

# EXHIBIT B


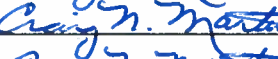
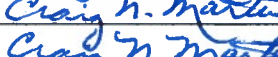

**00 42 23      PROPOSAL FORM**

**ARTICLE 1 – PROPOSAL RECIPIENT**

- 1.01 This Proposal is submitted to:  
City of Pflugerville, Texas  
Central Wastewater Treatment Plant Expansion  
Circular Clarifier Sludge Collectors

**ARTICLE 2 – OFFEROR’S ACKNOWLEDGMENTS**

- 2.01 Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with Buyer on the form included in the Procurement Contract Documents, to provide Goods and Special Services specified or indicated in Procurement Contract Documents for the Procurement Contract Price indicated in this Proposal or as modified by Contract Amendment. Offeror agrees to provide Goods and Special Services within the Procurement Contract Times established in the Agreement or as modified by Contract Amendment and comply with the all other terms and conditions of the Procurement Contract Documents.
- 2.02 Offeror accepts all of the terms and conditions of the Request for Proposals and Instructions to Offerors, including those dealing with required bonds. The Proposal will remain subject to acceptance for 90 days after the date of Proposal submission.
- 2.03 Offeror accepts the provisions of the Agreement as to liquidated damages in the event of its failure to provide Goods and Special Services in accordance with the schedule set forth in the Agreement.
- 2.04 Offeror acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt
1	11/9/18	
2	11/14/18	
3	11/19/18	
4	11/20/18	

**ARTICLE 3 – OFFEROR’S REPRESENTATIONS**

- 3.01 The Offeror has examined and carefully studied the Procurement Contract Documents and the other related data identified in the Proposal Documents.
- 3.02 The Offeror has become familiar with and is satisfied as to the general, local, and Site conditions that may impact providing Goods and Special Services.
- 3.03 The Offeror is familiar with Laws and Regulations that may impact providing Goods and Special Services.
- 3.04 The Offeror has considered the:
  - A. Information known to Offeror;
  - B. Information commonly known to Sellers doing business in the area of Site; and
  - C. The Procurement Contract Documents.

- 3.05 Based on the information and observations referred to in the preceding paragraphs, Offeror agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for providing Goods and Special Services at the Procurement Contract Price, within the Procurement Contract Times, and in accordance with the other terms and conditions of the Procurement Contract Documents.
- 3.06 The submission of a Proposal will constitute an incontrovertible representation by the Offeror that the Offeror has complied with every requirement of this Section, that without exception the Proposal is premised upon completion of provisions of Goods and Special Services required by the Procurement Contract Documents, Addenda and the related supplemental data, that the Offeror has given the PCM written notice of all conflicts, errors, ambiguities and discrepancies that the Offeror has discovered in the Procurement Contract Documents, Addenda and the related supplemental data and the written resolutions provided by the PCM are acceptable to the Offeror, and that the Procurement Contract Documents, Addenda and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for providing the Goods and Special Services.
- 3.07 The Offeror is aware of the general nature of construction to be performed by Buyer, Contractor, and others at the Site that relates to providing Goods and Special Services as indicated in the Procurement Contract Documents.
- 3.08 The Offeror has correlated the information known to the Offeror, information and observations obtained from visits to the Site, reports and drawings identified in the Procurement Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Procurement Contract Documents.
- 3.09 The Offeror has given the PCM written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror has discovered in the Procurement Contract Documents, and the written resolution provided by the PCM is acceptable to the Offeror.
- 3.10 The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for providing Goods and Special Services.
- 3.11 Offeror's entry into this Procurement Contract constitutes an incontrovertible representation by Offeror that without exception all prices in the Agreement are premised upon providing the Goods and Special Services required by the Procurement Contract Documents.

#### **ARTICLE 4 – BASIS OF OFFER**

- A. Offeror will provide the Goods and Special Services in accordance with the Procurement Contract Documents for the prices shown in the attached in Section 00 42 26 "Price Proposal."
- B. Unit prices offered include the Procurement Contract Price for providing Goods and Special Services related to the award of only those Goods covered in line items as shown in Section 00 42 26 "Price Proposal."

#### **ARTICLE 5 – TIME OF COMPLETION**

- 5.01 Offeror agrees that the Goods will be complete, delivered to the Site ready for assembly and installation by the Contractor per the technical specification.

- 5.02 Offeror agrees that Special Services will be provided within 30 days after receiving notice from the Contractor that the equipment will be ready to be placed in operation in accordance with the Procurement Contract Documents.

#### **ARTICLE 6 – ATTACHMENTS TO THIS PROPOSAL**

- 6.01 The following documents are attached to and made a condition of this Proposal:
- A. Section 00 42 26 "Price Proposal";
  - B. Section 00 43 13 "Bid Bond";
  - C. Section 00 45 01 "Compliance to State Law on Nonresident Bidders";
  - D. Section 00 45 02 "Compliance to State Sales Tax Code";
  - E. Section 00 45 03 "Conflict of Interest Questionnaire";
  - F. Section 00 45 04 "Non-Collusion Affidavit";
  - G. Section 00 45 05 "Prohibition on Contracts with Companies Boycotting Israel";
  - H. Section 00 45 16 "Technical Proposal";
  - I. Section 00 45 17 "Technical Proposal Requirements" and required attachments.

#### **ARTICLE 7 – DEFINED TERMS**

- 7.01 The terms used in this Proposal have the meanings indicated in the General Conditions and the Supplementary Conditions. The significance of terms with initial capital letters is described in the General Conditions.

#### **ARTICLE 8 – VENUE**

- 8.01 Offeror agrees that venue lies exclusively in Travis County, Texas for any legal action.

**ARTICLE 9 – PROPOSAL SUBMITTAL**

9.01 This Proposal is submitted by:

Offeror: WesTech Engineering, Inc.  
*(typed or printed name of organization)*

Signature:   
*(individual's signature)*

Name: Carig N. Martin  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Address for giving notices:

3665 S. West Temple, Salt Lake City, UT 84115  
\_\_\_\_\_  
\_\_\_\_\_

Phone: 801.265.1000 Email: munisales@westech-inc.com

*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

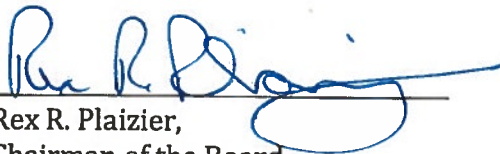
**END OF SECTION**

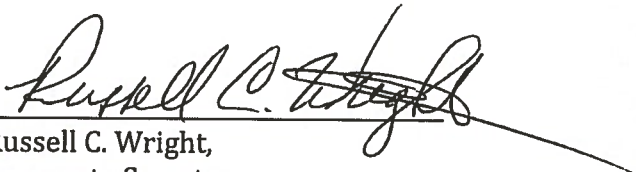
**Board of Directors Resolution for Officer Authority**

At the WesTech Engineering Board of Directors meeting duly convened on January 25, 2018, the following elements regarding potential contracts were approved as a Resolution:

1. That WesTech Engineering, Inc. is a duly chartered corporation under the laws of the State of California since 1973 and has been in good standing since that time.
2. That any officer of the company has the authority to sign and certify tender documents and contract documents which have undergone proper review from management.

In witness whereof, the Chairman of the Board, Rex R. Plaizier, has hereunto subscribed his name and affixed the corporate seal of said WesTech Engineering, Inc. this 25<sup>th</sup> day of January, 2018.

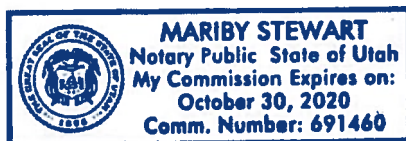
  
Rex R. Plaizier,  
Chairman of the Board

  
Russell C. Wright,  
Corporate Secretary

State of Utah  
County of Salt Lake

On this 25<sup>th</sup> day of January, 2018, before me, a duly commissioned and qualified Notary Public of the State of Utah, came Rex R. Plaizier, Chairman of WesTech Engineering, Inc.'s Board of Directors and Russell C. Wright, Corporate Secretary of WesTech Engineering, Inc., to me personally known to hold said positions and who executed the preceding instrument.

In testimony whereof, I have hereunto set my hand and affixed by official seal the day and year first written above.



  
Notary Public



**00 45 01 COMPLIANCE TO STATE LAW ON NONRESIDENT BIDDERS**

Texas Government Code Chapter 2252 applies to the award of government contract to nonresident bidders. This chapter provides that:

“a government entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lower bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located.”

“Nonresident bidder” refers to a person who is not a resident of Texas.


“Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Check the statement that is correct for Offeror:

- Offeror (includes parent company or majority owner) qualifies as a resident bidder whose principal place of business is in the state of Texas.
- Offeror qualifies as a nonresident bidder whose principal place of business or residency is in the state of: Utah

Any determination of state bidder preference law is based on the Texas Comptroller’s annual summary of other state bidder preference laws. For the purpose of this determination, Offerors submitting a Proposal are considered to be Bidders.

Offeror: WesTech Engineering, Inc.  
*(typed or printed name of organization)*

Signature:   
*(individual’s signature)*

Name: Craig N. Martin  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Business Address:  
3665 S. West Temple, Salt Lake City, UT 84115

Phone: 801.265.1000 Email: munisales@westech-inc.com  
*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

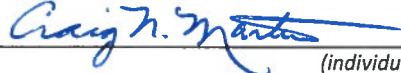
**END OF SECTION**

**00 45 02 COMPLIANCE TO STATE SALES TAX CODE**

Comply with all applicable sales, excise, and use tax requirements of the Texas Tax Code. The Offeror hereby certifies that the Procurement Contract Price is divided as follows:

Tax exempt products, materials, and services (See Notes 1 and 2) \$ \_\_\_\_\_  
Taxable products, materials, and services (See Note 3) \$ \_\_\_\_\_  
Total (See Note 4) \$ \_\_\_\_\_

Offeror: WesTech Engineering, Inc.  
*(typed or printed name of organization)*

Signature:   
*(individual's signature)*

Name: Craig N. Martin  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Business Address:  
3665 S. West Temple, Salt Lake City, UT 84115

Phone: 801.265.1000 Email: munisales@westech-inc.com  
*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

**Notes:**

1. Exempt products and materials are those items purchased for the Project which are physically incorporated into the facilities constructed for the Buyer or are necessary and essential for providing Goods and Special Services and are completely consumed for the Project. For purposes of this definition, products and materials are completely consumed if after being used once for its intended purpose it is used up or destroyed. Products and materials rented or leased for use in providing Goods and Special Services cannot be completely consumed for the purposes of this definition.
2. Exempt services are those services performed at the Site where the Procurement Contract expressly requires the specific service to be provided or purchased by the person performing the service is integral to providing Goods and Special Services.
3. Products, materials, and services are not tax exempt if they are used by the Seller but are not physically incorporated into the Buyer's facilities or are not consumed by construction or installation as defined above. Machinery or equipment and its accessories and repair and replacement parts used in providing Goods and Special Services are not exempt.
4. The total sum of the amount for tax exempt and taxable products, materials, and services must equal the Procurement Contract Price.

**END OF SECTION**



**CONFLICT OF INTEREST QUESTIONNAIRE**

**For vendor doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176 of the Local Government Code by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

None

**2**  Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

None

Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes  No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes  No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1)

**7** Craig R. Martin Vice President  
Signature of vendor doing business with the governmental entity

November 26, 2018  
Date

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.



**00 45 17      PROPOSAL FORM 4 - TECHNICAL REQUIREMENTS**

**ARTICLE 1 – TECHNICAL DATA**

Provide a copy of this checklist and the required information with the **Proposal**

Seller:

Project:      Procurement Package Circular Clarifier Sludge Collectors

<b>Item</b>	<b>Description</b>	<b>Attachment No.</b>
1	Complete description of all equipment offered, including catalogs, cut sheets, and pertinent design data.	1
2	List of deviations between Seller's offered Goods and the products specified.	2
3	Drawings of equipment and appurtenances showing dimensions, size and layout of connections (piping and electrical), weight, anchorage requirements, clearance requirements, and other pertinent design details.	3
4	Technical data on products and process for protective coatings and linings.	4
5	Location of facilities for manufacturing (foundry, machining and assembly) and factory witness testing.	5
6	Plan and schedule indicating dates for submittals, manufacturing, testing, and delivery.	6
7	Letter acknowledging that Seller will meet specified Warranty Requirements.	7
8	List of spare parts to be provided and included in the prices stated in the Price Proposal.	8
9	Resume of proposed Seller's Project Manager.	9
10	Resume of proposed Seller's Representative for Installation Checks and Startup services.	10
11	Resume of Seller's Representative for Training.	11

**END OF SECTION**



Scope of Supply

## Item A – One (1) 115' Diameter Clarifier Mechanism Model CLC18G

### General Scope of Supply

Item	Unit	Value/Description
Number of Mechanisms	Each	1
Application	-	Activated Sludge Secondary
Tank Diameter	ft	115
Tank Side Wall Depth	ft	18
Tank Side Water Depth	ft	16
Tank Bottom Slope	-	0.06:12
Average Flow Rate	MGD	2.5
Max Flow Rate	MGD	8.75

### Detailed Scope of Supply

Item	Unit	Qty	Size/Description	Material
Walkway Bridge	each	1	Pony Truss Type	304 SS
Walkway Handrail	-	-	Truss serves as railing	304 SS
Walkway Flooring	-	-	1-1/4" Grating	Aluminum
Platform Handrail	-	-	2 Rail Component	Aluminum
Platform Flooring	-	-	1/4" Checker Plate	Aluminum
Center Column Diameter	in	1	36	304 SS
Dual-Gate EDI Diameter	ft	1	10	304 SS
Dual-Gate EDI Total Height	ft	-	3.5	
Feedwell Diameter	ft	1	28	304 SS
Feedwell Total Height	ft	-	6.5	
Feedwell Supports	-	-	Supported from the Cage	304 SS
Suction Header	-	1	Rectangular tapered cross-section	304 SS
Suction Header Supports	-	-	Full box truss	304 SS
Rotating Suction Manifold	-	1	Surrounds center column	304 SS
Scum Skimmer	each	2	Std. hinged skimmer Blade	304 SS
Scum Box	each	1	4' Standard scum box	304 SS
Scum Flushing Valve	each	1	Skimmer actuated	Polymer/SS
Scum Spray System	-	1	1.5" Header diameter	304 SS
Anchor Bolts & Fasteners	-	-	-	316 SS

Drive Unit		
Description	Unit	Value/Description
Drive Type	C42	Cage w/ Precision Bearing
Housing Material	-	Steel
Continuous Rated Torque	ft·lbs	30,000
Momentary Peak Torque	ft·lbs	60,000
Rake Tip Speed	ft/min	8
Motor Size	HP	1
Motor Speed/Voltage/Frequency/Phase	RPM / V / Hz / Phase	1800 / 460 / 60 / 3
Torque Control Settings	Alarm: ft·lbs	100%: 30,000
	Motor Cutout: ft·lbs	120%: 36,000
Main Gear and Pinion Lubrication	-	Oil
Main Bearing and Reducer Lubrication	-	Grease

Surface Preparation and Coating		
Coating Area	Surface Preparation	Coating
Submerged	None	None
Non-Submerged	None	None
Drive Unit	SSPC-SP6	One (1) coat Tnemec N140F-1255 Epoxy, 3-9 mils DFT, and one (1) coat Tnemec 1074U-B5712 Polyurethane, 2-5 mils DFT

On-site Services	
Item	Quantity
Total Number of Trips	1
Total Number of Days	1

For inspection, observation of torque testing, startup, and instruction of plant personnel. Additional on-site services may be purchased at standard WesTech daily rates plus travel and living expenses.

~~**Client Comments**  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]  
 [Redacted text]~~

**Items Not Included in WesTech's Base Scope of Supply (unless specifically noted)**

- Electrical Controls and Wiring
- Piping, Valves, or Fittings

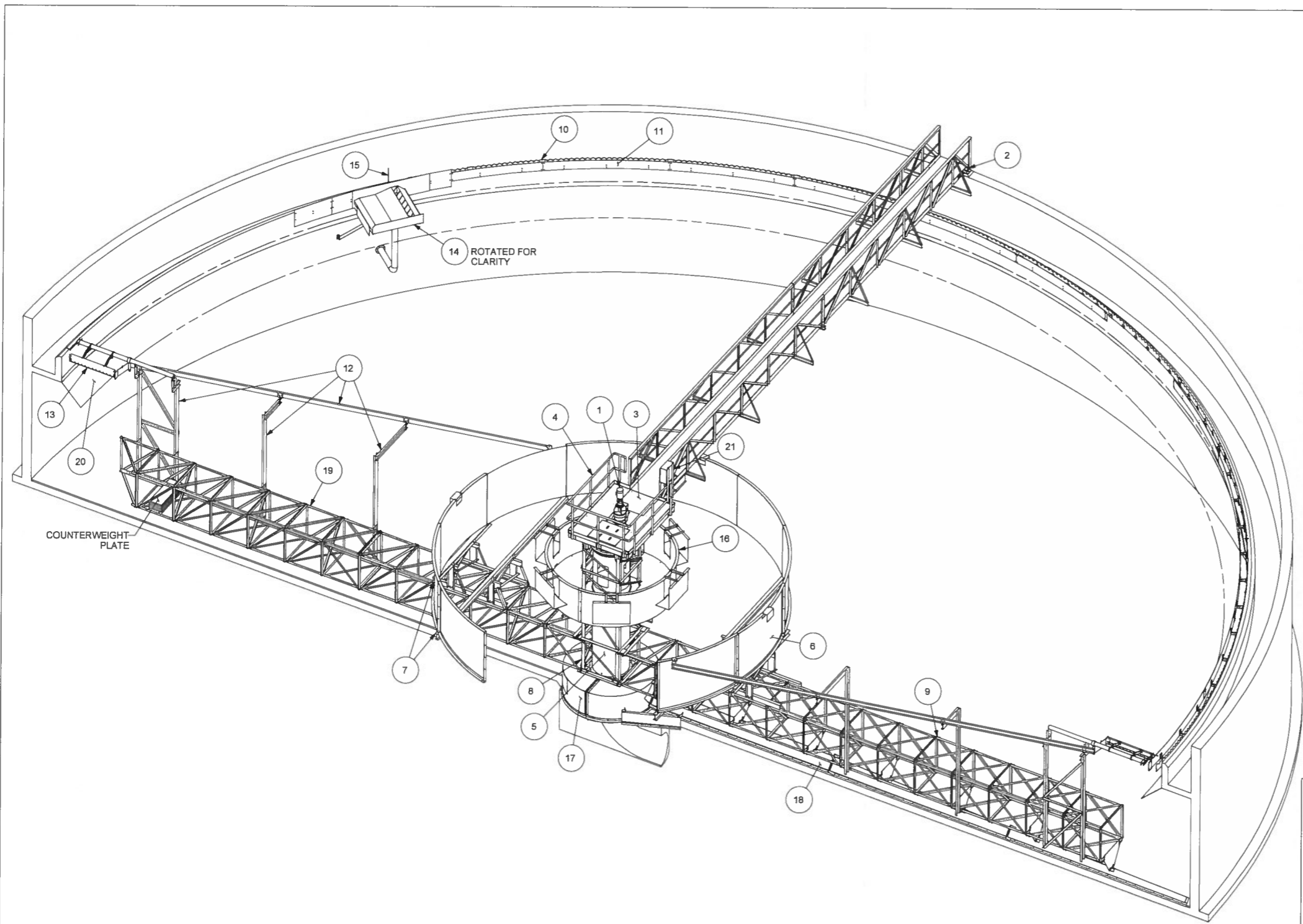
- Lubricants
- Unloading or Storage
- Erection or Assembly
- Weir, Scum Baffle, & Supports
- Concrete

*This proposal has been reviewed and is approved for issue by Kevin Cheatham on November 26, 2018.*



# Drawings

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EQUIPMENT LIST	
ITEM	DESCRIPTION/REMARKS
1	DRIVE UNIT WITH TORQUE CONTROL DEVICE
2	WALKWAY
3	DRIVE PLATFORM
4	HANDRAIL
5	CENTER INFLUENT COLUMN WITH INFLUENT PORTS
6	FEEDWELL WITH BAFFLED SCUM PORTS
7	FEEDWELL SUPPORTS
8	DRIVE CAGE
9	(X) SUCTION HEADER SUPPORT ARMS
10	WEIR PLATE WITH 90 V-NOTCHES (OPTIONAL)
11	BAFFLE PLATE WITH SUPPORTS (OPTIONAL)
12	(1) SKIMMER BLADE WITH SUPPORTS
13	(1) SCUM SKIMMER ASSEMBLY WITH WIPERS
14	SCUM BOX WITH SUPPORTS AND DISCHARGE PIPE CONNECTION WITH FLEXIBLE COUPLING
15	SCUM FLUSHING VALVE
16	ENERGY DISSIPATING INLET WELL WITH MULTIPLE INLET GATES
17	SLUDGE MANIFOLD
18	SUCTION HEADER WITH ORIFICES SUPPORTED BY A TRUSS
19	RAKE ARM
20	DENSITY CURRENT BAFFLE (OPTIONAL)
21	ELECTRICAL CONTROL PANEL (OPTIONAL)

**NOTES:**

1. FOLLOW THE LISTED WESTECH REFERENCE DOCUMENTS EXCEPT AS NOTED ON THIS DRAWING.

PREPARED FOR:

CONTRACTOR:

ENGINEER:

P. O. CONTRACT NUMBER

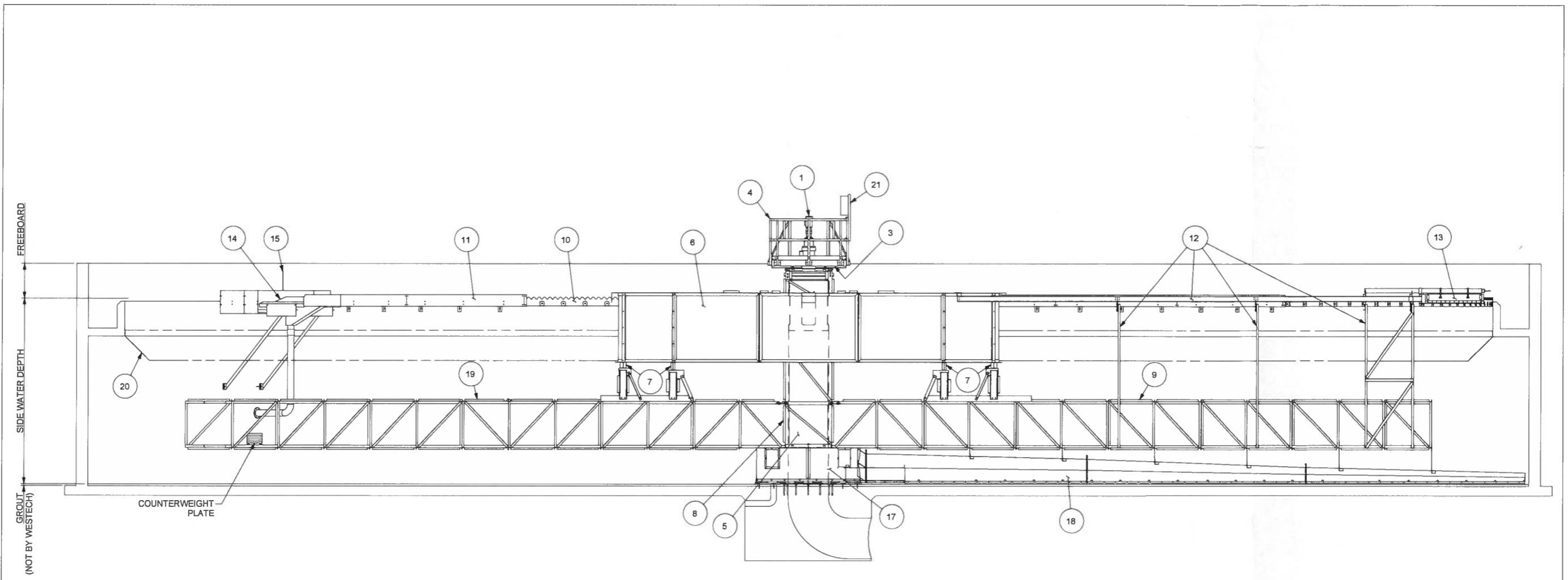
1001\_1\_ga\_tank\_cutaway\_view\_img\_1.png

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TITLE: GENERAL ARRANGEMENT - TANK CUTAWAY VIEW  
 Ø115' CLARIFIER  
 CLC18G

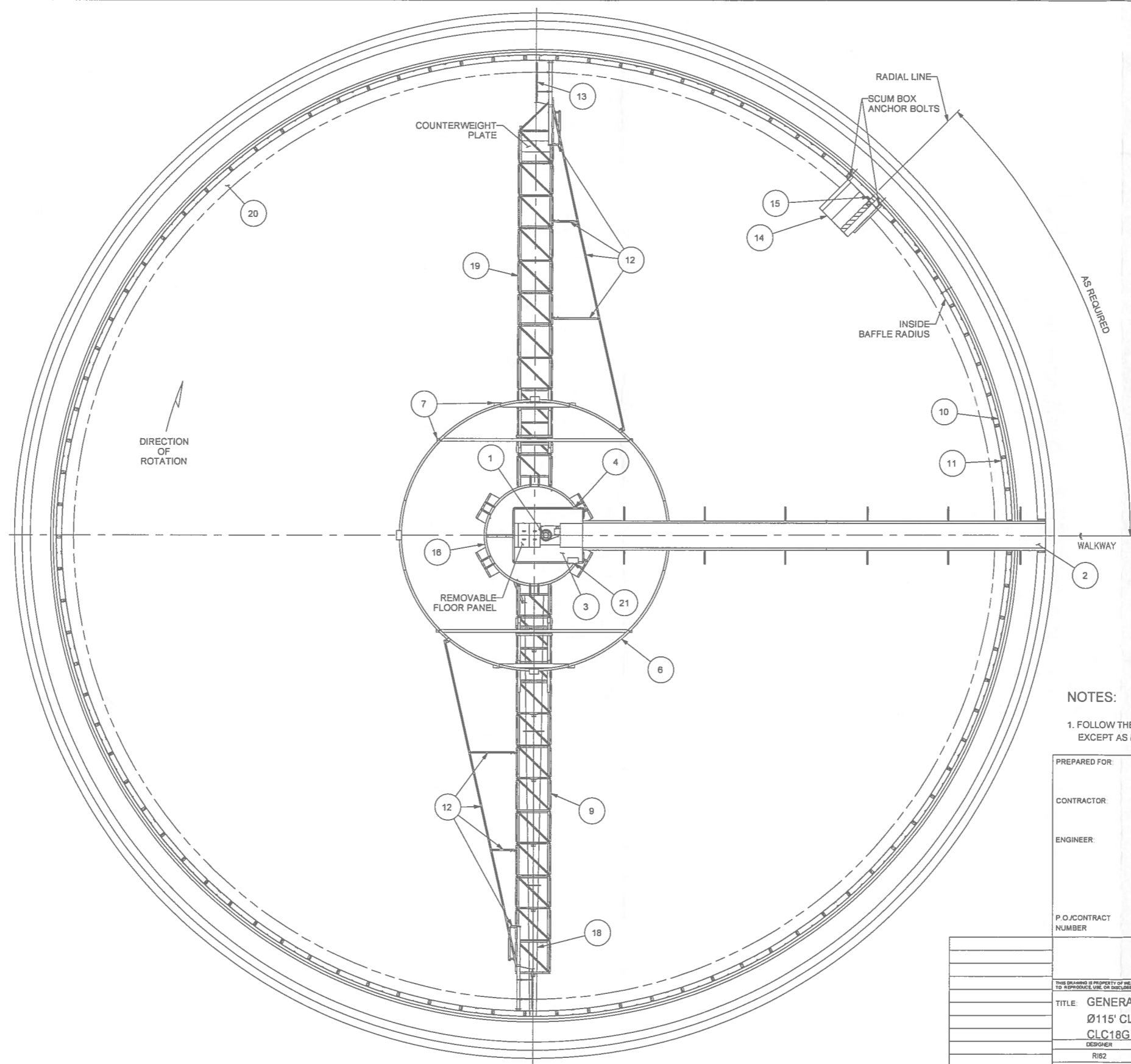
DESIGNER	CHECKER	APPROVER	DATE
RIB2			

REV	REVISION DESCRIPTION	ECN	DESIGNER	APPROVER	DATE	REFERENCE DOCUMENTS	DOCUMENT NUMBER	SHEET	REV
							PROP019G-1001	1 OF 1	-



PREPARED FOR	
CONTRACTOR	
ENGINEER	
P.O./CONTRACT NUMBER	
	1002_1_ga_elevation_view_img_1.png
<small>THIS DRAWING IS PROPERTY OF WESTECH ENGINEERING INC. AND IS TRANSMITTED IN CONFIDENCE. NEITHER ACCEPT NOR POSSESSION CONFERS OR TRANSFERS ANY RIGHTS TO REPRODUCE, USE, OR DISCLOSE, IN WHOLE OR IN PART, DATA CONTAINED HEREIN FOR ANY PURPOSE WITHOUT THE WRITTEN PERMISSION OF WESTECH ENGINEERING INC.</small>	
TITLE: GENERAL ARRANGEMENT - ELEVATION VIEW	
Ø115' CLARIFIER	
CLC18G	
DESIGNER	CHECKER
RIB2	
APPROVER	DATE
DOCUMENT NUMBER	SHEET
PROP019G-1002	1 OF 1
REV	
	-

REV	REVISION DESCRIPTION	ECN	DESIGNER	APPROVER	DATE	REFERENCE DOCUMENTS



**NOTES:**

1. FOLLOW THE LISTED WESTECH REFERENCE DOCUMENTS EXCEPT AS NOTED ON THIS DRAWING.

PREPARED FOR:	
CONTRACTOR:	
ENGINEER:	
P.O./CONTRACT NUMBER:	

1003\_1\_ga\_plan\_view\_img\_1.png

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TITLE: GENERAL ARRANGEMENT - PLAN VIEW

Ø115' CLARIFIER

CLC18G

DESIGNER	CHECKER	APPROVER	DATE
R162			

DOCUMENT NUMBER  
PROP019G-1003

SHEET  
1 OF 1

REV  
-

REV	REVISION DESCRIPTION	ECN	DESIGNER	APPROVER	DATE	REFERENCE DOCUMENTS

# TECO Westinghouse

ISSUED <b>8/29/2014</b>	<b>PERFORMANCE DATA</b> <b>3-PHASE INDUCTION MOTOR</b>	ENCLOSURE <b>TEFC</b>
TYPE <b>AEUH8NDC</b>		CATALOG# <b>EPV0014C</b>

### NAMEPLATE INFORMATION

OUTPUT HP	KW	POLE	FRAME SIZE	VOLTAGE	HZ	RATED AMBIENT	INS. CLASS	NEMA DESIGN	TIME RATING	SERVICE FACTOR
<b>1</b>	<b>0.7</b>	<b>4</b>	<b>143TC</b>	<b>230/460</b>	<b>60</b>	<b>40°C</b>	<b>F</b>	<b>B</b>	<b>CONT.</b>	<b>1.15</b>

### VARIABLE FREQUENCY DRIVE SERVICE

VARIABLE TORQUE				OHMS/PHASE EQUIVALENT WYE CIRCUIT (AT RATED OPERATING TEMPERATURE 25°C)				
HZ	HP	RPM	TORQUE (lb-ft)	R1	R2	X1	X2	X <sub>m</sub>
<b>3~60</b>	<b>0.0001~1</b>	<b>90~1800</b>	<b>0.006~3.009</b>	<b>8.1425</b>	<b>6.5479</b>	<b>18.783</b>	<b>11.565</b>	<b>313.61</b>

CONSTANT TORQUE				CONSTANT HORSEPOWER			
HZ	HP	RPM	TORQUE (lb-ft)	HZ	HP	RPM	TORQUE (lb-ft)
<b>6~60</b>	<b>.1~1</b>	<b>180~1800</b>	<b>3.009</b>	<b>60~120</b>	<b>1</b>	<b>1800~3600</b>	<b>3.009~1.505</b>

### TYPICAL PERFORMANCE

FULL LOAD RPM	EFFICIENCY				POWER FACTOR			SOUND PRESSURE LEVEL @ 3 FT Db(A)
	FULL LOAD		3/4 LOAD %	1/2 LOAD %	FULL LOAD %	3/4 LOAD %	1/2 LOAD %	
	MIN.%	NOM.%						
<b>1745</b>	<b>82.5</b>	<b>85.5</b>	<b>84</b>	<b>81.5</b>	<b>73</b>	<b>64.5</b>	<b>51.5</b>	<b>49</b>

CURRENTS									NEMA KVA CODE LETTER	SAFE STALL TIME IN SECONDS	
NO LOAD			FULL LOAD			LOCKED ROTOR				COLD	HOT
AT 208 VOLT	AT 230 VOLT	AT 460 VOLT	AT 208 VOLT	AT 230 VOLT	AT 460 VOLT	AT 208 VOLT	AT 230 VOLT	AT 460 VOLT			
<b>1.67</b>	<b>1.60</b>	<b>0.8</b>	<b>3.32</b>	<b>3.00</b>	<b>1.50</b>	<b>27.1</b>	<b>30.0</b>	<b>15</b>	<b>N</b>	<b>71</b>	<b>50</b>

TORQUE				INERTIA			ACCEL TIME (DOL)		ALLOWABLE STARTS PER HOUR	
FULL LOAD (lb-ft)	LOCKED ROTOR %FLT	PULL UP %FLT	BREAK DOWN %FLT	ROTOR WR <sup>2</sup> (lb-ft <sup>2</sup> )	NEMA LOAD WK <sup>2</sup> (lb-ft <sup>2</sup> )	MAX ALLOWABLE WK <sup>2</sup> (lb-ft <sup>2</sup> )	NEMA LOAD WK <sup>2</sup> Sec	MAX ALLOWABLE WK <sup>2</sup> Sec	COLD	HOT
<b>3.01</b>	<b>310</b>	<b>280</b>	<b>410</b>	<b>0.086</b>	<b>5.8</b>	<b>46</b>	<b>3.41</b>	<b>26.70</b>	<b>2</b>	<b>1</b>

APPROVED:	<b>M. PRATER</b>	DRAWING NO.	<b>31057EPV0014C</b>	REVISION:	<b>1</b>
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# Protective Coatings

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# ENDURA-SHIELD® II SERIES 1074U

## PRODUCT PROFILE

**GENERIC DESCRIPTION** Aliphatic Acrylic Polyurethane

**COMMON USAGE** A coating highly resistant to abrasion, wet conditions, corrosive fumes and exterior weathering. High build quality combines with project specific primers for two-coat, labor saving systems. Contains a blend of ultra-violet light (UV) absorbers for enhanced color and gloss retention. Fast curing options are available; see Curing Time below. **NOT FOR IMMERSION SERVICE.**

**COLORS** Refer to Tnemec Color Guide. **Note:** Certain colors may require multiple coats depending on method of application and finish coat color. When feasible, the preceding coat should be in the same color family, but noticeably different.

**FINISH** Gloss

**SPECIAL QUALIFICATIONS** Series 1074U meets the requirements of SSPC-36 (level 3) Paint Standard.

**PERFORMANCE CRITERIA** Contact your Tnemec representative for specific test results.

## COATING SYSTEM

**PRIMERS** **Steel:** Series 1, 20, FC20, 27, 66, L69, L69F, N69, N69F, V69, V69F, 90-97, 91-H<sub>2</sub>O, 94-H<sub>2</sub>O, 104, 135, L140, L140F, N140, N140F, V140, V140F, 161, 394, 530  
**Galvanized Steel and Non-Ferrous Metal:** Series 27, 66, L69, L69F, N69, N69F, V69, V69F, 135, 161  
**Concrete:** Series 66, L69, L69F, N69, N69F, V69, V69F, 84, 104, 161  
**CMU:** 54-660, 130. Intermediate coat required.  
**Note:** Before topcoating with Series 1074U, Series 530 exterior exposed for more than 24 hours must first be scarified or receive an intermediate coat of Tnemec polyamide epoxy. Recoat windows for other primers may apply. See those data sheets for additional information.

## SURFACE PREPARATION

**ALL SURFACES** Must be clean, dry and free of oil, grease and other contaminants. See primer product data sheet for surface preparation recommendation.

## TECHNICAL DATA

**VOLUME SOLIDS** 66 ± 2.0% (mixed) †

**RECOMMENDED DFT** 2.0 to 5.0 mils (50 to 125 microns) per coat. **Note:** Number of coats and thickness requirements will vary with substrate, application method and exposure. Contact your Tnemec representative.

CURING TIME	Temperature	To Handle	To Recoat	Resist Moisture
	95°F (35°C)	4 hours	5 hours	3 hours
	75°F (24°C)	6 hours	8 hours	5 hours
	55°F (13°C)	12 hours	16 hours	9 hours
	35°F (2°C)	36 hours	48 hours	20 hours

Curing time varies with surface temperature, air movement, humidity and film thickness. If coating is exposed to moisture before the applicable cure parameters are met, dull, flat or spotty appearing areas may develop. **Note:** For faster curing and low-temperature applications, add No. 44-710 Urethane Accelerator; see separate product data sheet. Contact Tnemec Technical Services for force curing times and temperatures.

## VOLATILE ORGANIC COMPOUNDS

EPA Method 24 †

Unthinned	Max 7% (No. 39 Thin.)	Max 6% (No. 42 Thin.)	Max 5% (No. 48 Thin.)
2.59 lbs/gal (310 g/l)	2.83 lbs/gal (339 g/l)	2.82 lbs/gal (338 g/l)	2.81 lbs/gal (337 g/l)

## HAPS

Unthinned	Max 7% (No. 39 Thin.)	Max 6% (No. 42 Thin.)	Max 5% (No. 48 Thin.)
0.19 lbs/gal solids	0.19 lbs/gal solids	0.19 lbs/gal solids	0.19 lbs/gal solids

**THEORETICAL COVERAGE** 1,051 mil sq ft/gal (25.8 m<sup>2</sup>/L at 25 microns). See APPLICATION for coverage rates. †

**NUMBER OF COMPONENTS** Two: Part A and Part B

**MIXING RATIO** By volume: Eight (Part A) to one (Part B)

## PACKAGING

	PART A (Partially filled)	PART B (Partially filled)	When Mixed
3 Gallon Kit	5 gallon pail	1/2 gallon can	3 gallons (11.35L)
1 Gallon Kit	1 gallon pail	1 pint can	1 gallon (3.79L)

**NET WEIGHT PER GALLON** 11.03 ± 0.25 lbs (5.00 ± .11 kg) (mixed) †

**STORAGE TEMPERATURE** Minimum 20°F (-7°C) Maximum 110°F (43°C)

**TEMPERATURE RESISTANCE** (Dry) Continuous 250°F (121°C) Intermittent 275°F (135°C)

**SHELF LIFE** Part A: 24 months; Part B: 12 months at recommended storage temperature.

**FLASH POINT - SETA** Part A: 95°F (35°C) Part B: 135°F (57°C)

# ENDURA-SHIELD® II | SERIES 1074U

**HEALTH & SAFETY**

Paint products contain chemical ingredients which are considered hazardous. Read container label warning and Material Safety Data Sheet for important health and safety information prior to the use of this product.  
**Keep out of the reach of children.**

**APPLICATION**

**COVERAGE RATES**

**Conventional Build (Spray, Brush or Roller)**

	Dry Mils (Microns)	Wet Mils (Microns)	Sq Ft/Gal (m <sup>2</sup> /Gal)
Suggested	2.5 (65)	4.0 (100)	423 (39.3)
Minimum	2.0 (50)	3.0 (75)	529 (49.2)
Maximum	3.0 (75)	4.5 (115)	353 (32.8)

**High-Build (Spray Only)**

	Dry Mils (Microns)	Wet Mils (Microns)	Sq Ft/Gal (m <sup>2</sup> /Gal)
Suggested	4.0 (100)	6.0 (150)	265 (24.6)
Minimum	3.0 (75)	4.5 (115)	353 (32.8)
Maximum	5.0 (125)	7.5 (190)	212 (19.7)

**Note:** Can be spray applied at 3.0 to 5.0 mils (75 to 125 microns) DFT per coat when extra protection or the elimination of a coat is desired. Allow for overspray and surface irregularities. Wet film thickness is rounded to the nearest 0.5 mil or 5 microns. Application of coating below minimum or above maximum recommended dry film thicknesses may adversely affect coating performance. †

**MIXING**

Stir contents of the container marked Part A, making sure no pigment remains on the bottom. Add the contents of the can marked Part B to Part A while under agitation. Continue agitation until the two components are thoroughly mixed. When used with 44-710 Urethane Accelerator, first blend 44-710 into Part A under agitation; continue as above. Do not use mixed material beyond pot life limits. **Caution: Part B is moisture-sensitive and will react with atmospheric moisture. Unused material must be kept tightly closed at all times.**

**THINNING**

Thinning is required for proper application. For air or airless spray, thin 6% or 7 ounces per gallon with No. 42 Thinner if temperatures are below 80°F (27°C) or use 5% or 6 ounces of No. 48 Thinner for temperatures above 80°F (27°C). For brush and roller, thin 7% or 9 ounces per gallon with No. 39 Thinner. When using 1074U, maximum thinning is 7% for No. 39 Thinner, 6% for No. 42 Thinner, and 5% for No. 48 Thinner. **Caution: Do not add thinner if more than 30 minutes have elapsed after mixing.**

**POT LIFE**

1 1/2 hours at 77°F (25°C) unthinned    2 hours at 77°F (25°C) thinned

**APPLICATION EQUIPMENT**

**Air Spray**

Gun	Fluid Tip	Air Cap	Air Hose ID	Mat'l Hose ID	Atomizing Pressure	Pot Pressure
DeVilbiss JGA	E	704 or 765	5/16" or 3/8" (7.9 or 9.5 mm)	3/8" or 1/2" (9.5 or 12.7 mm)	75-90 psi (5.2-6.2 bar)	10-20 psi (0.7-1.4 bar)

Low temperatures or longer hoses require higher pot pressure.

**Airless Spray**

Tip Orifice	Atomizing Pressure	Mat'l Hose ID	Manifold Filter
0.009-0.013" (230-330 microns)	3000-3500 psi (207-241 bar)	1/4" or 3/8" (6.4 or 9.5 mm)	100 mesh (150 microns)

Use appropriate tip/atomizing pressure for equipment, applicator technique and weather conditions.

**Roller:** Use 1/4" or 3/8" (6.4 mm or 9.5 mm) synthetic woven nap roller covers. Do not use long nap roller covers. Two coats are required to obtain dry film thickness above 3.0 mils (75 microns).

**Brush:** Recommended for small areas only. Use high quality natural or synthetic bristle brushes. Two coats are required to obtain recommended film thickness above 3.0 mils (75 microns).

**SURFACE TEMPERATURE**

Minimum 35°F (2°C)    Maximum 120°F (49°C)  
 The surface should be dry and at least 5°F (3°C) above the dew point.

**CLEANUP**

Flush and clean all equipment immediately after use with the recommended thinner or MEK.

† Values may vary with color.

WARRANTY & LIMITATION OF SELLER'S LIABILITY: Tnemec Company, Inc. warrants only that its coatings represented herein meet the formulation standards of Tnemec Company, Inc. THE WARRANTY DESCRIBED IN THE ABOVE PARAGRAPH SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. The buyer's sole and exclusive remedy against Tnemec Company, Inc. shall be for replacement of the product in the event a defective condition of the product should be found to exist and the exclusive remedy shall not have failed its essential purpose as long as Tnemec is willing to provide comparable replacement product to the buyer. NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY, ENVIRONMENTAL INJURIES OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO THE BUYER. Technical and application information herein is provided for the purpose of establishing a general profile of the coating and proper coating application procedures. Test performance results were obtained in a controlled environment and Tnemec Company makes no claim that these tests or any other tests, accurately represent all environments. As application, environmental and design factors can vary significantly, due care should be exercised in the selection and use of the coating.

Tnemec Company Incorporated 6800 Corporate Drive Kansas City, Missouri 64120-1372 1-800-TNEMEC1 Fax: 1-816-483-3969 www.tnemec.com



# Location of Manufacturing

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## **Drive Unit**

Salt Lake City, Utah area

## **Mechanism**

Houston, Texas area

## Schedule

Submittals, after PO receipt	6 to 8 Weeks
Customer Review Period	2 weeks
Ready to Ship, after Submittal Approval	18 to 20 weeks
<b>Total Weeks from PO to Shipment</b>	<b>26 to 30 weeks</b>



2/13/2019

City of Pflugerville, TX  
Central Wastewater Treatment Plant  
15500 Sun Light Near Way  
Pflugerville, TX 78660

Re: WesTech Proposal No. 1360277 - Pflugerville Warranty Bid Requirements: Specification  
Section 00 45 17; Article 1; Item 7

To Whom It May Concern:

WesTech will meet the warranty requirements of the contract documents.

Sincerely,

A handwritten signature in blue ink that reads "Chris Perry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chris Perry  
Product Manager  
cperry@westech-inc.com  
801.290.6448



# Resumes

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**Antoniu I. Musca**  
**Project Manager**  
**WesTech Engineering, Inc.**

**Education**

University Babes – Bolyai, Cluj, Romania  
MS in Chemical Engineering – 1983

Chemical High School – Tirgu-Mures, Romania  
Professional Chemical Operator - 1977

**Experience:**

2008 - Present WesTech Engineering Inc. Salt Lake City, Utah  
Project Manager

Manage project(s) for WesTech Customer expectations. Customer interface at all job stages. Interface with project managers from other groups at all stages.

*Key responsibilities:* Design calculations, Submittal preparation and follow up, Shop inspection. Coordinate design/checking/approving of drawings. Arrange for purchasing of equipment. Primary coordination between customer and all other aspects of project execution. Responsible to meet project specifications, ensure schedules, budgets etc., are met. Expediting vendors and sub-contractors, coordinating with general contractors. Communication with internal and external customers.

2002 - 2008 Eimco Process Equipment/Dorr-Oliver Eimco/Eimco Water Technologies Salt Lake City, Utah  
Project Manager

Responsible for coordinating sales order execution for Municipal Sedimentation equipment in accordance with customer requirements, established profit margins, and committed schedules. Main project contact for customers and ensure that all contract requirements for scope of supply, fieldwork, start-ups and training are scheduled and successfully completed. Periodical reporting to senior management of project status, margin and solutions to improve on overall project execution.

*Key responsibilities:* review of all applicable job data, including P.O.'s, Project Plans and Specs, etc. provide comments when applicable, schedule and conduct Project Review meeting; focus on scope of supply, cost, construction and project scheduling. Communicate with other departments in order to maintain schedule with regards to purchasing, fabrication, construction, inspection, start-up, etc. Adhere to all company and corporate policies and advises management on project status. Responsible for providing prompt feedback to customer regarding project schedule and any issues that may arise during the execution of a project. Responsible for timely execution of all assigned projects. Performs all work in accordance with established safety procedures. Other duties were assigned as required.

1995 - 2002 Franklin Consulting Company Broomall, Pennsylvania

Plant Engineer/Operator

Water remediation project for Kennecott Utah Copper mining company. Biological treatment of Acid Plume and Leach Water. Extensive pilot and demonstration study of Membrane Nano-filtration Technologies of Waters with very high TDS and low pH. Long term process operation, optimization and re-engineering.

**Mark Raines**  
**Startup and Training**  
**WesTech Engineering, Inc.**

Field Service Technician 2012 – Present

WesTech Engineering, Inc. - Salt Lake City, Utah

- Shop inspection of fabricated equipment
- Inspection of equipment after installation
- Assist in resolving field problems relating to engineering and design
- Identification of problem – trouble shooting
- Isolation of cause
- Development of corrective action
- Initiation of preventative maintenance to avert reoccurring problems.

Supervision of Initial Operation

- Check equipment erection procedures and testing
- Ensure proper lubrication and tolerances are met
- Start up and certification of equipment
- Operator training for equipment operation

Partial Equipment List

- Thickeners
- Clarifiers –Solids Contact, Dissolved air flotation, Suction Header, Suction Pipe, Corner Sweeps
- Drive Units – Rake, Turbine, and Lift Drives
- STM Aerotor
- Municipal & Industrial Wastewater Screening Equipment
- Screening Transport Washing & Dewatering Equipment
- Gritt Classifier and other Headworks equipment

Certifications:

- 40-hour OSHA Certification, 29 CFR 1910.120 HAZWOPER
- 30-hour OSHA Certification 29CFR 1926 Construction Training DOL Card
- State of Utah Water Distribution Class IV License
- State of Utah Small Sewer Systems Class 1 License
- Certified Emergency Care Instructor

Experience:

Stantec Consulting 5+ years - Salt Lake City, UT

Resident Engineer/Environmental Monitoring

- Utility design and observation of construction
- Hydrostatic testing
- Disinfection testing
- Bacteriological sampling





***Surety and Seller, intending to be legally bound and obligated to Buyer do each cause this performance bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Seller and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Seller as Principal faithfully performs the work required by the Procurement Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. Provisions of this bond are pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond will be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue lies exclusively in Travis County, Texas for any legal action.***

**Seller as Principal**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**Surety**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

*(Attach Power of Attorney and place surety seal below)*

**END OF SECTION**

**00 61 16      PAYMENT BOND**

<p><b>Seller as Principal</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p><b>Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Buyer</b></p> <p>Name: <b>City of Pflugerville, Texas</b></p> <p>Mailing address (principal place of business):</p> <p><b>PO Box 589</b> <b>Pflugerville, TX 78691-0589</b></p>	<p>Physical address (principal place of business):</p>   <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p><b>Procurement Contract</b></p> <p>Project name and number:</p> <p>Central WWTP Expansion Equipment Procurement for Circular Clarifier Sludge Collectors PFL16607</p> <p>Procurement Contract Price: Effective Date of Procurement Contract:</p>	<p>Surety's state of incorporation:</p> <p><b><i>By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in the state of Texas.</i></b></p> <p><b>Local Agent for Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Bond</b></p> <p>Bond Amount:</p> <p>Date of Bond:</p> <p>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</p>	<p>Telephone (Main):</p> <p><b><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.</i></b></p>

***Surety and Seller, intending to be legally bound and obligated to Buyer do each cause this payment bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Seller and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Seller as Principal pays all claimants providing labor or materials to Seller in the prosecution of the work required by the Procurement Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. Provisions of this bond are pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond will be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue lies exclusively in Travis County, Texas for any legal action.***

**Seller as Principal**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Email: \_\_\_\_\_

**Surety**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Email: \_\_\_\_\_

*(Attach Power of Attorney and place surety seal below)*

**END OF SECTION**

**GENERAL  
CONDITIONS**

**00 72 00      GENERAL CONDITIONS**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

- A. A term with initial capital letters, including the term’s singular and plural forms, has the meaning indicated in this paragraph wherever used in the Bidding Requirements, Proposal Requirements, or Procurement Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the Procurement Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda* - Documents issued prior to the receipt of Bids or Proposals which clarify or modify the Bidding Requirements or Proposal Requirements or the proposed Procurement Contract Documents.
  2. *Agreement* - The document executed between Buyer and Seller covering the purchase of Goods and Special Services.
  3. *Application for Payment* - The form used by Seller to request payments from Buyer and the supporting documentation required by the Procurement Contract Documents.
  4. *Bid; Proposal* - The documents submitted by an Offeror to establish the proposed Procurement Contract Price and Procurement Contract Times and provide other information and certifications as required by the Bidding Requirements or Proposal Requirements.
  5. *Bidding Documents; Proposal Documents* - The Bidding Requirements or Proposal Requirements, the proposed Procurement Contract Documents, and Addenda.
  6. *Bidding Requirements; Proposal Requirements* - The Invitation to Bid or Request for Proposals, Instructions to Offerors, Bid Security or Proposal Security, Bid Form or Proposal Form and attachments, and required certifications and affidavits.
  7. *Bid Security; Proposal Security* - The financial security in the form of a bid bond provided by Offeror at the time the Bid or Proposal is submitted and held by Buyer until the Agreement is executed and insurance, performance, payment, and other bonds required by the Procurement Contract Documents are provided.
  8. *Buyer* - The individual or entity with whom Seller has entered into the Agreement with to provide the Goods and Special Services.
  9. *Buyer’s Indemnitees* - Each member of the BPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
  10. *Buyer’s Project Team or BPT* - The Buyer, Program Manager, Project Construction Manager, Resident Project Representative, Design Professional, and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide services to the Buyer.
  11. *Change Directive* - A written directive issued to Seller on or after the Effective Date of the Procurement Contract ordering an addition, deletion, or revision in the Goods and Special Services. The Goods and Special Services Change Directive serves as a memorandum of understanding regarding the Change Directive until a Change Order can be issued.

12. *Change Order* - A document issued on or after the Effective Date of the Procurement Contract and signed by Buyer and Seller which modifies the Goods and Special Services, Procurement Contract Price, Procurement Contract Times, or terms and conditions of the Procurement Contract.
13. *Change Proposal* - A document submitted by Seller in accordance with the requirements of the Procurement Contract Documents:
  - a. Requesting an adjustment in Procurement Contract Price or Procurement Contract Times;
  - b. Contesting an initial decision concerning the requirements of the Procurement Contract Documents or the acceptability of Goods and Special Services under the Procurement Contract Documents;
  - c. Challenging a Set-off against payment due; or
  - d. Seeking a Modification with respect to the terms of the Procurement Contract.
14. *Claim* - A demand or assertion by Buyer or Seller submitted in accordance with the requirements of the Procurement Contract Documents. A demand for money or services by an entity other than the Buyer or Seller is not a Claim.
15. *Constituent of Concern* - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.
16. *Procurement Contract* - The entire integrated set of documents concerning the Goods and Special Services describing the relationship between the Buyer and Seller. The Procurement Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
17. *Contract Amendment* - A document issued on or after the Effective Date of the Procurement Contract and signed by Buyer and Seller which modifies the terms and conditions of the Procurement Contract but does not make changes in the Goods and Special Services.
18. *Procurement Contract Documents* - Those items designated as Procurement Contract Documents in the Agreement.
19. *Procurement Contract Price* - The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.
20. *Procurement Contract Times* - The number of days or the dates stated in the Agreement by which Seller must deliver the Goods and provide the Special Services.
21. *Contractor* - The individual or entity with which Buyer has contracted for installing the Goods and coordinating the delivery of Special Services.
22. *Day* - A calendar day of 24 hours measured from midnight to the next midnight.

23. *Defective* - When applied to Goods and Special Services, Defective refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
  - a. Do not conform with the Procurement Contract Documents;
  - b. Do not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Procurement Contract Documents; or
  - c. Have been damaged prior to PCM's recommendation of final payment unless responsibility for the protection of the Goods and Special Services has been assumed by Buyer.
24. *Drawings* - The part of the Procurement Contract Documents that graphically shows the scope, extent, and character of the Goods and Special Services. Shop Drawings and other Seller submittals are not Drawings.
25. *Effective Date of the Procurement Contract* - The date indicated in the Agreement on which the Procurement Contract becomes effective.
26. *Design Professional* - The individual or entity named as Design Professional in the Agreement and the subconsultants, individuals or entities directly or indirectly employed or retained by Design Professional to provide design or other technical services to the Buyer. Design Professional has responsibility for design and technical issues related to the Procurement Contract Documents.
27. *Field Order* - A document issued by PCM or Design Professional requiring changes in the Goods and Special Services that do not change the Procurement Contract Price or the Procurement Contract Times.
28. *General Requirements* - Sections of Division 01 of the Specifications. The General Requirements pertain to all Sections of the Specifications.
29. *Goods* - The materials, products, or equipment to be provided by the Seller in accordance with the Procurement Contract Documents.
30. *Hazardous Environmental Condition* - The presence of Constituents of Concern at the Site in quantities or circumstances that may present a danger to persons or property exposed to Constituents of Concern. The presence of Constituents of Concern at the Site necessary for the provision of the Goods and Special Services or to be incorporated in the Goods and Special Services is not a Hazardous Environmental Condition provided these Constituents of Concern are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Procurement Contract.
31. *Indemnified Costs* - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Buyer's Indemnitees. These costs include fees for design professionals, architects, attorneys, and other professionals.
32. *Laws and Regulations; Laws or Regulations* - Applicable laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.
33. *Liens* - Charges, security interests, or encumbrances upon Procurement Contract related funds, real property, or private property.

34. *Manufacturer* - The individual or entity that designs, casts, fabricates, manufactures, assembles, tests and provides Goods to Seller that Buyer has contracted with for providing Goods and Special Services.
35. *Milestone* - A principal event in the delivery of the Goods and Special Services that Seller is required by Procurement Contract to complete by a specified date or within a specified period.
36. *Modification* - Change made to the Procurement Contract Documents by one of the following methods:
  - a. Contract Amendment;
  - b. Change Order;
  - c. Field Order; or
  - d. Change Directive.
37. *Notice of Award* - The notice by PCM to an Offeror of Buyer's acceptance of the Bid or Proposal.
38. *Notice to Proceed* - A notice to Seller of the date Goods and Special Services is to begin and of the Procurement Contract Times.
39. *Offeror* - An individual or entity that submits a Bid or Proposal to Buyer.
40. *Point of Destination* - The specific location indicated in the Procurement Contract Documents where Goods and Special Services are to be delivered.
41. *Project Construction Manager or PCM* - The individual or entity named as the Project Construction Manager in the Agreement and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide construction management services to the Buyer. The Project Construction Manager may be an employee of the Buyer.
42. *Project Management Information System or PMIS* - The online project management system that will be used by BPT and Contractor to submit and share documentation and other related communications and information for this Project.
43. *Program Manager* - The individual or entity named as Program Manager in the Agreement and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide program management services to the Buyer.
44. *Progress Schedule* - A schedule prepared and maintained by Seller, describing the sequence and duration of the activities comprising the Seller's plan to provide the Goods and Special Services within the Procurement Contract Times.
45. *Project* - The total undertaking to be accomplished by Buyer for which the Goods and Special Services are to be provided.
46. *Resident Project Representative or RPR* - The authorized representative of BPT assigned to assist PCM at the Site. As used herein, the term Resident Project Representative includes assistants and field staff of the PCM.

47. *Samples* - Physical examples of Goods, or workmanship representing some portion of the Goods and Special Services that are used to establish the standards for that portion of the Goods and Special Services.
48. *Schedule of Submittals* - A schedule of required submittals, prepared and maintained by Seller.
49. *Schedule of Values* - A schedule, prepared and maintained by Seller, allocating portions of the Procurement Contract Price to various portions of the Goods and Special Services and used as the basis for Seller's Applications for Payment.
50. *Seller* - The individual or entity with which Buyer has contracted for providing Goods and Special Services.
51. *Set-off* - A reduction in the amount Buyer pays to Seller that is imposed based on one or more provisions of the Procurement Contract.
52. *Shop Drawings* - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled and submitted by Seller to illustrate some portion of the Goods and Special Services. Shop Drawings, whether approved or not, are not Drawings and are not Procurement Contract Documents.
53. *Site* - Location indicated in the Procurement Contract Documents where Goods are to be installed by Contractor and where Special Services are to be provided.
54. *Special Services* - Services associated with the Goods to be furnished by Seller as required by the Procurement Contract Documents.
55. *Specifications* - The part of the Procurement Contract Document that describes the requirements for the Goods and Special Services, and certain administrative requirements and procedural matters applicable to providing Goods and Special Services.
56. *Successful Offeror* - The Offeror to which Buyer awards a contract.
57. *Supplementary Conditions* - The part of the Procurement Contract that amends or supplements the General Conditions.

## 1.02 Terminology

- A. The words and terms discussed in this paragraph are not defined, but when used in the Bidding Requirements, Proposal Requirements or Procurement Contract Documents have the indicated meaning.
- B. It is understood that the cost for providing Goods and Special Services is included in the Procurement Contract Price and no additional compensation is to be paid by Buyer unless specifically stated otherwise in the Procurement Contract Documents. Expressions including or like "at no additional cost to Buyer," "at Seller's expense," or similar words mean that the Seller is to provide the Goods and Special Services without an increase in the Procurement Contract Price.

- C. The meaning and intent of certain terms or adjectives are described as follows:
1. The terms “as allowed,” “as approved,” “as ordered,” “as directed,” or similar terms in the Procurement Contract Documents indicate an exercise of professional judgment by the BPT.
  2. Adjectives including or similar to “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or similar adjectives are used to describe a determination of BPT regarding the Goods and Special Services.
  3. Any exercise of professional judgment by the BPT will be made solely to evaluate the Goods and Special Services for general compliance with the Procurement Contract Documents unless there is a specific statement in the Procurement Contract Documents indicating otherwise.
  4. The use of these or similar terms or adjectives does not assign a duty or give BPT authority to supervise or direct the provision of the Goods and Special Services or assign a duty or give authority to the BPT to undertake responsibilities contrary to the provisions of Articles 9 or 10 or other provisions of the Procurement Contract Documents.
- D. The use of the words “furnish,” “install,” “perform,” and “provide” have the following meanings when used in connection with Goods and Special Services:
1. Furnish means to supply and deliver the Goods and Special Services to the Site or other specified location ready for use or installation.
  2. Install means to complete construction or assembly of the Goods so they are ready for their intended use.
  3. Perform or provide means to furnish and install specified Goods, complete and ready for their intended use, and to provide Special Services.
  4. Perform or provide the specified Goods, complete and ready for their intended use, and provide Special Services if the Procurement Contract Documents require Goods and Special Services but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”
- E. Procurement Contract Documents are written in modified brief style:
1. Requirements apply to all Goods and Special Services of the same kind, class, and type even though the word “all” is not stated.
  2. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish,” “install,” “perform,” “provide,” or similar words include the meaning of the phrase “The Seller must...” before these words.
  3. Unless specifically stated that action is to be taken by the BPT or others, it is understood that the action described is a requirement of the Seller.
- F. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Contract Documents in accordance with this recognized meaning unless stated otherwise in the Procurement Contract Documents.

- G. Written documents are required where reference is made to notices, reports, approvals, consents, submittals, statements, instructions, opinions, or other types of communications required by the Procurement Contract Documents. Approval and consent documents must be received by Seller prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the BPT's project management information system or other electronic media as required by the Procurement Contract Documents or approved by the PCM.
- H. Giving notice as required by the Procurement Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

- A. Provide required bonds and evidence of insurance required by the Procurement Contract Documents to the PCM with the executed Agreement.

### **2.02 Copies of Documents**

- A. BPT is to furnish one fully executed Agreement and one copy of the executed Procurement Contract Documents in electronic portable document format (PDF). This document is the Project Record Copy of the Procurement Contract Documents.

### **2.03 Commencement of Procurement Contract Times; Notice to Proceed**

- A. The Procurement Contract Times commence to run on the date indicated in the Notice to Proceed. Begin production of the Goods and Special Services on the date indicated in the Notice to Proceed.
- B. Do not begin prior to having the required insurance in force or before the date indicated in the Notice to Proceed.

### **2.04 Seller's Review**

- A. Carefully study the Procurement Contract Documents. Check and verify manufacturing and fabrication requirements and make all applicable field measurements before starting fabrication or assembly of the Goods. Promptly report any conflict, error, ambiguity, or discrepancy of which Seller has knowledge and obtain an interpretation or clarification from PCM before proceeding with any affected work.

### **2.05 Preliminary Conference; Designation of Authorized Representatives**

- A. Attend a preliminary conference as required by the Procurement Contract Documents.
- B. Provide the following preliminary documents within 10 days after the Effective Date of the Procurement Contract:
  - 1. Progress Schedule;
  - 2. Schedule of Submittals; and
  - 3. Schedule of Values and anticipated date of each payment.

- C. Designate the specific individuals authorized to act as representatives of the Seller. These individuals must have the authority to transmit and receive information, render decisions relative to the Procurement Contract, and otherwise act on behalf of the Seller.
- D. Buyer is to designate the specific individuals authorized to act as representatives of the Buyer and the limits of their authority with regard to acting on behalf of the Buyer.

#### 2.06 Progress Schedule

- A. Provide the Goods and Special Services in accordance with the Progress Schedule established in accordance with the Procurement Contract Documents. Adjust the Progress Schedule as required to reflect actual progress.
- B. Provide a Progress Schedule that shows an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Procurement Contract Times. Accepting this schedule does not impose responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the work on BPT or relieve Seller from full responsibility for meeting the schedule.

#### 2.07 Schedule of Submittals

- A. Provide a schedule showing when each submittal will be delivered to the PCM for review and approval in accordance with the Procurement Contract Document on the form provided by the PCM. Incorporate this information into the Progress Schedule as well.
- B. Notify the PCM if submittals will not comply with the schedule and adjust the schedule as necessary.

#### 2.08 Schedule of Payments

- A. Provide a schedule showing when each Application for Payment will be delivered to the PCM for review and approval in accordance with the Procurement Contract Documents, and the anticipated amount of the Application for Payment.

### **ARTICLE 3 – PROCUREMENT CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 Intent

- A. Requirements of components of the Procurement Contract Documents are as binding as if required by all Procurement Contract Documents. It is the intent of the Procurement Contract Documents to describe a functionally complete project. The Procurement Contract Documents do not indicate or describe all the Goods and Special Services required to complete the Project. Additional details required for the correct installation of selected Goods are to be provided by the Seller and coordinated with the BPT.
  - 1. The Procurement Contract requirements described in the General Conditions, Supplementary Conditions and General Requirements apply to Goods and Special Services regardless of where it is described in the Procurement Contract Documents, unless specifically noted otherwise.



2. In offering a Bid or Proposal for this Project and in entering into this Procurement Contract, Seller represents:
    - a. Seller has studied the Procurement Contract Documents, the Goods and Special Services, the Point of Destination, local conditions, Laws and Regulations, and other conditions that may affect the Goods and Special Services;
    - b. Seller has taken all this information into consideration in developing the Procurement Contract Price offered and that the Procurement Contract Price offered provides full compensation for providing the Goods and Special Services in accordance with the Procurement Contract Documents.
  3. Specifications or details do not need to be indicated or specified in each Specification or Drawing. Items shown in the Procurement Contract Documents are applicable regardless of their location in the Procurement Contract Documents.
  4. Standard paragraph titles and other identifications of subject matter in the Specifications are intended to aid in locating and recognizing various requirements of the Specifications. Titles do not define, limit, or otherwise restrict Specification text.
  5. Provide the labor, documentation, services, materials, or equipment that may be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result, whether specifically called for in the Procurement Contract Documents or not. Include these related costs in the offered Procurement Contract Price.
- B. Provide Goods that are functionally complete as described in the Procurement Contract Documents. The Drawings and Specifications do not indicate or describe all of the Goods and Special Services required to complete the installation of Goods purchased by the Buyer or Seller. Additional details required for the correct installation of selected Goods are to be provided by the Seller and coordinated with the Design Professional through the PCM.
  - C. Comply with the most stringent requirements where compliance with two or more standards is specified and they establish different or conflicting requirements for the Goods and Special Services, unless the Procurement Contract Documents indicate otherwise.
  - D. Provide Goods comparable in quality to similar Goods incorporated in the Goods or as required to meet the minimum requirements of the application if the Goods are shown in the Drawings but are not included in the Specifications.
  - E. The Project Record Copy of the Procurement Contract Documents governs if there is a discrepancy between the Project Record Copy of the Procurement Contract Documents and subsequent electronic or digital versions of the Procurement Contract Documents, including printed copies derived from these electronic or digital versions.
  - F. The Procurement Contract supersedes all prior written or oral negotiations, representations, and agreements. The Procurement Contract Documents comprise the entire Agreement between Buyer and Seller. The Procurement Contract Documents may be modified only by a Modification.
  - G. Request clarification from PCM for a decision before proceeding if Seller is not clear on the meaning of the Procurement Contract Documents. PCM is to issue clarifications and interpretations of the Procurement Contract Documents in accordance with the Procurement Contract Documents.

### 3.02 Reference Standards

#### A. Standard Specifications, Codes, Laws and Regulations:

1. Reference in the Procurement Contract Documents to standard specifications, manuals, reference standards, or codes of technical societies, organizations, or associations, or to Laws or Regulations, whether specific or implied, are those in effect at the time the Bid or Proposal is submitted or when Seller negotiates the Procurement Contract Price unless specifically stated otherwise in the Procurement Contract Documents.
2. No provision of referenced standard specifications, manuals, reference standards, codes, or instructions of Seller changes the duties or responsibilities of BPT or Seller from those described in the Procurement Contract Documents or assigns a duty to or gives authority to the BPT to supervise or direct the provision of the Goods and Special Services or undertake responsibilities inconsistent with the Procurement Contract Documents.
3. The provisions of the Procurement Contract Documents take precedence over standard specifications, manuals, reference standards, codes, or instructions of Seller unless specifically stated otherwise in the Procurement Contract Documents.

#### B. Comply with applicable construction industry standards, whether referenced or not.

1. Standards referenced in the Procurement Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.
2. Comply with the requirements of the Procurement Contract Documents if they produce a higher quality of Goods and Special Services than the applicable construction industry standards.
3. Design Professional determines whether a code or standard is applicable, which of several are applicable, or if the Procurement Contract Documents produce a higher quality of Goods and Special Services.

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies:

1. Carefully study the Drawings and verify pertinent figures and dimensions with respect to actual field measurements before fabricating or assembling the Goods and providing Special Services. Immediately, but in no event later than 3 days, report conflicts, errors, ambiguities, or discrepancies to the PCM. Do not proceed with affected Goods and Special Services until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the PCM or by a Modification to the Procurement Contract Documents issued pursuant to Paragraph 7.01.
2. Immediately, but in no event later than 3 days, notify the PCM of conflicts, errors, ambiguities, or discrepancies in the Procurement Contract Documents or discrepancies between the Procurement Contract Documents and:
  - a. Applicable Laws or Regulations;
  - b. Actual field conditions;

- c. Standard specifications, manuals, reference standards, or codes; or
  - d. Instructions of Seller.
3. Do not proceed with affected Goods and Special Services until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the PCM or by a Modification to the Procurement Contract Documents issued pursuant to Paragraph 7.01.
  4. Seller is liable to the BPT for failure to report conflicts, errors, ambiguities, or discrepancies in the Procurement Contract Documents of which Seller has knowledge.
  5. Seller is deemed to have included the most expensive item, system, procedure, etc. in the Procurement Contract Price if a conflict, error, ambiguity, or discrepancy in components of the Procurement Contract Documents was known, but not reported prior to submitting the Bid or Proposal or when Seller negotiates the Procurement Contract Price.

#### 3.04 Interpretation of the Procurement Contract Documents

- A. Submit questions concerning the design requirements of the Procurement Contract Documents or relating to the acceptability of the Goods and Special Services to the PCM immediately after the question arises. Design Professional is to be the initial interpreter of the design requirements of the Procurement Contract Documents and judge of the acceptability of the Goods and Special Services. Design Professional is to render an interpretation of the Procurement Contract Documents or initiate a Modification to the Procurement Contract Documents through the PCM if a change is required in the Procurement Contract Documents. Seller may appeal Design Professional's interpretation by submitting a Change Proposal.
- B. Submit questions concerning the non-technical or contractual / administrative requirements of the Procurement Contract Documents to the PCM immediately after the question arises. PCM is to be the initial interpreter of these requirements of the Procurement Contract Documents. PCM is to render an interpretation of the Procurement Contract Documents or initiate a Modification to the Procurement Contract Documents if a change is required in the Procurement Contract Documents. Seller may appeal PCM's interpretation by submitting a Change Proposal.

### **ARTICLE 4 – BONDS AND INSURANCE**

#### 4.01 Bonds

- A. Furnish performance and payment bonds, each in an amount equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Contract Documents. These bonds are to remain in effect until one year after the date of final payment. Furnish other bonds as required by the Procurement Contract Documents.
- B. Provide bonds in the form prescribed by the Procurement Contract Documents from sureties named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S.

Department of the Treasury. All bonds 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 each bond.

- C. Provide bonds required by the Procurement Contract Documents from surety companies that are duly licensed or authorized to provide bonds in the State of Texas.
- D. Notify PCM immediately if the surety on bonds furnished by Seller:
  - 1. Is declared bankrupt or becomes insolvent;
  - 2. Has its right to do business in Texas terminated; or
  - 3. Ceases to meet the requirements of Paragraphs 4.01.B or 4.01.C.
- E. Provide a bond and surety which comply with the requirements of Paragraphs 4.01.B and 4.01.C within 20 days after the event giving rise to this notification.
- F. Seller is to use amounts paid by Buyer to Seller under the Procurement Contract for the performance of the Procurement Contract and to satisfy claims against the payment bond.
- G. Notify the PCM of claims filed against the payment bond. Notify the claimant and PCM of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Texas Government Code Chapter 2253. Promptly pay undisputed amount.
- H. Buyer is not liable for payment of costs or expenses of claimants under the payment bond. Buyer has no obligations to pay, give notice, or take other action to claimants under the payment bond.
- I. Buyer may exercise Buyer's termination rights under Article 12 if Seller fails to obtain or maintain required bonds.
- J. BPT will provide a copy of the payment bond to entities claiming to have furnished labor or materials used in providing the Goods and Special Services that request this information in accordance with Texas Government Code Chapter 2253.

#### 4.02 Insurance

- A. Seller must provide insurance of the types and coverages and in the amounts stipulated in the Procurement Contract Documents.

### **ARTICLE 5 – SELLER'S RESPONSIBILITIES**

#### 5.01 Supervision and Superintendence

- A. Supervise, inspect, and direct the provision of the Goods and Special Services competently and efficiently, devoting such attention and applying such skills and expertise as are necessary to perform its obligations in accordance with the Procurement Contract Documents. Seller is solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations.

## 5.02 Goods and Special Services

- A. Seller must provide competent, qualified, and trained personnel in all aspects of its performance of the Procurement Contract.
- B. Use only new materials and equipment in producing the Goods. Protect, assemble, connect, clean, and condition materials and equipment in accordance with the original manufacturer's instructions. Provide special warranties and guarantees required by the Procurement Contract Documents. Provide satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment used to produce the Goods as required by the Procurement Contract Documents or as requested by the PCM.
- C. Be responsible for the services, materials, equipment, labor, transportation, machinery, tools, appliances, fuel, utilities, and other facilities and incidentals necessary for the performance, testing, startup, and completion of the Goods and Special Services, even if these items are not specifically called for in the Procurement Contract Documents.
- D. Assume, pay, and discharge all liabilities, claims, or demands of suppliers, subcontractors, or others under contract with Seller relating to its performance of the Procurement Contract.

## 5.03 Compliance with Laws and Regulations, Standards, Specifications, and Codes

- A. Comply with all Laws and Regulations applicable to providing the Goods and Special Services. Neither Buyer nor BPT are responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. Pay all claims, costs, losses, and damages, including but not limited to all fees and charges of design professionals, attorneys, and other professionals and all court or arbitration or other dispute resolution costs arising out of Seller furnishing Goods and Special Services contrary to Laws or Regulations.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) influencing the cost or time of performance is subject of an equitable adjustment in Procurement Contract Price or Procurement Contract Times.

## 5.04 Safety and Protection

- A. Seller is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with providing the Goods and Special Services.
- B. Take necessary precautions for the safety of persons on the Site who are providing Special Services.
- C. Comply with Contractor and BPT's safety requirement when working on the Site.
- D. Comply with applicable Laws and Regulations relating to the safety and protection of persons or property. Erect and maintain necessary safeguards for safety and protection. Notify BPT and Contractor when providing Goods and Special Services that may affect them. Cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- E. Remedy damage, injury, or loss to property caused by Seller. Pay remediation costs unless the damage or loss is attributable to the fault of the Procurement Contract Documents or to the acts or omissions of BPT or Contractor and is not attributable to the fault of the Seller.
- F. Seller's duties and responsibilities for safety and protection of persons and property continues until the provision of Goods and Special Services is completed and resumes whenever Seller returns to the Site to fulfill warranty or correction obligations or to conduct other tasks.

5.05 Hazard Communication Programs

- A. Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available or exchanged between or among employers at the Site in accordance with Laws or Regulations.

5.06 Hazardous Environmental Conditions at Site

- A. Seller is not responsible for removing or remediating Hazardous Environmental Conditions encountered, uncovered, or revealed at the Site.
- B. Seller is responsible for controlling, containing, and duly removing and remediating Constituents of Concern brought to the Site by Seller and paying associated costs.
  - 1. Buyer may remove and remediate the Hazardous Environmental Condition and impose a Set-off against payments to Seller for associated costs if Seller creates a Hazardous Environmental Condition and Seller does not take acceptable action to remove and remediate the Hazardous Environmental Condition.
  - 2. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, SELLER INDEMNIFIES AND HOLDS HARMLESS BUYER'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY SELLER, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY SELLER. NOTHING IN THIS PARAGRAPH OBLIGATES SELLER TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**
- C. Immediately notify the PCM and take the following action if Seller uncovers or reveals a Hazardous Environmental Condition at the Site that was not created by the Seller:
  - 1. Notify the PCM and secure or otherwise isolate this condition;
  - 2. Stop work in affected areas; and
  - 3. Do not resume work in the affected areas until after BPT has obtained required permits and PCM sends notice to the Contractor:
    - a. Specifying that this condition and affected areas are or have been rendered safe for the resumption of work; or
    - b. Specifying special conditions under which work may be safely resumed.
  - 4. Buyer may order the portion of the work that is in the area affected by the Hazardous Environmental Condition to be deleted from the Procurement Contract. Buyer may

have this deleted portion of the Procurement Contract performed by Buyer's own forces or others.

- D. Seller may submit a Change Proposal or Buyer may impose a Set-off if an agreement is not reached within 10 days of PCM's notice regarding the resumption of work as to whether Seller is entitled to an adjustment in Procurement Contract Price or Procurement Contract Times or on the amount or extent of adjustments resulting from this work stoppage or special conditions under which Seller agrees to resume work.

#### 5.07 Taxes

- A. Seller is responsible for all taxes and duties arising out of providing the Goods and Special Services. The Buyer generally qualifies as a tax exempt agency as defined by the statutes of the State of Texas and is usually not subject to any city or state sales or use taxes, however certain items such as rented equipment may be taxable even though Buyer is a tax-exempt agency. Seller is responsible for including any applicable sales and use taxes in the Procurement Contract Price and is responsible for complying with all applicable statutes and rulings of the State Comptroller. Pay sales, consumer, use, and other similar taxes required to be paid by Seller in accordance with the Laws and Regulations. Include on each invoice submitted hereunder (i) the amount of any applicable sales and/or use tax and (ii) a statement on said invoice verifying that the amount submitted for payment includes the stated and applicable sales and/or use tax. Provide to Buyer copies of any audits by the Texas State Comptroller of Seller's payment of sales taxes applicable to transactions under this Agreement. Further, Seller, in consideration of the rights, duties and obligations contained herein, hereby waives confidentiality of audits conducted by the Texas State Comptroller pertaining to transactions under this Agreement and authorizes the Texas State Comptroller, upon request of the Buyer, to release to Buyer copies of Seller's audits pertaining to transactions under this Agreement. **IN ADDITION TO OTHER INDEMNITIES CONTAINED HEREIN, SELLER INDEMNIFIES, RELEASES AND HOLDS HARMLESS BUYER FROM ALL COSTS, LOSSES OR EXPENSES ARISING FROM SELLER'S FAILURE TO (I) INCLUDE THE SALES AND/OR USE TAXES IN THE STATED PURCHASE AMOUNT, (II) SEPARATELY STATE THE SALES AND/OR USE TAXES ON INVOICES, AND/OR (III) PROVIDE WRITTEN VERIFICATION ON INVOICES THAT THE SALES TAX IS INCLUDED IN THE PROCUREMENT CONTRACT PRICE.**

#### 5.08 Delegation of Professional Design Services

- A. Seller is not required to provide professional design services unless these services are specifically required by the Procurement Contract Documents for a portion of the Goods and Special Services or unless these services are required to carry out Seller's responsibilities. Seller is not required to provide professional services in violation of applicable Laws and Regulations.
- B. The Procurement Contract Documents specify performance and design criteria related to Goods and Special Services if professional design services or certifications by a design professional related to Goods and Special Services are specifically required of Seller. These services or certifications must be provided by the licensed Design Professional who prepares, signs and seals drawings, calculations, specifications, certifications, Shop Drawings, and other submittals.

- C. BPT is entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by Seller's design professionals, provided BPT has specified to Seller the performance and design criteria that these services must satisfy.
- D. Design Professional's review and approval of design calculations and design drawings pursuant to this paragraph is for the limited purpose of checking for conformance with the performance and design criteria given and the design concepts expressed in the Procurement Contract Documents. Design Professional's review and approval of Shop Drawings and other submittals is only for the purpose stated in the Procurement Contract Documents.
- E. Seller is not responsible for the adequacy of the performance or design criteria specified by BPT. Advise BPT if the performance or design criteria are known or considered likely to be inadequate or otherwise deficient.

#### 5.09 Continuing Performance

- A. Adhere to the Progress Schedule established in accordance with Paragraph 2.06.A to deliver the Goods and furnish the Special Services within the Procurement Contract Times specified in the Agreement.
- B. Carry on the work and adhere to the Progress Schedule during all disputes or disagreements with Buyer. Do not delay or postpone providing the Goods and Special Services while disputes or disagreements are being resolved.

#### 5.10 Seller's Warranties and Guarantees

- A. Seller warrants and guarantees that it has the means, capability, experience, registration, licenses, permits and all necessary governmental approvals and authorizations required to provide the Goods and Special Services.
- B. Seller warrants and guarantees to Buyer that the Goods and Special Services are in accordance with the Procurement Contract Documents and are not Defective. Buyer is entitled to rely on Seller's warranty and guarantee. Assume and bear responsibility for costs and time delays associated with variations from the requirements of the Procurement Contract Documents.
- C. Seller's warranty and guarantee excludes damage caused by improper maintenance or operation, abuse, or modification by BPT; or normal wear and tear under normal usage.
- D. The Procurement Contract Documents may require the Seller to accept the assignment of the Procurement Contract between the Buyer and Seller to the Contractor. The specific warranties, guarantees, and correction obligations contained in this Procurement Contract govern with respect to Seller's performance obligations to Buyer for the Goods and Special Services described in an assigned contract.
- E. Seller's obligation to provide the Goods and Special Services in accordance with the Procurement Contract Documents is absolute. None of the following constitutes an acceptance of Defective Goods and Special Services or a release of Seller's obligation to provide Goods and Special Services in accordance with the Procurement Contract Documents:
  - 1. Observations by BPT;



2. Recommendation by PCM or payment by Buyer of progress or final payments;
3. Use of the Goods by Buyer;
4. Acceptance by Buyer (subject to the provisions of Paragraph 8.02.D) or any failure to do so;
5. Review and approval of a Shop Drawing or Sample;
6. Inspections, tests, or approvals by others; or
7. Correction of Defective Goods and Special Services by Buyer.

#### 5.11 Seller's Warranty of Title

- A. Seller warrants and guarantees that title to Goods furnished under the Procurement Contract is to pass to Buyer free and clear of Liens, title defects, and patent, licensing, copyright, or royalty obligations no later than 7 days after the time of payment by Buyer of the Application for Payment which includes these items.

#### 5.12 Indemnification

- A. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF SELLER UNDER THE PROCUREMENT CONTRACT OR OTHERWISE, SELLER INDEMNIFIES AND HOLDS HARMLESS BUYER'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF SELLER.**
- B. The indemnification obligation under paragraph 5.12.A is not limited by the amount or type of damages, compensation, or benefits payable by or for members of the Seller or other individuals or entities under workers' compensation acts, disability benefit acts, or other employee benefit acts in claims against Buyer's Indemnitees or Contractor by an employee or the survivor or personal representative of employee of Seller.
- C. The indemnification obligations of Seller under Paragraph 5.12.A do not extend to the liability of Design Professional arising out of the preparation of the Procurement Contract Documents or giving directions or instructions, or failing to give them, to the extent they are obligated to do so if that is the primary cause of the injury or damage.

### ARTICLE 6 – SHIPPING AND DELIVERY

#### 6.01 Shipping

- A. Select the carrier and pay all costs for packaging, transporting, insuring, special handling, and any other costs associated with shipment and delivery.

#### 6.02 Delivery

- A. Deliver the Goods F.O.B. to the Point of Destination in accordance with the Procurement Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.

- B. Notify the Buyer and Contractor of the method of shipment and the anticipated delivery date at least 15 days before shipment. Include instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods at least 15 days before shipment. Require the carrier to give PCM or Contractor at least 24 hours' notice by telephone prior to the anticipated hour of delivery.
- C. Contractor will be responsible for unloading the Goods from carrier and paying costs for unloading the Goods.
- D. Buyer will ensure that adequate facilities are available to receive delivery of the Goods during the Procurement Contract Times set forth in the Agreement, or on another date agreed by Buyer and Seller.

#### 6.03 Risk of Loss

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's acceptance of the Goods.
- B. Assume the risk of loss if Buyer rejects the Goods as Defective until these defects are corrected or the Buyer accepts the Goods, even if Buyer has received the Goods as described in Paragraph 6.03.A.

### **ARTICLE 7 – CHANGES, SCHEDULE, AND DELAYS**

#### 7.01 Amending the Procurement Contract Documents

- A. The Procurement Contract Documents may be modified by a Contract Amendment, Change Order, Change Directive, or Field Order.
  - 1. Contract Amendment: Buyer and Seller may modify the terms and conditions of the Procurement Contract Documents without the recommendation of the Design Professional using a Contract Amendment. A Contract Amendment may be used for changes that do not involve:
    - a. The performance or acceptability of the Goods and Special Services;
    - b. The design as described in the Drawings, Specifications, or otherwise; or
    - c. Other design or technical matters.
  - 2. Change Order: All changes to the Procurement Contract Documents that include a change in the Procurement Contract Price or the Procurement Contract Times for previously authorized Goods and Special Services, or changes to the Goods and Special Services requiring Design Professional's approval must be made by Change Order. A Change Order may also be used to establish modifications of the Procurement Contract Documents that do not affect the Procurement Contract Price or Procurement Contract Times.
  - 3. Change Directive: A Change Directive does not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modifications ordered or documented by a Change Directive are to be incorporated in a subsequently issued Change Order following negotiations on the Procurement Contract Price and Procurement Contract Times. Seller must submit a Change Proposal seeking an adjustment of the Procurement Contract Price or the Procurement

Contract Times no later than 30 days after the completion of the changes set out in the Change Directive if negotiations are unsuccessful under the terms of the Procurement Contract Documents.

4. Field Order: Design Professional may authorize minor changes in the Goods and Special Services that do not change the Procurement Contract Price or Procurement Contract Times using a Field Order. PCM may issue a Field Order for non-technical, administrative issues. Submit a Change Proposal if Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times before proceeding with the Goods and Special Services described in the Field Order.
- B. Provide added or revised Goods and Special Services under the applicable provisions of the Procurement Contract Documents for the same or similar Goods and Special Services unless different Drawings, Specifications or directions are provided in the Contract Amendment, Change Order, Change Directive, or Field Order.

#### 7.02 Changes in the Goods and Special Services

- A. Buyer may order additions, deletions, or revisions in the Goods and Special Services at any time as recommended by the Design Professional to the extent the change:
  1. Involves the design as described in the Procurement Contract Documents;
  2. Involves acceptance of the Goods and Special Services; or
  3. Involves other design or technical matters.
- B. These changes may be authorized by a Change Order or by a Change Directive. Proceed with the Goods and Special Services involved or, in the case of a deletion in the Goods and Special Services, immediately cease production activities with respect to the deleted Goods and Special Services upon receipt of either a Change Order or Change Directive. Nothing in this paragraph obligates the Seller to undertake work that Seller reasonably concludes cannot be performed in a manner consistent with Seller's safety obligations under the Procurement Contract Documents or Laws and Regulations.
- C. Seller is not entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to Goods and Special Services provided that are not required by the Procurement Contract Documents.
- D. Seller is responsible for costs and time delays associated with variations from the requirements of the Procurement Contract Documents unless the variations are specifically approved by Change Order.

#### 7.03 Change in Procurement Contract Price

- A. The Procurement Contract Price can only be changed by a Change Order. Any Change Proposal for an adjustment in the Procurement Contract Price must comply with the provisions of Paragraph 7.05. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 11.
- B. An adjustment in the Procurement Contract Price is to be determined by a mutually agreed lump sum.

#### 7.04 Change of Procurement Contract Times

- A. The Procurement Contract Times can only be changed by Change Order. Any Change Proposal for an adjustment in the Procurement Contract Times must comply with the provisions of Paragraph 7.05. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 11.
- B. Delays in Seller's Progress:
  - 1. Seller is entitled to an equitable adjustment in the Procurement Contract Times if BPT directly delays, disrupts, or interferes with providing the Goods and Special Services. The Seller agrees to make no Claim for damages for delay in the performance of the Procurement Contract occasioned by an act or omission to act of the BPT and agrees that the extension of time provides an equitable adjustment.
  - 2. Seller is not entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delays, disruptions, or interference caused by or within the control of Seller, including but not limited to labor strife, transportation, shortages, or delays at Seller's facilities. Delays attributable to and within the control of Seller's subcontractors or suppliers are deemed within control of Seller.
  - 3. Seller is entitled to an equitable adjustment in Procurement Contract Times if Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of BPT or Seller. These unanticipated causes may include:
    - a. Severe and unavoidable natural catastrophes e.g. fires, floods, epidemics, and earthquakes; or
    - b. Acts of war or terrorism.
  - 4. These adjustments in Procurement Contract Times are the Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph.
  - 5. Notify the PCM immediately of a potential delaying, disrupting, or interfering event. Submit a Change Proposal seeking an adjustment in Procurement Contract Times within 15 days of the commencement of the delaying, disrupting, or interfering event.
  - 6. Seller is only entitled to an adjustment of the Procurement Contract Times for specific delays, disruptions, and interference to providing the Goods and Special Services that can be demonstrated to directly impact the ability of the Seller to complete the Goods and Special Services within the Procurement Contract Times and which are not caused by delays set forth in Paragraph 7.04.B.2. No adjustments in Procurement Contract Times are allowed for delays on components of the Goods and Special Services which were or could have been completed without impacting the Procurement Contract Times.
  - 7. Seller is not entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Buyer if this delay is concurrent with a delay, disruption, or interference attributable to or within the control of the Seller.
- C. Continue providing Goods and Special Services and adhere to the Progress Schedule during disputes or disagreements with Buyer. Do not delay or postpone the provision of Goods

and Special Services pending resolution of disputes or disagreements, or during an appeal process, unless Buyer and Seller agree otherwise.

#### 7.05 Change Proposals

- A. Submit a Change Proposal to the PCM to:
  - 1. Request an adjustment in the Procurement Contract Price or Procurement Contract Times;
  - 2. Appeal an initial decision by BPT concerning the requirements of the Procurement Contract Documents or relating to the acceptability of the Goods and Special Services under the Procurement Contract Documents;
  - 3. Contest a Set-off against payment due; or
  - 4. Seek other relief under the Procurement Contract Documents.
- B. Notify the PCM immediately if a Change Proposal is to be submitted. Submit each Change Proposal to PCM no later than 30 days after the event initiating the Change Proposal. Submit the following as part of the Change Proposal:
  - 1. Any proposed change in Procurement Contract Price, Procurement Contract Times, or other relief, accompanied by a statement that the requested Change Order is the entire adjustment to which Seller believes it is entitled.
  - 2. The reason for the proposed change.
  - 3. Supporting data, accompanied by a statement that the supporting data is accurate and complete.
- C. PCM is to advise BPT regarding the Change Proposal. BPT is to review each Change Proposal and Seller's supporting data, and within 30 days after receipt of the documents, direct the PCM to either approve or deny the Change Proposal in whole or in part. PCM is to issue a Change Order for an approved Change Proposal. The Seller may deem the Change Proposal to be denied if PCM does not take action on the Change Proposal within 30 days and start the time for appeal of the denial under Article 11.

#### 7.06 Execution of Change Orders

- A. Buyer and Seller are to execute Change Orders covering:
  - 1. Changes in the Procurement Contract Price or Procurement Contract Times which are agreed to by Buyer and Seller, including undisputed sums or amount of time for Goods and Special Services provided in accordance with a Change Directive;
  - 2. Changes in Procurement Contract Price resulting from Buyer Set-offs unless the Set-off has been successfully challenged by Seller;
  - 3. Changes in the Goods and Special Services which are:
    - a. Ordered by Buyer pursuant to Paragraph 7.01.A,
    - b. Required because Defective Goods and Special Services were accepted under Paragraph 8.02 or Buyer's correction of Defective Goods and Special Services under Paragraph 8.03, or

- c. Agreed to by the Buyer and Seller.
- B. A Change Order is deemed to be in full force as if executed by Seller if the Seller refuses to execute a Change Order that is required to be executed under the terms of this paragraph.

#### 7.07 Notice to Surety

- A. Notify the surety of Change Orders or Contract Amendments affecting the general scope for providing Goods and Special Services, changes in the provisions of the Procurement Contract Documents, or changes in Procurement Contract Price or Procurement Contract Times. Adjust the amount of each bond required by a Change Order.

#### 7.08 Laws and Regulations

- A. Give required notices and comply with Laws and Regulations applicable to the provision of the Goods and Special Services. BPT is not responsible for monitoring Seller's compliance with Laws or Regulations except where expressly required by applicable Laws and Regulations.
- B. Pay costs resulting from actions taken by Seller that are contrary to Laws or Regulations. Seller is not responsible for determining that the design aspects of the Goods and Special Services described in the Procurement Contract Documents is in accordance with Laws and Regulations. This does not relieve Seller of its obligations under Paragraph 3.03.
- C. Buyer or Seller may give notice to the other party of changes in Laws or Regulations that may affect the cost or time of provision of the Goods and Special Services, including:
  - 1. Changes in Laws or Regulations affecting procurement of permits; and
  - 2. Sales, use, value-added, consumption, and other similar taxes which come into effect after Seller's Bid or Proposal is submitted or when Seller negotiates the Procurement Contract Price.
- D. Seller may submit a Change Proposal or Buyer may initiate a Claim within 30 days of this notice if Buyer and Seller are unable to agree on entitlement to or on the amount or extent of adjustments in Procurement Contract Price or Procurement Contract Times resulting from these changes.

### **ARTICLE 8 – BUYER'S RIGHTS**

#### 8.01 Inspections and Testing

- A. General:
  - 1. Provide inspections and require tests of the Goods at Seller's facility and at the Point of Destination in accordance with the Procurement Contract Documents as part of the Special Services.
  - 2. Pay all expenses, including travel and lodging expenses of Buyer's representatives, for inspections and tests at Seller's facility. Pay for travel and lodging expenses of Buyer's representatives for all subsequent inspections and tests if the Goods are Defective until inspections and tests indicate that Goods meet the requirements of the Procurement Contract Documents.

3. Include all expenses for inspections and tests at the Point of Destination in the Procurement Contract Price. Procurement Contract Price is also to include expenses of Seller's representatives for all subsequent inspections and tests if the Goods are Defective until inspections and tests indicate that Goods meet the requirements of the Procurement Contract Documents.
4. Notify Buyer 30 days in advance of the readiness of the Goods for all inspections, tests, or approvals specified in the Procurement Contract Documents.
5. PCM is to notify Seller of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination.
6. PCM is to notify Seller of any tests or inspections conducted and the results of the tests or inspections. PCM is to notify the Seller if Goods appear to be Defective on the basis of inspections or tests. Seller is to respond with a description of corrective work to be done to bring the Goods into conformance with the Procurement Contract Documents.
7. Neither payments made by Buyer to Seller nor any tests or inspections constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.
8. BPT will inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. This inspection does not constitute acceptance of the Goods that, as a result of subsequent inspections and tests, are determined to be Defective.

#### 8.02 Defective Goods or Special Services

- A. It is Seller's obligation to ensure that the Goods and Special Services are not Defective.
  1. BPT has the authority to determine whether Goods and Special Services are Defective and to reject Defective Goods and Special Services, in whole or in part.
  2. PCM will notify Seller of Defective Goods and Special Services of which BPT has actual knowledge.
  3. Promptly correct, or remove and replace Defective Goods and Special Services if requested by the Buyer.
  4. Buyer's special warranties or guarantees are to remain in force after Defective Goods and Special Services are corrected.
  5. Pay claims, costs, losses, and damages arising out of or relating to Defective Goods and Special Services including the cost for correction, removal, and replacement of Defective Goods and Special Services and cost for additional inspection and testing to verify the correction of Defective Goods and Special Services.
- B. Buyer's Rejection of Non-Conforming Goods:
  1. Buyer's notification to Seller of Defective Goods, in whole or in part, is to describe the reason Goods are Defective. Seller is to promptly remove and replace the Defective Goods if they have been delivered to Buyer, so the Procurement Contract will be completed within the Procurement Contract Times.

2. Pay all costs, losses, and damages attributable to the removal and replacement of the Defective Goods as provided in Paragraph 8.02.E.
  3. Buyer retains a security interest in the Goods to the extent of payments made and expenses incurred in testing and inspections.
- C. Remedying Defective Goods or Special Services:
1. Promptly provide a schedule for modifications to be made to correct Defective Goods if Buyer elects to permit the Seller to correct the Defective Goods.
  2. Provide Special Services conforming to the Procurement Contract Documents and acceptable to BPT. Buyer may delete the Special Services and reduce the Procurement Contract Price to recover the cost of these services if Seller fails to provide acceptable Special Services.
- D. Buyer may elect to accept Defective Goods instead of requiring correction or removal and replacement of Defective Goods provided:
1. This acceptance occurs prior to final payment;
  2. Design Professional confirms that the Defective Goods are in general accordance with the design intent and applicable design principles; and
  3. Design Professional confirms that acceptance of the Defective Goods does not endanger public health or safety.
  4. Seller pays costs, losses, and damages attributable to Buyer's evaluation of and determination to accept the Defective Goods as provided in Paragraph 8.02.E.
- E. Pay all claims, costs, losses, and damages, including:
1. Fees and charges for re-inspection and retesting;
  2. Fees for any design professionals, attorneys and other professionals;
  3. Court, arbitration, or other dispute resolution costs arising out of or relating to the Defective Goods or Special Services;
  4. Costs for the correction or removal and replacement of the Defective Goods;
  5. Costs for the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the Defective Goods; and
  6. Costs of obtaining of conforming Special Services from others.
- F. Buyer may impose a reasonable Set-off against:
1. Payments due under Article 10 for costs associated with BPT's evaluation of Defective Goods and Special Services to determine if it can be accepted and to determine the diminished value of the Goods and Special Services.
  2. Payments due under Article 10 if the parties are unable to agree as to the decrease in the Procurement Contract Price to compensate Buyer for the diminished value of Defective Goods and Special Services accepted.
- G. PCM is to issue a Modification for acceptance of the Defective Goods and Special Services prior to final payment. Pay an appropriate amount to Buyer if the acceptance of Defective Goods and Special Services occurs after final payment.



### 8.03 Correction Period

- A. Promptly correct Defective Goods and Special Services without cost to Buyer for one year after the date on which Buyer has placed the Goods in continuous service or other period prescribed by the Procurement Contract Documents.
- B. Buyer may have the Defective Goods and Special Services corrected if Seller does not comply with the terms of PCM's instructions, or in an emergency where delay would cause serious risk of loss or damage.
- C. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE PROCUREMENT CONTRACT DOCUMENTS AND TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, THE SELLER INDEMNIFIES AND HOLDS BUYER'S INDEMNITEES AND CONTRACTOR HARMLESS FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE CORRECTION OF DEFECTIVE GOODS AND SPECIAL SERVICES.**
- D. The correction period is extended for an additional period of one year for Defective Goods and Special Services corrected after the accepted date the correction period starts to run as described in Paragraph 8.03.A. This extended correction period starts to run when Defective Goods and Special Services has been satisfactorily corrected under this paragraph.
- E. Seller's obligations under this paragraph are in addition to other obligations or warranties. The provisions of this paragraph are not a substitute for, or a waiver of, the provisions of applicable statutes of limitation or repose.

## ARTICLE 9 – ROLE OF THE PCM AND DESIGN PROFESSIONAL

### 9.01 Duties and Responsibilities

- A. BPT issues communications to Seller through PCM except as otherwise provided in the Procurement Contract Documents.
- B. PCM is Buyer's representative. The duties and responsibilities and the limitations of authority of PCM as Buyer's representative are described in the Procurement Contract Documents.
- C. BPT is not responsible for the acts or omissions of Seller. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Procurement Contract Documents creates a duty in contract, tort, or otherwise of the BPT to the Seller.

### 9.02 Clarifications and Interpretations

- A. Submit questions concerning the design requirements of the Procurement Contract Documents or relating to the acceptability of the Goods and Special Services to the PCM immediately after the question arises. Design Professional is to interpret the design requirements of the Procurement Contract Documents and judge the acceptability of the Goods and Special Services. Design Professional is to render an interpretation of the Procurement Contract Documents or initiate a Modification to the Procurement Contract Documents through the PCM if a change is required in the Procurement Contract

Documents. Seller may appeal Design Professional's interpretation by submitting a Change Proposal.

- B. Submit questions concerning the non-technical or contractual / administrative requirements of the Procurement Contract Documents to the PCM immediately after the question arises. PCM is to interpret these requirements of the Procurement Contract Documents. PCM is to render an interpretation of the Procurement Contract Documents or initiate a Modification to the Procurement Contract Documents if a change is required in the Procurement Contract Documents. Contractor may appeal PCM's interpretation by submitting a Change Proposal.

#### 9.03 Rejecting Defective Goods and Special Services

- A. BPT has the authority to reject Defective Goods and Special Services, in whole or in part. PCM is to notify the Seller of the defect and document when Defective Goods and Special Services have been corrected or accepted.

#### 9.04 Decisions on Requirements of Procurement Contract Documents and Acceptability of Goods and Special Services

- A. Design Professional is to render decisions regarding compliance with the design requirements of the Procurement Contract Documents or relating to the acceptability of the Goods and Special Services. Design Professional is to render decisions regarding the Procurement Contract Documents through the PCM. Design Professional will provide documentation for a Modification if a change is required in the Procurement Contract Documents. PCM will issue a Request for a Change Proposal if a Modification is required. Seller may appeal Design Professional's decision by submitting a Change Proposal if Seller does not agree with the Design Professional's decision.
- B. PCM is to render decisions regarding non-technical or contractual / administrative requirements of the Procurement Contract Documents. PCM will prepare documentation for a Modification if a change is required in the Procurement Contract Documents. Seller may appeal PCM's interpretation by submitting a Change Proposal.

### **ARTICLE 10 – PAYMENT**

#### 10.01 Applications for Progress Payments

- A. Progress payments are to be paid on the basis of the Schedule of Values as set forth in the Agreement and as incorporated into the form for Applications for Payment provided by the PCM.
- B. Submit Applications for Payment using the following procedures:
  - 1. Submit Application for Payment to the PCM at least 20 days before the payment Milestones established in the Agreement for Buyer to make progress payments. The Application for Payment is to be completed following the procedures in the Procurement Contract Documents and accompanied by the supporting documentation required by the Procurement Contract Documents.

2. Provide a bill of sale, invoice, or other documentation warranting that Buyer has received the Goods free and clear of Liens with the Application for Payment following delivery of Goods.
  3. Provide evidence that the Goods are covered by insurance specified in the Procurement Contract Documents or other arrangements to protect Buyer's interest.
  4. Provide an affidavit stating that previous progress payments received for Goods and Special Services have been used to pay Seller's obligations associated with prior Applications for Payment.
- C. The PCM is to review the Application for Payment following the procedures described in the Procurement Contract Documents:
1. PCM is to either recommend payment of the Application for Payment to Buyer or notify the Seller of the BPT's reasons for not recommending payment. Seller may make necessary corrections and resubmit the Application for Payment within 10 days after receipt of the notice.
  2. PCM's recommendation of the Application for Payment constitutes a representation by BPT that based on their experience and the information available:
    - a. The provision of Goods and Special Services has progressed to the point indicated;
    - b. The quality of the Goods and Special Services is generally in accordance with the Procurement Contract Documents; and
    - c. Requirements prerequisite to payment have been met.
  3. This representation is subject to:
    - a. Further evaluation of the Goods and Special Services as a functioning whole;
    - b. The results of subsequent tests called for in the Procurement Contract Documents; or
    - c. Any other qualifications stated in the recommendation.
  4. BPT does not represent by recommending payment:
    - a. Inspections made to check the quality or the quantity of the Goods and Special Services have been exhaustive, extended to every aspect of the Goods and Special Services in progress, or involved detailed inspections of the Goods and Special Services; or
    - b. Other matters or issues between the parties that might entitle Seller to additional compensation or entitle Buyer to withhold payment to Seller may or may not exist.
  5. Neither BPT's review of Seller's Goods and Special Services for the purposes of recommending payments nor PCM's recommendation of payment imposes responsibility on BPT:
    - a. To supervise, direct, or control the provision of Goods and Special Services;
    - b. For the Seller's means, methods, techniques, sequences, or procedures of production, or safety precautions and programs;

- c. For Seller's failure to comply with Laws and Regulations applicable to Seller's Goods and Special Services;
  - d. To make examinations to ascertain how or for what purposes Seller has used the monies paid on account of the Procurement Contract Price; or
  - e. To determine that title to the Goods has passed to Buyer free and clear of Liens.
- D. Buyer is to pay the amount recommended for payment within 30 days after receipt of the PCM's recommended Application for Payment.
- E. Reduction in Payment by Buyer:
1. Buyer is entitled to impose a Set-off against payment based on the following:
    - a. Claims made against Buyer or costs, losses, or damages incurred by Buyer related to:
      - 1) Seller's conduct in providing the Goods and Special Services, including, but not limited to, workplace injuries, non-compliance with Laws and Regulations, or patent infringement; or
      - 2) Seller's failure to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site, including, but not limited, to workplace injuries, property damage, and non-compliance with Laws and Regulations.
    - b. Buyer has been required to remove or remediate a Hazardous Environmental Condition for which Seller is responsible;
    - c. Goods and Special Services are Defective or completed Goods have been damaged by Seller, requiring correction or replacement;
    - d. Buyer has been required to correct Defective Goods and Special Services;
    - e. The Procurement Contract Price has been reduced by Change Orders;
    - f. Liquidated damages have accrued because of Seller's failure to achieve Milestones or completion of the Goods and Special Services within the Procurement Contract Times;
    - g. Liens have been filed in connection with the Goods and Special Services, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of these Liens;
    - h. Buyer has been notified of failure to make payments to entities with contracts to provide labor, materials or equipment to the Seller for this Procurement Contract, or Seller's employees;
    - i. Failure to submit Progress Schedule updates or revised schedules as requested by the PCM;
    - j. Compensation for BPT for third review of submittals, review of substitutions, re-inspection fees, inspections or designs related to correction of Defective Goods and Special Services, or other services identified as requiring payment by the Seller;

- k. Costs for tests performed by the Buyer to verify that Goods and Special Services previously tested and found to be Defective have been corrected;
  - l. BPT has actual knowledge of the occurrence of events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents with associated cost impacts;
  - m. Other items entitling Buyer to a Set-off against the amount recommended; or
  - n. Payment would result in an over-payment of the Procurement Contract Price.
2. Compensation for services of BPT staff is to be at the rates established in the Supplementary Conditions.
  3. PCM is to notify Seller stating the amount and the reasons for an imposed Set-off. The Buyer is to pay the Seller amounts remaining after deduction of the Set-off. Buyer is to pay the Set-off amount agreed to by Buyer and Seller if Seller remedies the reasons for the Set-off. Seller may submit a Change Proposal contesting the Set-off.

#### 10.02 Final Payment

- A. Make Application for Final Payment after Seller has corrected all Defective Goods to the satisfaction of BPT, furnished all Special Services, provided all specified spare parts, delivered all documents required by the Procurement Contract Documents, and PCM has issued a notice of acceptability to Seller. Provide the following with the final Application for Payment:
  1. Consent of Surety to Final Payment acknowledging unsettled disputes; and
  2. Affidavit of Payment of Debts and Claims or Affidavit of Release of Liens or furnish receipts or releases in full from entities under contract with Seller to provide materials, labor or equipment for providing the Goods and Special Services.
- B. PCM is to either recommend payment of the final Application for Payment to Buyer if BPT is satisfied that the Goods and Special Services has been completed and Seller's other obligations under the Procurement Contract Documents have been fulfilled or notify the Seller of the BPT's reasons for not recommending final payment.
- C. Provision of the Goods and Special Services is complete, subject to surviving obligations, when it is ready for final payment as established by the PCM's recommendation of payment of the final Application for Payment to Buyer.
- D. The Buyer is to pay the amount of final payment recommended by the PCM within 30 days after receipt of the final Application for Payment and accompanying documentation from the PCM.

#### 10.03 Waiver of Claims

- A. The making of final payment does not constitute a waiver by Buyer of Claims or rights against Seller. Buyer expressly reserves Claims and rights arising from:
  1. Unsettled Liens or claims for non-payment;
  2. Defective Goods and Special Services appearing after final payment;

3. Seller's failure to comply with the Procurement Contract Documents or the terms of specified special guarantees; or
  4. Seller's continuing obligations under the Procurement Contract Documents.
- B. Seller waives claims and rights against Buyer by accepting final payment with the exception of those Claims made in accordance with the provisions of Article 11 and specifically noted by the Seller in the Application for Final Payment.

## **ARTICLE 11 – CLAIMS**

### 11.01 Claims Process

- A. Follow the Claims process described in this Article for the following disputes between Buyer and Seller:
1. A demand or assertion by Buyer to Seller, submitted in accordance with the requirements of the Procurement Contract Documents:
    - a. Seeking an adjustment of Procurement Contract Price or Procurement Contract Times;
    - b. Contesting an initial decision by Design Professional concerning the requirements of the Procurement Contract Documents or the acceptability of Goods and Special Services under the Procurement Contract Documents;
    - c. Contesting Design Professional's decision regarding a Change Proposal;
    - d. Seeking resolution of a contractual issue that BPT has declined to address; or
    - e. Seeking other relief with respect to the terms of the Procurement Contract;
  2. A demand or assertion by Seller to Buyer, submitted in accordance with the requirements of the Procurement Contract Documents:
    - a. Contesting BPT's decision regarding a Change Proposal; or
    - b. Seeking resolution of a contractual issue that BPT has declined to address.
- B. Deliver notice of the Claim to the PCM no later than 7 days after the start of the event giving rise to the Claim or, in the case of appeals regarding Change Proposals, within 7 days of the decision under appeal. The responsibility to substantiate a Claim rests with the entity making the Claim. In the case of a Claim by Seller seeking an increase in the Procurement Contract Price or Procurement Contract Times, Seller must certify that the Claim is made in good faith, that the supporting data is accurate and complete, and that to the best of Seller's knowledge and belief, the amount of time or money requested accurately reflects the full amount to which Seller is entitled.
- C. The entity receiving a Claim is to review the Claim giving full consideration to its merits. The Buyer and Seller are to seek to resolve the Claim through the exchange of information and direct negotiations. The Buyer and Seller may extend the time for resolving the Claim by mutual agreement. Notify PCM of actions taken on a Claim.
- D. Buyer and Seller may mutually agree to mediate the underlying dispute at any time after initiation of a Claim.
1. The agreement to mediate suspends the Claim submittal and response process.

2. Buyer or Seller may unilaterally terminate the mediation process after 60 days from the agreement to mediate and resume the Claim submittal and decision process as of the date of the termination. The Claim process resumes as of the date of the conclusion of the mediation, as determined by the mediator, if the mediation is unsuccessful in resolving the dispute.
  3. Buyer and Seller are to each pay one-half of the mediator's fees and costs.
- E. If the entity receiving a Claim approves the Claim in part or denies it in part, this action is final and binding unless the other entity invokes the procedure described in Article 14 for final resolution of disputes within 30 days of this action.
  - F. Notify the PCM if efforts to resolve the Claim are not successful and the Claim is denied. A denial of the Claim is final and binding unless the other entity invokes the procedure described in Article 14 for the final resolution of disputes within 30 days of the denial.
  - G. The results of the agreement or action on the Claim is to be incorporated in a Change Order by the PCM to the extent they affect the Procurement Contract Documents, the Procurement Contract Price, or the Procurement Contract Times if the Buyer and Seller reach an agreement regarding a Claim.

## **ARTICLE 12 – CANCELLATION, SUSPENSION, AND TERMINATION**

### **12.01 Suspension of Performance by Buyer**

- A. Buyer may suspend performance of the Procurement Contract at any time without cause. Buyer will notify the Seller of the date of suspension and set the date on which Seller is to resume performance of the Procurement Contract. Seller may be entitled to adjustments in the Procurement Contract Price and Procurement Contract Times directly attributable to this suspension. Submit a Change Proposal seeking an adjustment no later than 30 days after the date fixed for resumption of the Procurement Contract.

### **12.02 Cancellation**

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by notifying Seller of the effective date of termination. Cancellation pursuant to the terms of this paragraph is not a breach of contract by Buyer. Buyer will pay Seller for reasonable documented direct costs incurred by Seller in producing Goods fabricated or assembled specifically to fulfill this Procurement Contract in the event of cancellation.
- B. Seller will not be paid for loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from this cancellation.

### **12.03 Buyer May Terminate for Cause**

- A. The occurrence of one or more of the following events constitutes a default by Seller and justifies termination for cause:
  1. Seller's failure to provide the Goods and Special Services in accordance with the Procurement Contract Documents;
  2. Failure to adhere to the Progress Schedule;

3. Failure of the Seller to provide a satisfactory replacement bond or insurance in the event either is lost or canceled;
  4. Failure of Seller to maintain financial solvency to adequately perform the Procurement Contract as indicated by one or more of the following:
    - a. A petition of bankruptcy is filed by or against Seller,
    - b. Seller is adjudged as bankrupt or insolvent,
    - c. Seller or surety makes a general assignment for the benefit of creditors,
    - d. A receiver is appointed for the benefit of Seller's creditors, or
    - e. A receiver is appointed on account of Seller's insolvency;
  5. Seller's disregard of Laws or Regulations;
  6. Seller's repeated disregard of the authority of BPT;
  7. Wrongful repudiation of the Procurement Contract; or
  8. Violation of any provisions of the Procurement Contract Documents.
- B. Seller and surety must provide adequate assurance of future performance of the Procurement Contract in accordance with the Procurement Contract Documents that is satisfactory to Buyer if Seller is believed to be in financial distress due to the existence of one or more of the indicators listed in Paragraph 12.03.A.4. Buyer may terminate this Procurement Contract if Seller and surety fail to provide adequate documentation satisfactory to Buyer within 10 days of PCM's request for this information.
- C. Buyer may declare Seller to be in default, give notice to Seller and surety that the Procurement Contract is terminated, and enforce the rights available to Buyer under the performance bond after giving Seller and surety 10 days' notice that one or more of the events identified in Paragraph 12.03.A has occurred.
- D. Buyer may take possession of the Goods, incorporate the Goods stored, and complete the Special Services as Buyer may deem expedient if Buyer has terminated the Procurement Contract for cause.
- E. Buyer may elect not to proceed with termination of the Procurement Contract under this paragraph if Seller begins to cure the cause for termination within 7 days of receipt of notice of intent to terminate.
- F. Seller is not entitled to receive further payments until the Goods and Special Services are provided if Buyer proceeds as provided in this paragraph. The amount of the Procurement Contract Price remaining is to be paid to the Seller if the unpaid balance exceeds the cost to complete the Procurement Contract. This cost to complete the Procurement Contract may include related claims, costs, losses, damages, and the fees and charges of design professionals, attorneys, and other professionals retained by Buyer. Pay the difference to Buyer if the cost to complete the Procurement Contract including related claims, costs, losses, and damages exceeds the unpaid balance of the Procurement Contract Price. Claims, costs, losses, and damages incurred by Buyer are to be reviewed as to their reasonableness and incorporated in a Change Order by PCM. Buyer is not required to obtain the lowest price to complete this Procurement Contract when exercising its rights or remedies under this paragraph.



- G. Termination does not affect the rights or remedies of Buyer against Seller or against surety under the payment bond or performance bond. Buyer does not release Seller from liability by paying or retaining money due Seller.

#### 12.04 Seller May Suspend Performance of the Procurement Contract or Terminate

- A. Seller may terminate the Procurement Contract and issue a Change Proposal requesting payment from Buyer on the same terms as provided in Paragraph 12.03 after 10 days' notice to PCM provided that, through no act or fault of Seller:
  - 1. Buyer wrongfully rejects the Goods;
  - 2. Buyer suspends performance of the Procurement Contract for more than 90 consecutive days;
  - 3. PCM fails to act on an Application for Payment within 30 days after it is submitted; or
  - 4. Buyer fails to pay Seller sums determined to be due, other than the final payment, within 30 days after payment is recommended by PCM; and
  - 5. BPT does not remedy this suspension or failure within 10 days after receipt of the notice.
- B. Seller may stop providing Goods and Special Services, without prejudice to other rights or remedies in lieu of terminating the Procurement Contract, if PCM has failed to act on an Application for Payment within 30 days after it is submitted, or Buyer has failed to pay Seller within 30 days after payment is recommended by PCM. The provisions of this paragraph are not intended to preclude Seller from submitting a Change Proposal for an adjustment in Procurement Contract Price or Procurement Contract Times for damage directly attributable to Seller's actions as permitted by this paragraph.

### **ARTICLE 13 – LICENSES AND FEES**

#### 13.01 Intellectual Property and License Fees

- A. Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered unless Seller is specifically required to do so by the Procurement Contract Documents. Buyer retains all intellectual property rights in the design if the Seller is manufacturing to Buyer's design.
- B. Pay license fees, royalties, and costs incident to the use of inventions, designs, processes, products, or devices which are patented or copyrighted by others in the provision of the Goods and Special Services, or to incorporate these inventions, designs, processes, products, or devices which are patented or copyrighted by others in the Goods and Special Services. The Procurement Contract Documents identify inventions, designs, processes, products, or devices BPT knows are patented or copyrighted by others or that its use is subject to patent rights or copyrights calling for the payment of a license fee or royalty to others. Seller is to include the cost associated with the use of patented or copyrighted products or processes, whether specified or selected by the Seller, in the Procurement Contract Price.

### 13.02 Seller's Infringement

- A. Buyer will notify Seller, or Seller will notify Buyer, promptly if either Buyer or Seller receive notice of a suit or threat of suit for intellectual property infringement.
- B. Seller must defend the claim or suit, including negotiating a settlement upon written demand from Buyer. Seller has control resolving this claim or suit provided that Seller pays all related costs, including cost to satisfy any adverse judgment associated with the claim or suit. Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim if Seller fails to defend such suit or claim after written demand by Buyer.
- C. Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's expense if a determination is made that Seller has infringed upon intellectual property rights of another.
- D. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS PROCUREMENT CONTRACT OR THE PROCUREMENT CONTRACT DOCUMENTS AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE SELLER INDEMNIFIES AND HOLDS HARMLESS THE BUYER'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST INDEMNIFIED COSTS ARISING OUT OF OR RELATED TO INFRINGEMENT ON U.S. OR FOREIGN PATENT RIGHTS OR COPYRIGHTS.**

### 13.03 Reuse of Documents

- A. Seller has no rights to the Procurement Contract Documents and may not use the Procurement Contract Documents, or copies or electronic media editions of the Procurement Contract Documents, other than for providing the Goods and Special Services under the Procurement Contract. This provision survives final payment or termination of the Procurement Contract.
- B. Seller can retain a copy of the Procurement Contract Documents for record purposes, unless specifically prohibited by the Buyer for security reasons. Surrender paper and digital copies of the Procurement Contract Documents and other related documents and remove these documents from computer equipment or storage devices as a condition of final payment if the Buyer so directs.

## **ARTICLE 14 – FINAL RESOLUTION OF DISPUTES**

### 14.01 Methods and Procedures

- A. The Buyer or Seller may appeal a Claim, approved or denied in part or in full, by:
  - 1. Electing to invoke the dispute resolution process if one is provided for in the Supplementary Conditions;
  - 2. Agreeing with the other party to submit the dispute to a dispute resolution process; or
  - 3. Notifying the other party of the intent to submit the dispute to a court of competent jurisdiction if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to.

## ARTICLE 15 – MISCELLANEOUS

### 15.01 Independent Contractor

- A. Seller is to perform its duties under this Procurement Contract as an independent contractor. The Seller and its personnel are not considered to be employees or agents of the Buyer. Nothing in this Procurement Contract is to be interpreted as granting Seller the right or authority to make commitments for the Buyer. This Procurement Contract does not constitute or create a joint venture, partnership, or formal business organization of any kind.

### 15.02 Controlling Law

- A. This Procurement Contract is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in jurisdiction of the Buyers offices.

### 15.03 Computation of Times

- A. Exclude the first day and include the last day when determining dates for times referred to in the Procurement Contract Documents by days. The last day of this period is to be omitted from the determination if it falls on a Saturday, Sunday, or a legal holiday.
- B. All references and conditions for a Calendar Day Contract in the Procurement Contract Documents apply for a Fixed Date Contract. A Fixed Date Contract is one in which the calendar dates for reaching Substantial Completion and/or final completion are specified in lieu of identifying the number of calendar days involved.

### 15.04 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available to the Buyer or Seller by these General Conditions are in addition to, and are not a limitation of, the rights and remedies which are otherwise imposed or available by:
  - 1. Laws or Regulations;
  - 2. Special warranties or guarantees; or
  - 3. Other provisions of the Procurement Contract Documents.
- B. The provisions of Paragraph 15.04.A are as effective as if repeated specifically in the Procurement Contract Documents in connection with each duty, obligation, right, and remedy to which they apply.

### 15.05 Limitation of Damages

- A. Buyer's Indemnitees are not liable to Seller for claims, costs, losses, or damages sustained by Seller associated with other projects or anticipated projects.

15.06 No Waiver

- A. The failure of Buyer or Seller to enforce any provision of this Procurement Contract does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Procurement Contract.

15.07 Severability

- A. If a court of competent jurisdiction renders a part of this Procurement Contract invalid or unenforceable, that part is to be severed and the remainder of this Procurement Contract continues in full force.

15.08 Survival of Obligations

- A. Representations, indemnifications, warranties, guarantees, and continuing obligations required by the Procurement Contract Documents survive completion and acceptance of the Goods and Special Services or termination of the Procurement Contract.

15.09 No Third Party Beneficiaries

- A. Nothing in this Procurement Contract can be construed to create rights in any entity other than the Buyer and Seller. Neither the Buyer nor Seller intends to create third party beneficiaries by entering into this Procurement Contract.

15.10 Assignment of Procurement Contract

- A. This Procurement Contract may not be assigned in whole or in part by the Seller without the consent of the Buyer.

15.11 Successors and Assigns

- A. The Buyer and the 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 Contract Documents.

15.12 No Waiver of Sovereign Immunity

- A. The Buyer has not waived its sovereign immunity by entering into and performing its obligations under this Procurement Contract.

15.13 Accrual of Claims

- A. To the fullest extent permitted by law, all causes of action arising under this Procurement Contract will be deemed to have accrued, and all statutory periods of limitations will commence, no later than the date of final acceptance.

15.14 Execution

- A. This Procurement Contract may be executed in one or more counterparts and may be exchanged by facsimile or other electronic means. It is stipulated and agreed that any

counterpart containing a signature or facsimile signature of the authorized representatives of Buyer and Seller will be deemed an original for all purposes.

15.15 Non-Exclusivity

- A. Seller acknowledges and agrees that this Procurement Contract constitutes a non-exclusive agreement for the provision of the Goods and Special Services to Buyer. Seller further acknowledges and agrees that Buyer has not made any representations that Seller will be the sole or exclusive provider of the Goods or Special Services to Buyer during the course of the Project. Due to the extensiveness and complexity of the Project, Buyer, in its sole and absolute discretion, reserves the right to award multiple contracts for the provision of Goods or Special Services.

15.16 Conflicts of Interest

- A. Neither Seller, nor any consultant, will have other interests which conflict with the interests of Buyer, specifically including, but not limited to, a connection with the sale or promotion of equipment or material which may be used on the Project. Seller agrees to make reasonable inquiry of all consultants concerning the existence of or potential for such conflicts.

15.17 Due Authorization; Good Standing

- A. Seller has the power and authority to enter into this Procurement Contract. The execution and delivery of this Procurement Contract and the performance of the work hereunder has been duly authorized by all necessary corporate action. Upon execution, this Procurement Contract will constitute the binding and valid obligations of Seller enforceable in accordance with its terms. Seller is in good standing in and qualified to do business in the State of Texas.

15.18 Conflict

- A. In the event any document submitted by the Seller (Offeror) conflicts with the terms of the Agreement, the Supplementary Conditions, or the General Conditions, it is understood and agreed that the terms of the Agreement, the Supplementary Conditions, and the General Conditions will prevail.

**END OF SECTION**

# INSURANCE REQUIREMENTS

**00 72 01 INSURANCE REQUIREMENTS**

**ARTICLE 1 – INSURANCE COVERAGE AMOUNTS AND POLICY REQUIREMENTS**

1.1 INSURANCE COVERAGE AMOUNTS

- A. Provide insurance coverage for the amounts shown in the table below, unless greater amounts are required by Laws and Regulations.

<b>Policy</b>	<b>Coverage Amount</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshore)	Statutory
<b>Employers' Liability</b>	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease - Each Employee	\$500,000
Bodily Injury by Disease - Policy Limit	\$500,000
<b>Seller's Liability Insurance</b>	
General Aggregate (Except Products - Completed Operations)	\$1,000,000 / Occurrence \$2,000,000 / Aggregate
Products - Completed Operations (Aggregate)	\$1,000,000 / Occurrence \$2,000,000 / Aggregate
Personal and Advertising Injury (One Person/Organization)	\$1,000,000
Bodily Injury and Property Damage (Each Occurrence)	\$1,000,000
Medical Expense (Limit Per Person)	\$5000
Personal Injury Liability (include coverage for claims arising out of Employment Practices Liability, limited to coverage provided under standard contract)	\$1,000,000
Property Damage Liability (include coverage for explosion, collapse and underground hazards where applicable)	\$1,000,000
Excess Liability, Umbrella Form (include coverage of watercraft liability. General Aggregate - Each Occurrence)	\$1,000,000
Pollution Liability Insurance (provide coverage that includes long-term environmental impacts for the disposal of pollutants/contaminants and is not limited to sudden & accidental discharge.)	\$1,000,000 / Occurrence \$2,000,000 / Aggregate
<b>Seller's Automobile Liability Insurance</b>	
Bodily Injury - Each Person / Each Accident	\$1,000,000 / \$1,000,000
Property Damage - Each Accident or Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000 / \$1,000,000
<b>Seller's Contractual Liability Insurance</b>	
General Aggregate	\$1,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
<b>Buyer's Liability Insurance</b>	
General Aggregate	\$1,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000

## 1.2 POLICY REQUIREMENTS

- A. Provide insurance meeting the requirements for insurance in accordance with the General Conditions and this Section.
- B. Provide endorsements to the policies as outlined in this Section.
- C. Obtain insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Provide insurance from companies that have an A.M. Best rating of A-VIII or better.
- D. Furnish copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles upon request by BPT or any named insured or additional insured. Seller may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this Procurement Contract.
- E. The name and number of the Project must be referenced on the certificate of insurance.
- F. BPT's failure to demand such certificates or other evidence of the Seller's full compliance with the insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Seller's obligation to obtain and maintain the insurance required by the Procurement Contract Documents.
- G. Notify the Buyer if the Seller fails to purchase or maintain the insurance required by the Procurement Contract Documents. Do not perform any work on the Project unless the required insurance policies are in effect.
- H. Buyer may exclude the Seller from the Site and exercise Buyer's termination rights under the General Conditions if Seller fails to obtain or maintain the required insurance.
- I. Buyer may elect to obtain equivalent insurance to protect Buyer's interests without prejudice to any other right or remedy if the Seller fails to obtain or maintain the required insurance. Buyer may impose a reasonable Set-off against payments due under Article 10 of the General Conditions to recover the cost of the insurance.
- J. Buyer does not represent that the insurance coverage and limits established in this Section are adequate to protect Seller or Seller's interests.
- K. The required insurance and insurance limits do not limit the Seller's liability under the indemnities granted to Buyer's Indemnitees in the Procurement Contract Documents.
- L. Provide for an endorsement that the "other insurance" clause does not apply to the BPT where the BPT is an additional insured shown on the policy. Seller's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by the BPT for liability arising out of operations under this Procurement Contract.
- M. All members of the BPT as identified in the Supplementary Conditions are to be named as an additional insured on all insurance policies, except workers' compensation insurance and the Seller's professional liability insurance.
- N. All insurance policies must include a waiver of subrogation, except workers' compensation insurance and the Seller's professional liability insurance, in favor of the Additional Insured identified in Section 00 73 00 "Supplementary Conditions."

## 1.3 SELLER'S INSURANCE



- A. Purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts. Obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law and written on a policy and endorsements approved by the Texas Department of Insurance. Provide insurance in amounts to meet all workers' compensation obligations. Provide an "all states" endorsement if Seller is not domiciled in Texas.
  - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees.
  - 3. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. Purchase and maintain commercial general liability insurance covering all operations by or on behalf of Seller. Provide coverage on an occurrence basis, against:
  - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
  - 2. Claims for damages insured by reasonably available personal injury liability coverage which are sustained;
  - 3. By any person because of an offense directly or indirectly related to the employment of such person by Seller;
  - 4. By any other person for any other reason; and
  - 5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including any resulting loss of use.
- C. Provide Seller's commercial general liability policy that is written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
  - 1. Products and completed operations coverage as required in this Section. Insurance is to remain in effective for 3 years after final payment. Furnish evidence of the continuation of this insurance at final payment and again each year for 3 years after final payment to Buyer and each named insured or additional insured.
    - a. Eliminate the exclusion with respect to property under the care, custody, and control of Seller. Provide and maintain installation floater insurance for property under the care, custody, or control of Seller in lieu of elimination of the exclusion, or if required by this Section. Provide installation floater insurance that is a broad form or "All Peril" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment which will be incorporated into the work.
      - 1) Provide coverage under the Seller's Installation Floater that includes:
        - a) Faulty or defective workmanship, materials, maintenance, or construction;

- b) Cost to remove Defective or damaged work from the Site or to protect it from loss or damage;
  - c) Cost to cleanup and remove pollutants;
  - d) Coverage for testing and startup;
  - e) Any loss to property while in transit;
  - f) Any loss at the Site;
  - g) Any loss while in storage, both on and off the Site; and
  - h) Any loss to temporary Project works if their value is included in the Procurement Contract Price.
- 2) Coverage cannot be contingent on an external cause or risk or limited to property for which the Seller is legally liable. Provide limits of insurance adequate to cover the value of the installation. Pay any deductible carried under this coverage and assume responsibility for claims on materials, supplies, machinery, fixture, and equipment which will be incorporated into the work while in transit or in storage.
- 2. Blanket contractual liability coverage for Seller's contractual indemnity obligations in Paragraph 5.12 of the General Conditions, and all other contractual indemnity obligations of Seller in the Procurement Contract Documents.
  - 3. Broad form property damage coverage.
  - 4. Severability of interest.
  - 5. Underground explosion and collapse coverage.
  - 6. Personal injury coverage.
  - 7. Endorsement CG 2032, "Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. Purchase and maintain automobile liability insurance against claims 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.
- E. Purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Provide coverage that is at least as broad as all underlying policies. Provide a policy that provides first-dollar liability coverage as needed.
- F. Provide Seller's commercial general liability and automobile liability policies that:
- 1. Are written on an occurrence basis;
  - 2. Include the individuals or entities identified in the Supplementary Conditions as additional insureds;
  - 3. Include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors for each named insured or additional insured;
  - 4. Provide primary coverage for all claims covered by the policies, including those arising from both ongoing and completed operations.

- G. Purchase and maintain insurance coverage for third-party injury and property damage claims, including clean-up costs that result from Hazardous Environmental Conditions which result from Seller's operations and completed operations. Provide Seller's pollution liability insurance that includes long-term environmental impacts for the disposal of pollutants/contaminants and is not limited to sudden and accidental discharge. The completed operations coverage is to remain in effect for 3 years after final payment. The policy must name BPT and any other individuals and entities identified in the Supplementary Conditions as additional insureds.
- H. Purchase and maintain applicable professional liability insurance, or have subcontractors and suppliers do so, if Seller or any subcontractor or supplier will provide or furnish professional services under this Procurement Contract.
- I. The policies of insurance required by this Section must:
  - 1. Include at least the specific coverages and be written for the limits of liability provided in this Section or required by Laws or Regulations, whichever is greater.
  - 2. Contain a provision that coverage afforded will not be canceled or materially changed until at least 30 days prior written notice has been given to Seller, Buyer, and all named insureds and additional insureds.
  - 3. Remain in effect always when Seller is performing work or is at the Site to conduct tasks arising from the Procurement Contract Documents.
  - 4. Be appropriate for the work being performed and provide protection from claims resulting from the Seller's performance of the work and Seller's other obligations under the Procurement Contract Documents, whether performed by Seller, subcontractor, supplier, anyone directly or indirectly employed or retained by any of them, or by anyone for whose acts they may be liable.
- J. The coverage requirements for specific policies of insurance must be met directly by those policies and may not rely on excess or umbrella insurance provided in other policies to meet the coverage requirement.

#### 1.4 BUYER'S LIABILITY INSURANCE

- A. Purchase and maintain a Buyer's protective liability insurance policy with the Buyer as the named insured and other members of the BPT as additional insureds. Provide a policy that will protect the BPT from claims which arise from operations under the Procurement Contract Documents. Provide this coverage in the same amounts required for the Seller's liability insurance and from the same company that provides the Seller's liability insurance.

#### 1.5 PROPERTY INSURANCE

- A. Purchase and maintain builder's risk insurance in the amount of the full replacement cost of the Project. This policy is subject to the deductible amounts requirements in this Section or those required by Laws and Regulations and must comply with the requirements of Paragraph 1.06. This insurance must:
  - 1. Include the BPT, Seller, and all subcontractors, and any other individuals or entities identified in the Supplementary Conditions, as named insureds.

2. Be written on a builder's risk "all risk" policy form that includes insurance for physical loss or damage to the work, temporary buildings, falsework, and materials and equipment in transit, and insures against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by this Section. 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, by endorsement or otherwise, this insurance may be provided through other insurance policies acceptable to Buyer and Seller.
3. Cover expenses incurred in the repair or replacement of any insured property.
4. Cover materials and equipment in transit or stored prior to being incorporated in the work.
5. Cover Buyer-furnished or assigned property.
6. Allow use of the Goods by Buyer on a limited basis prior to Substantial Completion for testing or other purposes.
7. Allow for the waiver of the insurer's subrogation rights as set forth below.
8. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
9. Not include a co-insurance clause.
10. Include a broad exception for ensuing losses from physical damage or loss with respect to any Defective workmanship, design, or materials exclusions.
11. Include testing and startup.
12. Be maintained in effect until the work is complete, unless otherwise agreed to in writing by Buyer and Seller.
13. Pay for costs not covered by the policy deductible.
14. Seller may purchase other special insurance to be included in or to supplement the builder's risk or property insurance policies provided under this Section.
15. Seller, subcontractors, or employees of the Seller or a subcontractor owning property items, such as tools, construction equipment, or other private property not expressly covered in the insurance required by the Procurement Contract Documents are responsible for providing their own insurance.

## **ARTICLE 2 – SELLER'S EVIDENCE OF INSURANCE**

### **2.1 ACCEPTABLE EVIDENCE OF INSURANCE**

- A. Provide evidence of insurance acceptable to the Buyer with the executed Procurement Contract Documents. Provide the following as evidence of insurance:
  - 1. Certificates of insurance on an acceptable form;
  - 2. Riders or endorsements to policies; and
  - 3. Policy limits and deductibles.
- B. Provide a list of additional insureds for each policy.
- C. Provide evidence that waivers of subrogation are provided on all applicable policies.
- D. Provide evidence of requirements for 30 days' notice before cancellation or any material change in the policy's terms and conditions, limits of coverage or change in deductible amount.
- E. Provide an endorsement from the insurance carrier permitting use of Goods during construction of the Project.
- F. Provide evidence that each policy is endorsed to provide primary and non-contributory coverage.
- G. Provide a provision or endorsement in each policy that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Buyer and Seller and to each named insured.

## 2.2 INSURANCE POLICIES

- A. Provide a copy of insurance policies, declaration pages and endorsements, and documentation of applicable self-insured retentions and deductibles if requested by the Buyer.
- B. Buyer may require the deletion, revision, or modification of policy terms, conditions, limitations, or exclusions (except where policy provisions are established by Laws or Regulations binding upon either of the parties hereto or the underwriter of any such policies). Comply with these requests and submit a copy of the replacement certificate of insurance to Buyer at the address provided below within 10 days of the requested change.

## 2.3 CERTIFICATES OF INSURANCE

- A. Submit certificates of insurance meeting the applicable requirements of the state department of insurance. No requirements of this Procurement Contract may be interpreted as requiring the issuance of a certificate of insurance on a certificate of insurance form that has not first been filed with and/or approved by the state department of insurance.
- B. Include the name of the Project in the description of operations box on the certificate of insurance.

## 2.4 CONTINUING EVIDENCE OF COVERAGE

- A. Provide updated, revised, or new evidence of insurance in accordance with this Section prior to the expiration of existing policies.
- B. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years.

2.5 NOTICES REGARDING INSURANCE

- A. Submit notices regarding insurance are to be sent to the Buyer at the following address:

**City of Pflugerville, Texas**

**Attn: CIP**

**Engineering PO**

**Box 589**

**Pflugerville, TX 78691-0589**

**END OF SECTION**

**SUPPLEMENTARY  
CONDITIONS**

**00 73 00 SUPPLEMENTARY CONDITIONS**

**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

*SC-1.01 Defined Terms*

- A. The Buyer’s Project Team as defined in the General Conditions consists of the following organizations:
  - 1. **City of Pflugerville, Texas**
  - 2. **Freese and Nichols, Inc.**
  - 3. **[Name of Project Construction Manager] [TBD]**

**ARTICLE 10 – PAYMENT**

*SC-10.01 Applications for Progress Payments*

- A. Compensation for services of BPT staff per Section 01 31 13 Project Coordination will be at the following rates:

<b>Position</b>	<b>Hourly Rate</b>
Principal in Charge	\$240
Project Manager	\$240
Project Design Professional	\$178
Project Construction Manager	\$173
Resident Design Professional	\$156
Resident Project Representative	\$138
Senior Resident Representative	\$173
Design Professional	\$156
Design Technician	\$126
Clerk	\$111

- B. Expenses will be billed at the actual cost multiplied by 1.15.

**END OF SECTION**



# BID BOND

00 43 13

**BID BOND**

<b>Offeror as Principal</b> Name: WesTech Engineering, Inc. Mailing address (principal place of business): 3665 South West Temple Salt Lake City, UT 84115	<b>Surety</b> Name: Fidelity and Deposit Company of Maryland Mailing address (principal place of business): 6550 South Millrock Drive, #300 Salt Lake City, UT 84121
<b>Buyer</b> Name: City of Pflugerville, Texas Mailing address (principal place of business): 100 E. Main Street, Suite 100 Pflugerville, TX 78660	Physical address (principal place of business): 6550 South Millrock Drive, #300 Salt Lake City, UT 84121  Telephone (Main): (801) 937-6700 Telephone (Claims):(801) 937-6700 Attn: Bond Dep
<b>Procurement Contract for Circular Clarifier Sludge Collectors</b> Project name and number: Central WWTP Expansion PFL16607  Bid/Proposal Due Date: November 28, 2018	Surety's state of incorporation: Maryland
<b>Bond</b> Procurement Contract Price Offered: (5%) Penal Sum of Bond: 5% of Procurement Contract Price offered Date of Bond: November 28, 2018	<b>By submitting this bond, Surety affirms it is authorized to do business and licensed to execute bonds in the state of Texas.</b>  <b>Local Agent for Surety</b> Name: Michael Keeley Mailing address (principal place of business): Strasburger & Price, LLP 901 Main Street, Suite 4400 Dallas, TX 75202-3794  Telephone (Main): (214) 651-4718
<b><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.</i></b>	

**Surety and Offeror, intending to be legally bound by this bond, do each cause this bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Offeror and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if Buyer accepts Offeror's Bid/Proposal and Offeror delivers the executed Agreement and the required performance and payment bonds within the time stipulated in the Bidding/Proposal Documents this obligation is null and void. Payment under this bond will be due and payable upon default by Offeror and within 30 calendar days after receipt by Offeror and Surety of written notice of default from Buyer. Venue lies exclusively in Travis County, Texas for any legal action.**

Offeror as Principal		Surety	
Signature: <u>Craig N. Martin</u>		Signature: <u>[Signature]</u>	
Name: <u>Craig N. Martin</u>		Name: <u>Andrew Rendon</u>	
Title: <u>Vice President</u>		Title: <u>Attorney-in-Fact</u>	
Email: <u>Cmartin@westech-inc.com</u>		Email: <u>arendon@buckner.com</u> <i>(Attach Power of Attorney)</i>	

END OF SECTION

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **DAVID MCVICKER, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Terry BUCKNER, J. Michele BURRSTON, Randy C. EMERY, Chris LUND, Douglas G. BALL, Bradley K. NIELSON, Vickie NELSON, Monica E. NELSON, Dennis M. GROSS and Andrew RENDON**, all of Salt Lake City, Utah, **EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 23rd day of September, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*

*David McVicker*

*Secretary  
Eric D. Barnes*

*Vice President  
David McVicker*

State of Maryland  
County of Baltimore

On this 23rd day of September, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **DAVID MCVICKER, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*



Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2019

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 28 day of November, 2018.



*Gerald F. Haley*

Gerald F. Haley, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:**

Zurich American Insurance Co.  
Attn: Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056