

City of Pflugerville, Texas



PROJECT MANUAL & SPECIFICATIONS

PFENNIG PUMP STATION IMPROVEMENTS SWITCHBOARD EQUIPMENT PRE-PURCHASE

Prepared By

Freese and Nichols, Inc.
10814 Jollyville, Bldg. 4, Suite 100
Austin, Texas 78759

00 30 00 PROPOSAL FORM

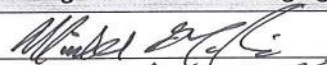
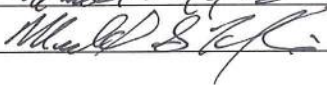
ARTICLE 1 – PROPOSAL RECIPIENT

1.01 This Proposal is submitted to:

**City of Pflugerville
c/o Sabrina Schmidt
100 East Main, Suite 100
Pflugerville, Texas 78660
Attention: Proposal Form
Pfennig Pump Station Improvements Switchboard
Equipment Pre-Purchase**

ARTICLE 2 – OFFEROR’S ACKNOWLEDGMENTS

- 2.01 Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with Owner on the form included in the Contract Documents, to provide Goods and Special Services specified or indicated in Contract Documents for the Contract Price indicated in this Proposal or as modified by Contract Amendment. Offeror agrees to provide Goods and Special Services within the Contract Times established in the Agreement or as modified by Contract Amendment and comply with the all other terms and conditions of the 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 60 days after the opening of Proposals.
- 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		
2		

ARTICLE 3 – OFFEROR’S REPRESENTATIONS

3.01 The Offeror has examined and carefully studied the 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;
 - C. Information and observations obtained from visits to the Site; and
 - D. The 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 Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- 3.06 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 Contract Documents.
- 3.07 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 Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 3.08 The Offeror has given the PCM written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror has discovered in the Contract Documents, and the written resolution provided by the PCM is acceptable to the Offeror.
- 3.09 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for providing Goods and Special Services.
- 3.10 Offeror's entry into this 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 Contract Documents.

ARTICLE 4 – BASIS OF OFFER

- 4.01 Offeror will provide Goods and Special Services in accordance with the Contract Documents at the unit prices shown in the following Table – Proposal Form Table 1.

Proposal Form Table 1

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Amount
Pump Station (PS) - Proposal Item A					
1	Furnish one (1) 480 Volt Switchboard	EA	1.00	\$122,995.00	\$122,995.00
	TOTAL AMOUNT		\$122,995.00		

- A. Extended amounts have been computed multiplying the number of units by the unit price.
- B. Unit Price and figures column will be used to compute the actual Proposal price.

ARTICLE 5 – TIME OF COMPLETION

5.01 Offeror agrees that the Goods and Special Service will be complete and ready for final payment in accordance with Paragraph 10.02 of the General Conditions within the number of Calendar Days indicated in Section 00 52 23 "Agreement".

ARTICLE 6 – ATTACHMENTS TO THIS PROPOSAL

- 6.01 The following documents are attached to and made a condition of this Proposal:
- A. Section 00 30 01 "Proposal Form Exhibit A,"
 - B. Section 00 30 02 "Proposal Security (Bid Bond),"
 - C. Section 00 30 03 "Vendor Compliance to State Law Certificate,"
 - D. Section 00 30 04 "Seller Compliance to Texas Sales Tax Code,"
 - E. Section 00 30 05 "Conflict of Interest Questionnaire,"
 - F. Section 00 30 06 " Non-Collusion Affidavit," and
 - G. Section 00 45 16 "Statement of Qualifications."

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 – STATEMENT OF MATERIALS AND OTHER CHARGES

8.01 Provide the completed form in Section 00 30 04 "Seller Compliance to Texas Sales Tax Code" with the Proposal.

ARTICLE 9 – VENUE

9.01 Offeror agrees that venue shall lie exclusively in Travis County, Texas for any legal action.



1922 WAUKESHA DRIVE
 PFLUGERVILLE TX 78660-2033
 Phone: 512-421-2316
 Fax: 512-421-2391

To: CITY OF PFLUGERVILLE
 CITY OF PFLUGERVILLE
 100 EAST MAIN STREET, SUITE 100
 PFLUGERVILLE TX 78660-2743
 Attn: COP
 Phone: 512-990-6100
 Fax: 512-251-5768
 Email:

Date: 03/07/2014
Proj Name: PFENNING PUMP STATION
GB Quote #: 219746996
 Valid From: 03/07/2014
 Valid To: 04/06/2014
 Contact: KEVIN FAULKNER
 Email: kevin.faulkner@graybar.com

Proposal

We Appreciate Your Request and Take Pleasure in Responding As Follows

Item	Quantity	Supplier	Catalog Nbr	Description	Price	Unit	Ext.Price
100	1 EA	SQUARE D CO.	LOT SQUARE D GEAR PER ATTACHED BOM		\$122,995.00	1	\$122,995.00

Total in USD (Tax not included): \$122,995.00

This equipment and associated installation charges may be financed for a low monthly payment through Graybar Financial Services (subject to credit approval). For more information call 1-800-241-7408 to speak with a leasing specialist.

To learn more about Graybar, visit our website at www.graybar.com

24-Hour Emergency Phone#: 1-800-GRAYBAR

Subject to the standard terms and conditions set forth in this document. Unless otherwise noted, freight terms are F.O.B. shipping point prepaid and bill. Unless noted the estimated ship date will be determined at the time of order placement.

Quotation

Q2C Number: 34638993	Quote Number: 1	Revision Number: 0
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Project Name: PFLUGERVILLE PFENNING PS SWBD

Project Sub-Name:

Project Location: PFLUGERVILLE, TX

Quote Name: PFLUGERVILLE PFENNING PS SWBD

Through Addenda Number: 0

Bid Date: 03/05/2014

Consultant / Specifier:

Contractor / Installer:

Sales Representative: MATTHEW BELL

Conditions of Sale

This Quotation is subject to Schneider Electric USA, Inc.'s published Conditions of Sale with the following exceptions:

Payment Terms: AS DESCRIBED IN ARTICLE 6.02

Liquidated Damages: AS DESCRIBED IN ARTICLE 4.02 WITH A MAXIMUM OF 10% OF THE PRICE OF THIS QUOTATION

Currency: US DOLLARS

Quote Markings

Q2C Number: 34638993

Quote Number: 1

Revision Number: 0

Project Name: PFLUGERVILLE PFENNING PS SWBD

Quote Name: PFLUGERVILLE PFENNING PS SWBD

Item No.	Qty.	Catalog Number / Details
001-00	1	<p>Designation: SWBD-101 Square D Custom Swbd QED Switchboard</p> <p>----- Square D Custom Swbd Designed and Tested in accordance with: UL 891/NATIONAL ELECTRIC CODE/NEMA PB-2 System Voltage - 480Y/277V 3Ph 4W 60Hz Source Description - Main-Generator System Ampacity - 1600A Bussing - Silver Plated Copper Neutral Bus - 100% Max Available Fault Current (RMS) - 65kA Enclosure - Type 1 Accessibility: Front Only Equipment Nameplate White Surface/Black Letters, Screw-on (Factory Installed) Exterior Paint Color - ANSI 49 Ground Lug provided for each device Copper Ground Bus Lineup 1 BTU: 14347 Auto Throw-over System</p> <ul style="list-style-type: none"> . Standard Main-Generator . Transition Delay - 2 (SEC) . Source Loss Delay - 3 (SEC) . Utility Stabilization Delay - 10 (SEC) . Generator Stabilization Delay - 10 (SEC) . Generator Cooldown Delay - 15 (MIN) . Generator Exercise Duration - 30 (MIN) . Generator Exercise with Load Switch . Transition Type - Open . Automatic Retransfer Switch . Touchscreen HMI <p>Dimensions</p> <p>----- 3 - 36" Wide Section(s) 1 - 24" Wide Section(s) 4 - 36" Deep Enclosure(s) Dimensions: 132.00" W X 36" Max D X 91.5" H Approximate Weight: 3393.00</p> <p>Incoming Requirements</p> <p>----- Suitable for Use As Service Entrance - Incoming One Entry Point: Section 1, Through the Bottom Connection Type: Cable Power Meter - PM-870RD 3 CTs PM870 w/ Display - 3 phase 4 wire wye 1600A Ethernet Communications Card</p> <p>Suitable for Use As Service Entrance - Incoming Two Entry Point: Section 3, Through the Bottom Connection Type: Cable</p> <p>Mains</p> <p>----- 1 - 1600AF/1600AT 100% 3 Pole Stored Energy, Fixed Mounted Circuit Breaker, UL: Type NW</p>

Q2C Number: 34638993

Quote Number: 1

Revision Number: 0

Project Name: PFLUGERVILLE PFENNING PS SWBD

Quote Name: PFLUGERVILLE PFENNING PS SWBD

Item No.	Qty.	Catalog Number / Details
		<p>Device Associated to Incoming One</p> <p>1 - 1600AF/1600AT 100% 3 Pole Stored Energy, Fixed Mounted Circuit Breaker, UL: Type NW</p> <p>Device Associated to Incoming Two</p> <p>Common Main Features:</p> <p>Ammeter Trip Unit, Long Time, Short Time, Instantaneous, Ground Fault</p> <p>Auxiliary Switches 8A-8B</p> <p>Overcurrent Trip Switch 1A/1B Form C Contact (SDE)</p> <p>Second Shunt Trip without Communications - 120Vac</p> <p>Padlock Attachment</p> <p>Shunt Trip without Communications - 120Vac</p> <p>Contact Wear Indication - Visual</p> <p>Spring Charging Motor - 120Vac</p> <p>Shunt Close without Communications - 120Vac</p> <p>Nameplate - White Surface / Black Letters, Screw-on (Factory Installed)</p> <p>Specials: 4" Infared Viewing Window</p> <p>Special 4" Infared Viewing Window #: TAGWEB</p> <p>Feeders</p> <p>-----</p> <p>Devices Associated to Main 1:</p> <p>2 - 60AS/40AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type HJ</p> <p>Standard Trip Unit, Long Time, Instantaneous</p> <p>1 - 60AS/60AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type HJ</p> <p>Standard Trip Unit, Long Time, Instantaneous</p> <p>1 - 250AS/200AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type JJ</p> <p>Standard Trip Unit, Long Time, Instantaneous</p> <p>2 - 600AS/600AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type LJ</p> <p>Ammeter Trip Unit, Long Time, Short Time, Instantaneous, Ground Fault</p> <p>1 - 1000AS/1000AT 480V 100% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type RK</p> <p>Ammeter Trip Unit, Long Time, Short Time, Instantaneous, Ground Fault</p> <p>1 - 100AS/80AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type HJ</p> <p>Standard Trip Unit, Long Time, Instantaneous</p> <p>1 - 60AS/20AT 480V 80% Rated 65 kA 3 Pole UL, Group Mounted Electronic Trip Circuit Breaker: Type HJ</p> <p>Standard Trip Unit, Long Time, Instantaneous</p> <p>Common Feeder Features:</p> <p>Nameplate - White Surface / Black Letters,</p>

Q2C Number: 34638993

Quote Number: 1

Revision Number: 0

Project Name: PFLUGERVILLE PFENNING PS SWBD

Quote Name: PFLUGERVILLE PFENNING PS SWBD


Item No.	Qty.	Catalog Number / Details
		Screw-on (Factory Installed)
		Estimated Ship Days (ARO): 60 Working Days
002-00	1	STARTUP
003-00	1	TESTING
004-00	1	TRAINING

Quote Total US DOLLARS: \$122,995.00

ARTICLE 10 – PROPOSAL SUBMITTAL

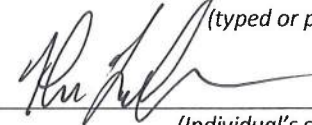
10.01 This Proposal is submitted by:

Offeror: GRAYBAR ELECTRIC COMPANY, INC.
(typed or printed)

By: 
(Individual's signature)

Name: MICHAEL G. HUMPHRIES
(typed or printed)

Title: BRANCH MANAGER
(typed or printed)

Attest: 
(Individual's signature)

Address for giving notices:

1922 WAUKESHA DRIVE Pflugerville, Tx 78660

Phone: (512) 421-2300

E-mail: michael.humphries@graybar.com

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

END OF SECTION

00 30 02 PROPOSAL SECURITY (BID BOND)

<p>Offeror as Principal Name: Mailing address (<i>principal place of business</i>):</p>	<p>Surety Name: Mailing address (<i>principal place of business</i>):</p>
<p>Owner Name: Mailing address (<i>principal place of business</i>):</p>	<p>Physical address(<i>principal place of business</i>):</p>
<p>Proposal Project name and location:</p> <p>Proposal Due Date: Contract Price Offered:</p>	<p>Surety is a corporation organized and existing under the laws of the state of:</p> <p>By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.</p> <p>Telephone (<i>main number</i>):</p> <p>Telephone (<i>for notice of claim</i>):</p>
<p>Bond Bond Number: Date of Bond: (<i>Date of Bond cannot be earlier than Proposal Due Date</i>) Penal Sum for Bond: (<i>Five Percent of the Contract Price Offered</i>)</p>	<p>Local Agent for Surety Name: Address:</p> <p>Telephone:</p> <p><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i></p>
<p><i>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 Owner accepts Offeror's Proposal and Offeror delivers the executed Agreement and the required performance and payment bonds within the time stipulated in the Proposal Documents this obligation is null and void. Payment under this Bond will be due and payable upon default by Proposer and within 30 calendar days after receipt by Proposer and Surety of written notice of default from Owner. Venue shall lie exclusively in _____ County, Texas for any legal action.</i></p>	
<p>Seller as Principal Signature: _____ Name and Title: _____</p>	<p>Surety Signature: _____ Name and Title: _____ (<i>Attach Power of Attorney</i>)</p>

END OF SECTION

00 30 03 **VENDOR COMPLIANCE TO STATE LAW**

Chapter 2252 of the Texas Government Code applies to the award of government contract to non-resident bidders. This law 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 Seller whose ultimate parent company or majority owner has its principal place of business in this state.

Check the statement that is correct for Bidder.


Non-resident bidders in _____ (give state), our principal place of business, are required to be _____ percent lower than resident bidders by State law. A copy of the statute is attached.

Non-resident bidders in _____ (give state), our principal place of business, are not required to under bid resident bidders.

Our principal place of business or corporate offices are in the State of Texas.

Bidder:

Company Name: Graybar Electric Co., Inc.
(typed or printed)

By: 
(Signature -- attach evidence of authority to sign)

Name: Darryl Bain
(typed or printed)

Title: Director, Finance
(Signature of Corporate Secretary)

Business address: 1922 Waukesha, Pflugerville, TX 78660

Phone: 817-213-1200 E-mail: darryl.bain@graybar.com

END OF SECTION

00 30 04 SELLER COMPLIANCE TO TEXAS SALES TAX CODE

Comply with all requirements of the Texas Sales Tax Code. The Seller hereby certifies that the Contract Price is divided as follows:

Material permanently incorporated into the Goods and resold to the Buyer as defined in Tax Code.	\$ <u>122,995.⁰⁰</u>
All other charges and costs	\$ <u>0.00</u>
Total (Total must equal the Contract Price)	\$ <u>122,995.00</u>

Seller:

Company Name: Graybar Electric Co., Inc.
(typed or printed)

By: Darryl Bain
(Signature -- attach evidence of authority to sign)

Name: Darryl Bain
(typed or printed)

Title: Director, Finance
(Signature of Corporate Secretary)

Business Address: 1922 Waukesha, Pflugerville, TX 78660

Phone: 817-213-1200 E-mail darryl.bain@graybar.com

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

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

MICHAEL HUMPHRIES

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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

UNKNOWN

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes

No

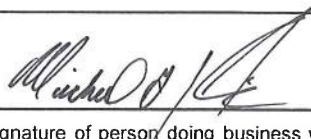
C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes

No

D. Describe each employment or business relationship with the local government officer named in this section.

4


Signature of person doing business with the governmental entity

3-7-14
Date

00 30 06 NON-COLLUSION AFFIDAVIT

STATE OF TEXAS

COUNTY OF Travis

OWNER: City of Pflugerville
100 E. Main, Suite 100
Pflugerville, Texas 78660

CONTRACT: Pfennig Pump Station Improvements Switchboard Equipment Pre-Purchase

Darryl Bain, being first duly sworn, says that (he/she) is the agent authorized by the Offeror to submit the attached Proposal.

Affiant further states that the Offeror has not been a party to any collusion among Offerors in the restraint of freedom of competition by agreement to submit a Proposal at a fixed price or to refrain from offering; or with any official or employee of the District as to quantity, quality, or price in the prospective Contract, or any other terms of said prospective Contract; or in any discussion between Offerors and any official of the District concerning exchange of money or other thing of value for special consideration in the letting of a Contract.

Company Name: Graybar Electric Co., Inc.
(typed or printed)

By: Darryl Bain
(Signature -- attach evidence of authority to sign)

Name: Darryl Bain
(typed or printed)

Title: Director, Finance
(Signature of Corporate Secretary)

Business address: 1922 Waukesha, Pflugerville, TX 78660

Phone: 817-213-1200 E-mail: darryl.bain@graybar.com

SUBSCRIBED AND SWORN BEFORE ME, this 7th day of March, 2014

Notary Public Patrice Morrison

My Commission Expires: 

Graybar

CORPORATE OFFICE
34 NORTH MERAMEC AVENUE
P.O. BOX 7231
ST. LOUIS, MISSOURI 60177

MATTHEW W. GEEKIE
SENIOR VICE PRESIDENT
SECRETARY AND GENERAL COUNSEL
TEL: (314) 573-9278
FAX: (314) 573-9445
EMAIL: MATTHEW.GEEKIE@GRAYBAR.COM

SECRETARY'S CERTIFICATE

I, M. W. Geekie, hereby certify that I am Secretary of Graybar Electric Company, Inc., a New York corporation (the "Corporation"), with its principal office at Clayton, Missouri; that as such I am custodian of the records and official seal of said Corporation, and that the following is a true and correct copy of a resolution duly adopted by the Executive Committee of the Board of Directors of said Corporation at a meeting held in Clayton, Missouri on July 14, 2003:

Upon motion duly made and seconded, the following resolution was unanimously adopted:

"NOW, THEREFORE, BE IT, AND IT IS HEREBY, RESOLVED that the Director, Electrical Sales, Director, Comm/Data Sales, Director, Operations or Director, Finance is hereby authorized to sign and/or execute in the name and on behalf of the Corporation:

- 1) Contracts with Customers for a single transaction or project, including applicable performance bonds, arising from invitation, bid, and acceptance forms, which bind the Corporation to the Customer's terms and conditions where the amount does not exceed \$1,000,000.
- 2) Other Proposals and Bids to Customers for a single transaction or project which bind the Customer to the Corporation's terms and conditions where the amount does not exceed \$2,000,000.
- 3) Bid Bonds where the amount does not exceed \$100,000.
- 4) Ongoing Sales Contracts with Customers, other than Corporate Account Customers, where the amount does not exceed \$1,000,000."

I further certify that the foregoing meeting was convened and the proceedings held in accordance with the law and the charter and By-laws of said Corporation and have not been revoked, annulled, or amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Corporation the 16th day of May 2011.


Secretary of
GRAYBAR ELECTRIC COMPANY, INC.

Graybar

CORPORATE OFFICE
34 NORTH MERAMEC AVENUE
P.O. BOX 7231
ST. LOUIS, MISSOURI 60177

MATTHEW W. GEEKIE
SENIOR VICE PRESIDENT
SECRETARY AND GENERAL COUNSEL
TEL: (314) 573-9278
FAX: (314) 573-9445
EMAIL: MATTHEW.GEEKIE@GRAYBAR.COM

SECRETARY'S CERTIFICATE

I, M. W. Geekie, hereby certify that I am Secretary of Graybar Electric Company, Inc., a New York corporation (the "Corporation"), with its principal office at Clayton, Missouri; that as such I am custodian of the records and official seal of said Corporation, and that the following is a true and correct copy of a resolution duly adopted by the Executive Committee of the Board of Directors of said Corporation at a meeting held in Clayton, Missouri on July 14, 2003:

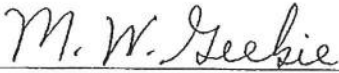
Upon motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED, that the Area Manager, Branch Manager, Manager, Comm/Data Business or Manager, Customer Service is hereby authorized to sign and/or execute in the name and on behalf of the Corporation:

- 1) Contracts with Customers for a single transaction or project, including applicable performance bonds, arising from invitation, bid, and acceptance forms, which bind the Corporation to the Customer's terms and conditions where the amount does not exceed \$200,000.
- 2) Other Proposals and Bids to Customers for a single transaction or project which bind the Customer to the Corporation's terms and conditions where the amount does not exceed \$400,000."

I further certify that the foregoing meeting was convened and the proceedings held in accordance with the law and the charter and By-laws of said Corporation and said resolution has not been revoked, annulled, or amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Corporation the 1st day of July 2011.


Secretary of
GRAYBAR ELECTRIC COMPANY, INC.

00 45 16 STATEMENT OF QUALIFICATIONS

ARTICLE 1: REQUIREMENTS FOR THE STATEMENT OF QUALIFICATIONS

- 1.01 The Statement of Qualifications must be submitted with the Proposal and include the information described in this section of the Specifications as a minimum. Failure to submit the required information in the Statement of Qualifications may result in the Buyer considering the Proposal non-responsive and result in rejection of the Proposal by the Buyer. Offerors may be required to provide supplemental information if requested by the Buyer to clarify, enhance or supplement the information provided in the Statement of Qualifications.
- 1.02 Offerors must provide the information requested in the Statement of Qualifications using the forms attached to this Section. A copy of these forms can be provided in Microsoft Word to assist with the preparation of the Statement of Qualifications. Information in these forms must be provided completely and in detail. The information in these forms will be used to make direct comparisons with the information provided by other Offerors. Failure to include the information completely and clearly may result in lower scores in the evaluations. Information that cannot be totally incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.
- 1.03 Offerors may provide supplemental information to the Statement of Qualifications such as organizational brochures or other marketing information to help demonstrate their ability to provide best value to the Buyer. This information may not be submitted as a substitute to the information specifically requested in this Section, or in the Statement of Qualifications forms. If this information is included as an appendix to the information requested in Paragraph 1.02 above, the reference must include the specific paragraph or section that applies to that question or item.

ARTICLE 2: EVALUATION CRITERIA

- 2.01 The Buyer will consider the proposed Contract Price, proposed Contract Time, qualifications of the Offerors and their subcontractors and suppliers, exceptions taken to the terms and conditions of the contract, counter offers and other factors as described in this Article to determine which Proposal offers the best value to the Buyer. The Proposals will be evaluated using the following criteria and weighting:

Rating Category	Description	Weighting Value %
A	Ability of the Seller to comply with experience requirements of the Contract Documents.	10
B	Quality and performance of Goods	10
C	Approach for providing Special Services	10
D	Experience in providing warranty service and service after the warranty period has expired.	10

Rating Category	Description	Weighting Value %
E	Proposed dates for delivery of Goods and proven ability to meeting contractual delivery dates.	20
F	Contract Price	40
	Total	100

- A. Ability of the Seller to comply with experience requirements of the Contract Documents. Experience must include, as a minimum, successfully providing Goods for at least 5 similar contracts within the last 5 years.
1. Provide general information about the organization as required in Tables 1-4. Limit the narrative portion responding this criterion to 10 pages. Provide a list of contracts completed by the Organization in the last 5 years using copies of Table 5.
- B. Quality and performance of Goods. Provide references for current or recently completed contracts in Table 5 to allow Buyer to assess the quality of Goods provided on these contracts. Quality considerations may include:
- a. The appearance of the completed Goods,
 - b. Amount of warranty or rework required,
 - c. Durability and maintainability of the completed Goods, and
 - d. Quality of manufacturing practices.
2. Offeror may include written mission or vision statements that demonstrate the commitment to quality of Goods, procedures for preparing detailed quality plans or recommendations and awards received commending the organization for the quality of their Goods. This narrative is not to exceed 10 pages.
- C. Approach for providing Special Services. Experience must include, as a minimum, successfully providing Special Services for at least five similar contracts within the last 5 years. Indicate the Contracts for which Special Services were completed by the Organization in the last 5 years on Table 5.
1. Describe organizations approach for providing Special Services and working with Contractors, Designers, Construction Managers and Buyers' operations and maintenance organizations. Limit the narrative portion responding this criterion to 10 pages.
 2. Provide references for current or recently completed contracts in Table 5 to allow Buyer to assess the quality of Special Services provided on these contracts. Quality considerations may include:
 - a. Quality of Special Services,
 - b. Quality of documentation provided,
 - c. Responsiveness to the Buyer's needs during production and testing, and
 - d. Quality of commissioning services and training provided.
 3. Offeror may include written mission or vision statements that demonstrate the commitment to quality of Special Services provided, procedures for preparing detailed

service plans or recommendations and awards received commending the organization for providing Special Services. This narrative is not to exceed 10 pages.

- D. Experience in providing warranty service and service after the warranty period has expired. Experience must include, as a minimum, successfully providing warranty services for at least five similar contracts within the last 5 years. Indicate the Contracts for which extended warranties, or warranties covered by warranty bonds were completed by the Organization in the last 5 years on Table 5.
1. Describe organizations approach for providing warranty services and working with Contractors, Engineers and Buyers' operations and maintenance organizations. Limit the narrative portion responding this criterion to 10 pages.
 2. Provide references for current or recently completed contracts in Table 5 to allow Buyer to assess the quality of warranty services provided on these contracts. Considerations may include:
 - a. Quality of warranty services,
 - b. Responsiveness to the Buyer's needs during warranty period,
 - c. Responsiveness to the Buyer's needs after the warranty period,
 - d. Experience with providing extended warranties, performance guarantees or bonded warranties.
 3. Offeror may include written mission or vision statements that demonstrate the commitment to quality of warranty services provided, procedures for warranty corrections, testimonials from previous Buyers received commending the organization for providing warranty services or services outside any warranty provisions. This narrative is not to exceed 10 pages.
- E. Proposed dates for delivery of Goods and proven ability to meeting contractual delivery dates.
1. Buyer will give consideration to the date for delivery of Goods in the best value determination for the Contract. Buyer may be subject to delay claims from the Contractor if Goods are not delivered and ready for Contractor to install on the date for delivery. The value of delays in delivery of Goods after the date indicated in Section 00 11 16 "Request for Proposals" will be determined by calculating the number of days between Offeror's proposed completion dates and the Buyer's completion dates indicated in Section 00 11 16 "Request for Proposals." This number of days will be multiplied by the Liquidated Damages amounts indicated in the Agreement to determine the value of early completion. This value for late delivery will be used to adjust the Contract Price when evaluating the Proposed Contract Price described in Paragraph F. The calculation is solely for the evaluation of Proposals and does not alter the Contract Price from the amounts included in the Proposal. Seller will be required to pay the full amount of Liquidated Damages as set forth in the Agreement, or as negotiated if the agreed upon delivery date is not met.
 2. Provide information to demonstrate the ability of the Offeror to complete contracts on time. Offerors are to provide a tabulation of all contracts completed by the Offeror within the last 5 years on Table 8 to demonstrate performance in delivering Goods on

time. Comments may be added to the tabulations to indicate the reasons for not meeting delivery dates.

3. Provide narrative information to indicate the number of contracts and dollar volume currently under contract by the organization and the projected completion date of each of these contracts. Describe how the resources dedicated to these contracts will impact the Offeror's ability to effectively complete this contract. This narrative is not to exceed 5 pages.
- F. Proposed Contract Price: The Contract Price offered and demonstrated ability to complete contracts for the Contract Price. Attach the Proposal and the information required to be submitted with the Proposal.
1. The Contract Price will be used in the best value determination and will be the Contract Price awarded unless this amount is changed during negotiations between the Seller and Buyer. Negotiations, if any, will be conducted in accordance with Government Code 2269.155 and will only be for changes in Scope or the terms and conditions of the Contract.
 2. The evaluation will consider the number and percentages of change orders to contract price for past contracts as an indicator of ability to provide Goods and Special Services within the Contract Price. Provide a tabulation of budget performance on all contracts completed by the Offeror within the last 5 years on Table 7 to demonstrate the ability of the Offeror to complete contracts for the Contract Price. Lines may be added beneath contract change order breakdowns to add explanatory comments.

ARTICLE 3: PROPOSAL REQUIREMENTS

- 3.01 Provide one printed copy of the Proposal at the time and place set forth in Section 00 11 16 "Request for Proposals." Prepare the proposal using the referenced tables and narrative descriptions as described in Article 2. Pages are to be 8-1/2 x 11 pages using a minimum font size of 10. A limited number of 11 X 17 sheets may be used, and must be folded to the size of an 8-1/2 x 11 page. Provide a tab to separate materials responding to each of the Criteria A through E described in Article 2.
- 3.02 Provide a digital copy of the Proposal in Portable Document Format (PDF) on a CD, portable drive or other digital recording device. This digital copy is to include all information required to evaluate the Proposal and should match the content of the printed copy of the Proposal. When creating the digital copy:
- A. Create PDF documents from native format files.
 - B. Rotate all pages so that the top of the document appears at the top when opened in PDF viewing software.
 - C. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the original documents. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
 - D. Submit color PDF documents if color is used in the printed version of the documents.

ARTICLE 4: RANKING OF OFFERORS

- 4.01 The Buyer will consider the qualifications of the Offerors, in addition to the proposed Contract Price and Contract Times, when evaluating Proposals to determine which Offeror will provide the best value to the Buyer and will rank each of the Offerors based on the criteria described in Paragraph 2.01. The Buyer reserves the right to waive irregularities in determining the Offerors' qualifications and reserves the right to require the submission of additional information.
- 4.02 The Buyer will give consideration to any exceptions and counter offers included a separate and additional Proposals submitted in accordance with Paragraph 7.03 of Section 00 21 13 "Instructions to Offerors". If the Buyer elects to consider accepting an exception or counter offer, an addendum describing the acceptable exceptions or counter offers will be sent to all Offerors submitting a Proposal on the date for delivering Proposals in Section 00 11 16 "Request for Proposals." Offerors will be invited to submit a best and final offer based on the Contract Documents as amended by this Addendum.
- 4.03 The Offerors may be invited to participate in interviews before or following any addendum requesting best and final offers. The Buyer will consider the information provided in these interviews and reassess the rankings of each Offeror. Buyer will use information from the Statements of Qualifications, the Proposals and the interviews to determine which Proposal offers the best value to the Buyer.
- 4.04 The Buyer has the right to accept a Proposal, which in its judgment offers the best value to the Buyer, reject any and all Proposals, to waive irregularities in the Proposals, or to reject non-conforming, non-responsive, or conditional Proposals. In addition, the Buyer reserves the right to reject any Proposal where circumstances and developments have, in the opinion of the Buyer, changed the qualifications or responsibility of the Offeror.
- 4.05 Material misstatements or misrepresentation in the documentation submitted for evaluation may be grounds for rejection of the Offeror's Proposal. Any such misstatement or misrepresentation, if discovered after award of the contract, may be grounds for immediate termination of the Contract. Additionally, the Offeror will be liable to the Buyer for any additional costs or damages to the Buyer resulting from this termination, including costs and attorney's fees for collecting such costs and damages.
- 4.06 The Buyer will evaluate and rank each Proposal not later than the 45th day after the date of opening the Proposals per Texas Government Code Section 2267.154(b).

Table 1 – General Information

Organization doing business as	Graybar Electric Company, Inc.		
Business address of principle office	34 N. Meramec Ave. (Corporate headquarters)		
	Clayton, Missouri 63105		
Telephone numbers			
Main number	314-251-9200 (Corporate headquarters)		
Website address	www.graybar.com		
Form of business (check one)	<input checked="" type="checkbox"/> A corporation	<input type="checkbox"/> A partnership	<input type="checkbox"/> An individual
If a Corporation			
Date of incorporation	December 11, 1925		
State of incorporation	New York		
Chief Executive Manager's name	Kathleen M. Mazarella - Chairman, President and CEO		
President's name	same		
Vice President's name(s)	Randall Harwood	Senior VP and CFO	
	Matthew Geekie	Senior VP - Secretary & Gen Counsel	
	Robert Lyons	Senior VP - North American Business	
	Larry Giglio	Senior VP - Operations	
	Beverly Propst	Senior VP - Human Resources	
Secretary's name	Matthew Geekie		
Treasurer's name	Randall Harwood		
If a Partnership			
Date of organization			
State whether partnership is general or limited			
If an Individual			
Name			
Identify all individuals not previously named which exert a significant amount of business control over the organization			
Indicators of Organization Size			
Average number of current full time employees	7,000	Average estimate of revenue for the current year	Avg of last 3 years: \$5+Billion

Table 2 – Organizational Experience

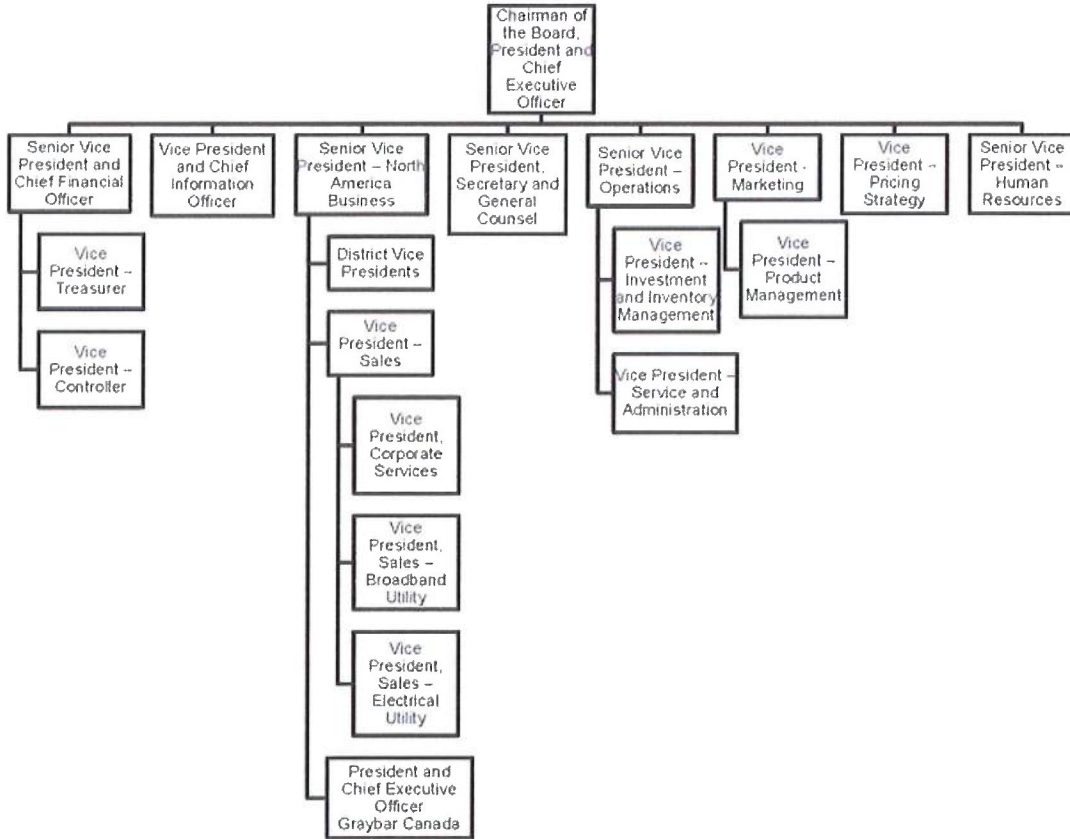
Organization doing business as	Graybar Electric Company, Inc.	
Business address of regional office	1922 Waukesha Drive	
	Pflugerville, TX 78660	
Name of regional office manager	Michael Humphries	
Telephone numbers	512-421-2366	
Main number		
Website address	www.graybar.com	
Organization History		
List of names that this organization currently, has or anticipates operating under over the history of the organization, including the names of related companies presently doing business:		
Names of organization	From date	To date
We often do business as "Graybar".		
Graybar Financial Services	1988	current
List of companies, firms or organizations that own any part of the organization.		
Name of companies, firms or organization.	Percent Ownership	
None		
Experience		
Years' experience with contracts for providing similar Goods and Special Services:		
Has this or a predecessor organization ever defaulted on a contract or failed to complete any contract awarded to it?	No	
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization been released from a bid or proposal in the past ten years?	No	
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization ever been disqualification as a bidder or offeror by any local, state, or federal agency within the last 5 years?	No	
If yes provide full details in a separate attachment. See attachment No.		
Is this organization or your proposed surety currently in any litigation or contemplating litigation?	*See below	
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization ever refused to provide Goods or Special Services as defined in the Contract Documents?	No	
If yes provide full details in a separate attachment. See attachment No.		

*Graybar Electric Company, Inc. is a Fortune 500 Company with approximately 240 locations across the United States. As a result, in the ordinary course of business, the Company is a party to routine civil litigation. However, there are no outstanding judgments or claims against the Company that are expected to adversely affect its financial condition.

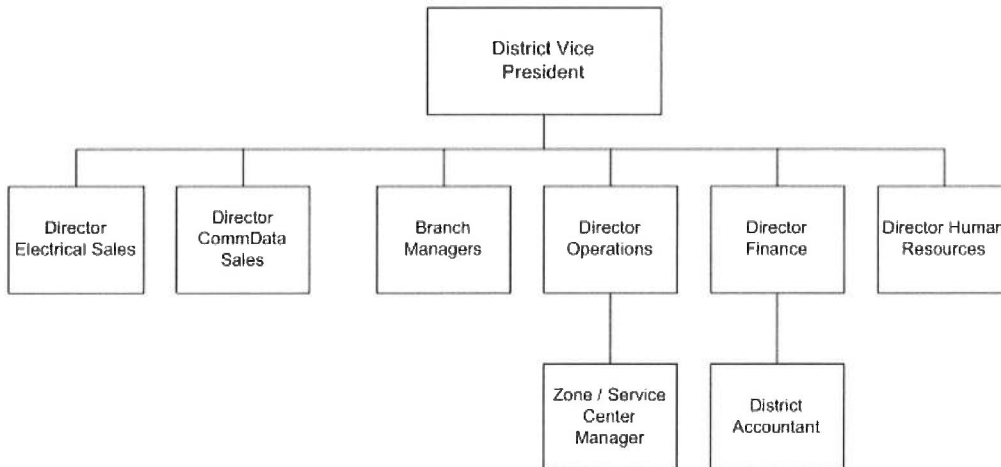
Table 3 – Organizational Structure

Organization doing business as:	Graybar Electric Company, Inc.		
Proposed organization			
Provide a brief description of the managerial structure of the organization and illustrate with an organizational chart. Include the title and names of key personnel for this Contract. Include this chart at an attachment to this description. See attachment No.			
See Exhibit 1			
Provide a brief description of the experience and qualifications of the organization’s management team, including individuals that will be directly involved in the Contract. Describe the individuals that are authorized to execute Contract Documents, Change Orders or receive payment for the organization. Include a copy of a board resolution or other documentation as appropriate for the structure of the company authorizing these individuals to conduct business on behalf of the organization. See attachment No.			
<p>MICHAEL HUMPHRIES - BRANCH MANAGER - 28 years DISTRIBUTION EXPERIENCE</p> <p>KEVIN FAULKNER - SALES MANAGER - 25 years DISTRIBUTION EXPERIENCE</p>			
Surety References			
Name:		Telephone (main number):	
Mailing address (principal place of business):		Telephone (for notice of claim):	
Physical address(principal place of business):		Local Agent for Surety:	
		Name: _____	
		Address: _____	
		Telephone: _____	
		eMail: _____	
Surety is a corporation organized and existing under the laws of the state of:			
Is surety authorized to provide surety bonds in the state of Texas?			
Is surety listed in "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?			

GRAYBAR COMPANY ORGANIZATION



Graybar District Organization



GRAYBAR BRANCH ORGANIZATION

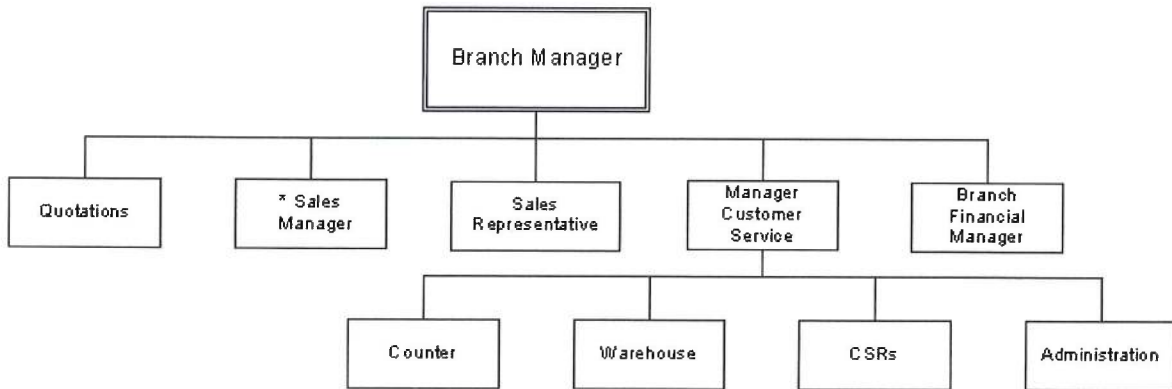


Table 4 – Contract Experience and Resources

Organization doing business as:	
Contracts	
Provide a narrative description (not to exceed 10 pages) of your organizations approach to completing this contract to provide best value for the Buyer. Including a description of your approach in the following areas:	
<ol style="list-style-type: none">1. Contract administration2. Management of subcontractors and suppliers3. Time management4. Cost control5. Quality management6. Safety7. Managing changes to the contracts8. Managing product delivery9. Providing start-up services.10. Providing training on operation and maintenance of Goods.11. Providing service on warranty corrections.12. Meeting HUB / MWBE Participation Goal	

Table 5 – Current Contracts and Contracts Completed within the last 5 Years

Buyer:		Contract name	
General description of Goods provided:			
General description of Special Services provided:			
Contract Price:	Production Facility	Project Manager	
Date Goods delivered	Assembly Facility	Quality Control Manager	
Reference contact information (listing names indicates approval to contacting the names individuals as a reference)			
Buyer	Name	Title/ position	Organization
Buyer			
Engineer			
Construction Manager			
Buyer			
General description of Goods and Special Services provided:			
Contract Price:	Production Facility	Project Manager	
Date Goods delivered	Assembly Facility	Quality Control Manager	
Reference contact information (listing names indicates approval to contacting the names individuals as a reference)			
Buyer	Name	Title/ position	Organization
Buyer			
Engineer			
Construction Manager			
Buyer			
General description of Goods and Special Services provided:			
Contract Price:	Production Facility	Project Manager	
Date Goods delivered	Assembly Facility	Quality Control Manager	
Reference contact information (listing names indicates approval to contacting the names individuals as a reference)			
Buyer	Name	Title/ position	Organization
Buyer			
Engineer:			
Construction Manager			

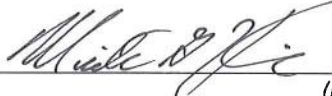
Table 6 - Contract Information

Buyer		Contract name	
General description of contract			
Contract Budget and Schedule Performance			
Budget history		Schedule performance	
	Amount	% of Bid Amount	Date
Bid			
Change orders		Notice to Proceed	
Buyer enhancements		Contract Delivery date at Notice to Proceed	
Design issues		Change Order authorized Delivery date	
Total		Actual / estimated Substantial Completion date	
Final cost		Comments:	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Buyer	Name	Title/ position	Organization
Designer			
Construction Manager			
Surety			
Issues / disputes resolved or pending resolution by arbitration, litigation or dispute review boards			
Number of issues resolved:	Total amount involved in resolved issues:	Number of issues pending:	Total amount involved in resolved issues:

Affidavits

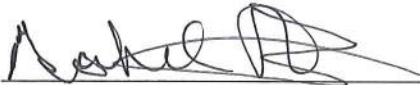
The following affidavit shall be executed and provided with this Statement of Qualifications. By submitting this Statement of Qualifications and related information; Offeror acknowledge they have read these documents and these documents are true and correct and contain no material misrepresentations; and that they are authorized to make this affidavit on behalf of the Offeror's organization. The individual signing the affidavit shall attach evidence of their authority to bind the organization to an agreement.

Seller: GRAYBAR ELECTRIC COMPANY, Inc.
(typed or printed)

By: 
(Individual's signature)

Name: MICHAEL G. HUMPHRIES
(typed or printed)

Title: BRANCH MANAGER
(typed or printed)

Attest: 
(Individual's signature)

Designated representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail: _____

END OF SECTION

00 52 23 AGREEMENT

This Agreement is between City of Pflugerville (Buyer) and GRAYBAR ELECTRIC COMPANY, INC. (Seller).

Buyer and Seller agree as follows:

ARTICLE 1 – GOODS AND SPECIAL SERVICES

1.01 Seller shall provide all Goods and Special Services in accordance with the Contract Documents. The Goods and Special Services are generally described as follows:

Pfennig Pump Station Improvements Switchboard
Equipment Pre-Purchase

ARTICLE 2 – DESIGNER AND PROFESSIONAL CONSTRUCTION MANAGER

2.01 The Designer for this Contract is:

Freese and Nichols, Inc.
10814 Jollyville, Bldg. 4, Suite 100
Austin, Texas 78759

2.02 The Professional Construction Manager for this Contract is:

City of Pflugerville
100 E. Main, Suite 100
Pflugerville, Texas 78660

ARTICLE 3 – POINT OF DESTINATION

3.01 The Goods are to be delivered to the Point of Destination identified in the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 Contract Times

- A. Shop Drawings required by the Contract Documents will be submitted to Buyer for Engineer's review and approval within 30 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.
- B. Date for delivery of templates, baseplates, anchor bolts or other materials required for Construction prior to the delivery of other Goods per paragraph C shall be within 30 days after approval of Shop Drawings
- C. The Goods are required to be delivered complete and ready for installation within **230** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

D. Date for Furnishing Special Services: The furnishing of Special Services to Buyer will commence within 10 days after Buyer's notice to Seller and shall be completed within 7 days thereafter.

4.02 Liquidated Damages

SEE NEXT PAGE FOR EXCEPTIONS

A. Buyer and Seller recognize that times specified for Milestones and delivery of Goods for installation as stated in the Contract Documents are of the essence of the Contract. Buyer and Seller recognize that the Buyer will suffer financial loss if the Goods are not delivered ready for installation within the times specified in Paragraph 4.01 and as adjusted in accordance with Article 7 of the General Conditions. Buyer and Seller also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Buyer if the Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty):

1. Seller shall pay Buyer \$750 for each day that expires after the time specified in Paragraph 4.01 for delivery of Goods suitable for installation until the Goods are delivered and ready to install.
2. The Buyer will determine whether the Goods have been delivered ready for installation within the Contract Times. Assessment of liquidated damages by the Buyer does not waive the Buyer's right to assess or collect additional damages which Buyer may sustain by the failure of the Seller to perform in accordance with the terms of its Contract.

ARTICLE 5 – CONTRACT PRICE

5.01 Buyer will pay Seller for completion of the Goods and Special Services in accordance with the Contract Documents at the unit prices shown in the attached in Section 00 30 00 "Proposal Form."

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments: Submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by the PCM as provided in the General Conditions.

6.02 The Buyer will make progress payments related to this Contract for Goods and Special Services.

A. Payment is based on achieving Contract Milestones described below and the Schedule of Values for these Milestones:

Milestone	Percent of Contract Price
Approval of Shop Drawings.	5%
Completion of castings and related testing in accordance with the Contract Documents.	10%
Completion of acceptable factory testing and delivery of Goods in accordance with the Contract Documents.	60%

Section 00 52 023 Agreement

4.02 Liquidated Damages (page 00 52 23-3)

A. Buyer and Seller recognize that times specified for Milestones and delivery of Goods for installation as stated in the Contract Documents are of the essence of the Contract. Buyer and Seller recognize that the Buyer will suffer financial loss if the Goods are not delivered ready for installation within the times specified in Paragraph 4.01 and as adjusted in accordance with Article 7 of the General Conditions. Buyer and Seller also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Buyer if the Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty):

1. Seller shall pay Buyer **\$750** for each day that expires after the time specified in Paragraph 4.01 for delivery of Goods suitable for installation until the Goods are delivered and ready to install, **provided however Seller shall pay in liquidated damages no more than ten percent (10%) of Seller's direct cost of material.**

2. The Buyer will determine whether the Goods have been delivered ready for installation within the Contract Times. Assessment of liquidated damages by the Buyer does not waive the Buyer's right to assess or collect additional damages which Buyer may sustain by the failure of the Seller to perform in accordance with the terms of its Contract.

General Conditions

1.01 Defined Terms (pages 1 and 3)

Buyer's Indemnitees - City of Pflugerville and its officers, directors, and employees,

Deleted: Each member of the BPT

Deleted: their

Deleted: members, partners,

Deleted: , agents, consultants, and subcontractors

Deleted: engineers, architects,

Deleted: , and other professionals

27. **Indemnified Costs** - All costs, losses, damages, and legal or other dispute resolution costs resulting from third party claims or demands against Buyer's Indemnitees. These costs include reasonable fees for attorneys,

28. **Laws and Regulations; Laws or Regulations** - Applicable U.S. federal and state laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.

5.10 Seller's Warranties and Guarantees (page 14)

A. Seller warrants and guarantees to Buyer that the Goods and Special Services are in accordance with the specifications as agreed to in writing by both parties 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 Contract Documents.

Deleted: Contract Documents

Seller warrants that all goods sold are free of any security interest and will make available to Buyer all transferable warranties (including without limitation warranties with respect to intellectual property infringement) made to Seller by the manufacturer of the goods. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT

LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE AND NON-INFRINGEMENT. UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER, PRODUCTS SOLD HEREUNDER ARE NOT INTENDED FOR USE IN OR IN CONNECTION WITH 1) ANY SAFETY APPLICATION OR THE CONTAINMENT AREA OF A NUCLEAR FACILITY, OR 2) IN A HEALTHCARE SITUATION, WHERE THE GOODS HAVE POTENTIAL FOR DIRECT PATIENT CONTACT OR WHERE A SIX (6) FOOT CLEARANCE FROM A PATIENT CANNOT BE MAINTAINED AT ALL TIMES.

5.12 Indemnification (page 14)

A. TO THE FULLEST EXTENT PERMITTED BY LAW, THE SELLER SHALL RELEASE, INDEMNIFY, AND HOLD HARMLESS THE BUYER'S INDEMNITEES FROM AND AGAINST THIRD PARTY CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS FEES OR DISPUTE RESOLUTION COSTS, ARISING OUT OF OR RESULTING FROM VIOLATIONS OF LAWS OR REGULATIONS, OR BODILY INJURY, DEATH, OR DESTRUCTION OF TANGIBLE PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE SELLER. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE SELLER TO INDEMNIFY A BUYER'S INDEMNITEE OR CONTRACTOR AGAINST A CLAIM, LOSS, DAMAGE OR EXPENSE CAUSED BY THE (I) NEGLIGENCE OR FAULT, (II) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR (III) THE BREACH OF CONTRACT BY A BUYER'S INDEMNITEES OR CONTRACTOR.

Deleted: AND CONTRACTOR

Deleted: PROVISION OF THE GOODS AND SPECIAL SERVICES,

Deleted: , REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED IN PART BY AN BUYER'S INDEMNITEES OR CONTRACTOR HEREUNDER, SUBJECT TO THE BUYER'S DEFENSES AND LIABILITY LIMITS UNDER THE TEXAS TORT CLAIMS ACT

Deleted: PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, SELLER INDEMNIFIES EACH OF BUYER'S INDEMNITEES AND CONTRACTOR AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE SELLER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A BUYER'S INDEMNITEE OR CONTRACTOR

8.02 Defective Goods or Special Services (page 20)

5. Pay the cost for correction 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.

Deleted: 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.

8.03 Correction Period (page 21)

C. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE CONTRACT DOCUMENTS, THE SELLER SHALL INDEMNIFY THE BUYER'S INDEMNITEES AND PAY INDEMNIFIED COSTS FOR THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH TO THE EXTENT ARISING OUT OF OR RELATING TO THE SELLER'S NEGLIGENCE IN ITS CORRECTION OF DEFECTIVE GOODS AND SPECIAL SERVICES TO THE FULLEST EXTENT PERMITTED BY LAW.

Deleted: claims, costs, losses, and damages arising out of or relating to Defective Goods and Special Services including

Deleted: , removal,

13.02 Seller's Infringement (page 29)

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 shall defend the claim or suit, including negotiating a settlement upon written demand from Buyer, to the extent Seller receives such defense from the manufacturer. 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.

Deleted: AND CONTRACTOR

1. 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.

Deleted: PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, SELLER INDEMNIFIES EACH OF BUYER'S INDEMNITEES AND CONTRACTOR AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE SELLER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN BUYER'S INDEMNITEES OR CONTRACTOR.

City of Pflugerville, Texas
Pfenning Pump Station Improvements
Switchboard Equipment Pre-Purchase
Graybar Electric Company, Inc. Exceptions to Terms and Conditions

2. Buyer shall be barred from any remedy against Seller for the suit or claim if Buyer fails to provide Seller the opportunity to defend such suit or claim after written demand by Seller.

C. Seller may use commercially reasonable efforts to ensure the manufacturer will (i) obtain the necessary licenses for Buyer's benefit, or (ii) 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 CONTRACT OR THE CONTRACT DOCUMENTS, THE SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE BUYER'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST INDEMNIFIED COSTS RESULTING FROM INFRINGEMENT ON PATENT RIGHTS OR COPYRIGHTS BY SELLER TO THE FULLEST EXTENT PERMITTED BY LAW, TO THE EXTENT THE SELLER RECEIVES SUCH INDEMNIFICATION FROM THE MANUFACTURER.

Add the following Limitation of Liability to the proposal:

Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller's liability exceed the purchase price of the purchase order from which such liability arises or to which such liability relates. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR ANY INDIRECT DAMAGES, OR FOR LOST PROFITS OR DATA (WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE), ALL REGARDLESS OF WHETHER SELLER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSSES.

Completion of Installation and Starting in accordance with Specification Section 01 75 00 "Starting and Adjusting."	15%
Completion of Performance Test, Provision of Final Operations and Maintenance Manuals, Warranties and other final Documentation required by the Contract Documents.	10%

- B. Payment will be made for the amount determined per Paragraph 7.02.A, less the total of payments previously made and less set-offs determined in accordance with Paragraph 10.01.E of the General Conditions.

ARTICLE 7 – SELLER’S REPRESENTATIONS

7.01 The Seller makes the following representations:

- A. The Seller has examined and carefully studied the Contract Documents and the other related data identified in the Proposal Documents.
- B. The Seller is familiar with and is satisfied as to the general, local, and Site conditions that may impact providing Goods and Special Services.
- C. The Seller is familiar with Laws and Regulations that may impact providing Goods and Special Services.
- D. The Seller has considered the:
 - 1. Information known to Seller;
 - 2. Information commonly known to Sellers doing business in the locality of the Site;
 - 3. Information and observations obtained from visits to the Site; and
 - 4. The Contract Documents.
- E. The Seller has considered the items identified in Paragraphs A and E with respect to the effect of such information, observations, and documents on:
 - 1. The cost, and schedule for providing Goods and Special Services;
 - 2. The means, methods, techniques, sequences, and procedures to be employed by Seller; and
 - 3. Seller’s safety programs.
- F. Based on the information and observations referred to in the preceding paragraphs, Seller agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for providing the Goods and Special Services at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. The Seller has correlated the information known to the Seller, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- H. The Seller has given the PCM written notice of all conflicts, errors, ambiguities, or discrepancies that the Seller has discovered in the Contract Documents, and the written resolution provided by the PCM is acceptable to the Seller.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for providing the Goods and Special Services.
- J. Seller's entry into this Contract constitutes an incontrovertible representation by Seller that without exception the Contract Price in the Agreement is based upon providing the Goods and Special Services required by the Contract Documents.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents:

- A. The Contract Documents consist of the following:
 - 1. Specifications, forms and documents listed in Section 00 01 00 "Table of Contents" except as specifically excluded in Paragraph C.
 - 2. Drawings listed in the Sheet Index in Section 00 01 00 "Table of Contents".
 - 3. Addenda (Numbers 00 90 01 to 00 90 (TBD), inclusive).
 - 4. Documentation required by the Contract Documents and submitted by Seller prior to Notice of Award (pages (TBD), inclusive).
- B. The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - 1. Notice to Proceed.
 - 2. Contract Amendment(s).
 - 3. Change Order(s).
 - 4. Field Order(s).
 - 5. Change Directive(s).
- C. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- D. There are no Contract Documents other than those listed above in this Article.
- E. The Contract Documents may only be amended, modified, or supplemented as provided in Article 7 of the General Conditions.

The Effective Date of the Contract is _____.

Buyer: City of Pflugerville
(typed or printed)

Seller: GRAYBAR ELECTRI Co., Inc.
(typed or printed)

By: _____
(Individual's signature)

By: 
(Individual's signature)

Name: Brandon Wade
(typed or printed)

Name: MICHAEL G. HUMPHRIES
(typed or printed)

Title: City Manager
(typed or printed)

Title: BRANCH MANAGER
(typed or printed)

Attest: _____
(Individual's signature)

Attest: 
(Individual's signature)

Address for giving notice:

100 E. Main – Suite 100

1922 Waukesha Drive

Pflugerville, Texas 78660

PFLUGERVILLE TX 78600

Designated representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail: _____

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

END OF SECTION

00 61 13 PERFORMANCE BOND FORM

<p>Seller as Principal Name: Mailing address (<i>principal place of business</i>):</p>	<p>Surety Name: Mailing address (<i>principal place of business</i>):</p>
<p>Owner Name: Mailing address (<i>principal place of business</i>):</p>	<p>Physical address(<i>principal place of business</i>):</p>
<p>Contract Project name and location:</p> <p>Effective Date of the Contract:</p> <p>Contract Amount:</p>	<p>Surety is a corporation organized and existing under the laws of the state of:</p> <p>By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.</p> <p>Telephone (<i>main number</i>):</p> <p>Telephone (<i>for notice of claim</i>):</p>
<p>Bond Date of Bond (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>) Bond Amount:</p>	<p>Local Agent for Surety Name: Address:</p> <p>Telephone:</p> <p><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i></p>
<p><i>Surety and Seller, intending to be legally bound and obligated to Owner do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal 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 Contract then this obligation shall be null and void; otherwise the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2267 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in _____ County, Texas for any legal action.</i></p>	
<p>Seller as Principal Signature: _____ Name and Title: _____</p>	<p>Surety Signature: _____ Name and Title: _____ (<i>Attach Power of Attorney</i>)</p>

END OF SECTION

00 61 16 PAYMENT BOND FORM

<p>Seller as Principal Name: Mailing address (<i>principal place of business</i>):</p>	<p>Surety Name: Mailing address (<i>principal place of business</i>):</p>
<p>Owner Name: Mailing address (<i>principal place of business</i>):</p>	<p>Physical address(<i>principal place of business</i>):</p>
<p>Contract Project name and location:</p> <p>Effective Date of the Contract:</p> <p>Contract Amount:</p>	<p>Surety is a corporation organized and existing under the laws of the state of:</p> <p>By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.</p> <p>Telephone (<i>main number</i>):</p> <p>Telephone (<i>for notice of claim</i>):</p>
<p>Bond Date of Bond (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>) Bond Amount:</p>	<p>Local Agent for Surety Name: Address:</p> <p>Telephone:</p> <p><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i></p>
<p><i>Surety and Seller, intending to be legally bound and obligated to Owner do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal 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 Contract then this obligation shall be null and void; otherwise the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2267 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in _____ County, Texas for any legal action.</i></p>	
<p>Seller as Principal Signature: _____ Name and Title: _____</p>	<p>Surety Signature: _____ Name and Title: _____ (<i>Attach Power of Attorney</i>)</p>

END OF SECTION

00 62 16 EVIDENCE OF INSURANCE

1.01 ACCEPTABLE EVIDENCE OF INSURANCE

- A. Provide evidence of insurance acceptable to the Owner with the executed 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.

1.02 CERTIFICATES OF INSURANCE

- A. Submit certificates of insurance meeting the following requirements:
 - 1. Form has been filed with and approved by the Texas Department of Insurance under Texas Insurance Code § 1811.101; or
 - 2. Form is a standard form deemed approved by the Department under Texas Insurance Code § 1811.101.
 - 3. No requirements of this 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 approved by the Texas Department of Insurance.
- B. Include the name of the project in the description of operations box on the certificate of insurance.

1.03 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 Owner.

1.04 CONTINUING EVIDENCE OF COVERAGE

- A. Provide updated, revised or new evidence of insurance in accordance with Paragraph 1.01 prior to the expiration of existing policies.
- B. Provide evidence of continuation of insurance coverage at final payment and for the following three years.

1.05 NOTICES REGARDING INSURANCE

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

**City of Pflugerville
100 E. Main, Suite 100
Pflugerville, Texas 78660**

END OF SECTION



CERTIFICATE OF LIABILITY INSURANCE

6/1/2014

DATE (MM/DD/YYYY)

5/22/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC-1 St. Louis Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Travelers Indemnity Co of CT		25682
INSURER B : Travelers Property Casualty Co of America		25674
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES GRAEL02 **CERTIFICATE NUMBER:** 2252119 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR _____ _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	N	N	HC2EGLSA474M6932TCT13	6/1/2013	6/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	N	N	HC2ECAP474M6920TCT13	6/1/2013	6/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 3,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	HC2JUB474M586713 (AOS)	6/1/2013	6/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	EXCESS OHIO WORKERS' COMPENSATION	N	N	HWXJUB474M588013	6/1/2013	6/1/2014	Workers' Comp. Statutory Employers' Liab. \$1,000,000 SIR - Each Accident \$350,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

2252119
FOR INFORMATIONAL PURPOSES ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE




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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 Proposal Requirements or Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the 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 Proposals which clarify or modify the Proposal Requirements or the proposed 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 Contract Documents.
 4. *Buyer* – The City of Pflugerville.
 5. *Buyer's Indemnitees* - Each member of the BPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
 6. *Buyer's Project Team or BPT* - The Buyer, Program Manager, Professional Construction Manager, Resident Project Representative, Engineer, and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide services to the Buyer.
 7. *Change Directive* - A directive issued to Seller on or after the Effective Date of the 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 directive until a Change Order can be issued.
 8. *Change Order* - A document issued on or after the Effective Date of the Contract and signed by Buyer and Seller which modifies the Goods and Special Services, Contract Price, Contract Times, or terms and conditions of the Contract.
 9. *Change Proposal* - A document submitted by Seller in accordance with the requirements of the Contract Documents:
 - a. Requesting an adjustment in Contract Price or Contract Times;
 - b. Contesting an initial decision concerning the requirements of the Contract Documents or the acceptability of Goods and Special Services under the Contract Documents;
 - c. Challenging a set-off against payment due; or
 - d. Seeking a Modification with respect to the terms of the Contract.
 10. *Claim* - A demand or assertion by Buyer or Seller submitted in accordance with the requirements of the Contract Documents. A demand for money or services by an entity other than the Buyer or Seller is not a Claim.
 11. *Constituent of Concern* - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous wastes, and substances, products, wastes, or other materials that are or become listed, regulated, or addressed pursuant to:

- a. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”);
 - b. The Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.;
 - c. The Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”);
 - d. The Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.;
 - e. The Clean Water Act, 33 U.S.C. §§1251 et seq.;
 - f. The Clean Air Act, 42 U.S.C. §§7401 et seq.; or
 - g. Any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract* - The entire integrated set of documents concerning the Goods and Special Services describing the relationship between the Buyer and Seller.
 13. *Contract Amendment* - A document issued on or after the Effective Date of the Contract and signed by Buyer and Seller which modifies the terms and conditions of the Contract, but does not make changes in the Goods and Special Services.
 14. *Contract Documents* - Those items designated as Contract Documents in the Agreement.
 15. *Contract Price* - The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents.
 16. *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.
 17. *Contractor* - The individual or entity with which Buyer has contracted for installing the Goods and coordinating the delivery of Special Services.
 18. *Day* - A calendar day of 24 hours measured from midnight to the next midnight.
 19. *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 Contract Documents;
 - b. Do not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the 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.
 20. *Drawings* - The part of the Contract that graphically shows the scope, extent, and character of the Goods and Special Services. Shop Drawings and other Seller submittals are not Drawings.
 21. *Effective Date of the Contract* - The date indicated in the Agreement on which the Contract becomes effective.
 22. *Engineer* - The individual or entity named as Engineer in the Agreement and the subconsultants, individuals or entities directly or indirectly employed or retained by Engineer to provide design or other technical services to the Buyer. Engineer has responsibility for design and technical issues related to the Contract Documents.

23. *Field Order* - A document issued by PCM or Engineer requiring changes in the Goods and Special Services that do not change the Contract Price or the Contract Times.
24. *General Requirements* - Sections of Division 01 of the Specifications. The General Requirements pertain to all sections of the Specifications.
25. *Goods* - The materials, products or equipment to be provided by the Seller in accordance with the Contract Documents.
26. *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 Contract.
27. *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 engineers, architects, attorneys, and other professionals.
28. *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.
29. *Liens* - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.
30. *Milestone* - A principal event in the delivery of the Goods and Special Services that Seller is required by Contract to complete by a specified date or within a specified period of time.
31. *Modification* - Change made to the Contract Documents by one of the following methods:
 - a. Contract Amendment;
 - b. Change Order;
 - c. Field Order; or
 - d. Change Directive.
32. *Notice of Award* - The notice by PCM to an Offeror of Buyer's acceptance of the Proposal.
33. *Notice to Proceed* - A notice to Seller of the date Goods and Special Services is to begin and of the Contract Times.
34. *Offeror* - An individual or entity that submits a Proposal to Buyer.
35. *Point of Destination* - The specific location indicated in the Contract Documents where Goods and Special Services are to be delivered.
36. *Professional Construction Manager or PCM* - The individual or entity named as PCM 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 PCM may be an employee of the Buyer.

37. *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.
38. *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 Contract Times.
39. *Project* - The total undertaking to be accomplished by Buyer for which the Goods and Special Services are to be provided.
40. *Proposal* - The documents submitted by an Offeror to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Proposal Requirements.
41. *Proposal Documents* - The Proposal Requirements, the proposed Contract Documents, and Addenda.
42. *Proposal Requirements* - The Request for Proposals, Instructions to Offerors, Proposal Security, Proposal Form and attachments, and required certifications and affidavits.
43. *Proposal Security* - The financial security in the form of a bid bond provided by Offeror at the time the Proposal is submitted and held by Buyer until the Agreement is executed and insurance, performance, payment, and other bonds required by the Contract Documents are provided.
44. *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.
45. *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.
46. *Schedule of Submittals* - A schedule of required submittals, prepared and maintained by Seller.
47. *Schedule of Values* - A schedule, prepared and maintained by Seller, allocating portions of the Contract Price to various portions of the Goods and Special Services and used as the basis for Seller's Applications for Payment.
48. *Seller* - The individual or entity with which Buyer has contracted for providing Goods and Special Services.
49. *Set-off* - A reduction in the amount Buyer pays to Seller that is imposed on the basis of one or more provisions of the Contract.
50. *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 Contract Documents.
51. *Site* - Location indicated in the Contract Documents where Goods are to be installed by Contractor and where Special Services are to be provided.
52. *Special Services* - Services associated with the Goods to be furnished by Seller as required by the Contract Documents.

53. *Specifications* - The part of the 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.
54. *Successful Offeror* - The Offeror to which Buyer awards a contract.
55. *Supplementary Conditions* - The part of the Contract that amends or supplements the General Conditions.

1.02 Terminology

- A. The words and terms discussed in this Paragraph 1.02 are not defined, but when used in the Proposal Requirements or Contract Documents, have the indicated meaning.
- B. It is understood that the cost for providing Goods and Special Services is included in the Contract Price and no additional compensation is to be paid by Buyer unless specifically stated otherwise in the Contract Documents. Expressions including or similar to “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 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 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 Contract Documents unless there is a specific statement in the 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 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 Contract Documents require Goods and Special Services but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”
- E. 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 shall...” 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 Contract Documents in accordance with this recognized meaning unless stated otherwise in the 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 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 Contract Documents or approved by the PCM.
 - H. Giving notice as required by the 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 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 Contract Documents in electronic portable document format (PDF). This document is the Project Record Copy of the Contract Documents.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The 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 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 Contract Documents.
- B. Provide the following preliminary documents within 10 days after the Effective Date of the 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 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 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 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 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 Contract Documents, and the anticipated amount of the Application for Payment.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. Requirements of components of the Contract Documents are as binding as if required by all Contract Documents. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of 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 Contract requirements described in the General Conditions, Supplementary Conditions and General Requirements (Division 01 sections of the Specifications) apply to Goods and Special Services regardless of where it is described in the Contract Documents, unless specifically noted otherwise.
 2. In offering a Proposal for this Project and in entering into this Contract, Seller represents:

- a. Seller has studied the 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 of this information into consideration in developing the Contract Price offered and that the Contract Price offered provides full compensation for providing the Goods and Special Services in accordance with the Contract Documents.
3. Specifications or details do not need to be indicated or specified in each Specification or Drawing. Items shown in the Contract Documents are applicable regardless of their location in the 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 Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result, whether specifically called for in the Contract Documents or not. Include these related costs in the offered Contract Price.
- B. Provide Goods that are functionally complete as described in the 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 Engineer 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 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 Contract Documents governs if there is a discrepancy between the Project Record Copy of the Contract Documents and subsequent electronic or digital versions of the Contract Documents, including printed copies derived from these electronic or digital versions.
 - F. The Contract supersedes all prior written or oral negotiations, representations, and agreements. The Contract Documents comprise the entire Agreement between Buyer and Seller. The 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 Contract Documents. PCM is to issue clarifications and interpretations of the Contract Documents in accordance with the Contract Documents.

3.02 *Reference Standards*

- A. Standard Specifications, Codes, Laws and Regulations:
 1. Reference in the 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 Proposal is submitted or when Seller negotiates the Contract Price unless specifically stated otherwise in the 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 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 Contract Documents.
 3. The provisions of the Contract Documents take precedence over standard specifications, manuals, reference standards, codes, or instructions of Seller unless specifically stated otherwise in the Contract Documents.
- B. Comply with applicable construction industry standards, whether referenced or not.
1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.
 2. Comply with the requirements of the Contract Documents if they produce a higher quality of Goods and Special Services than the applicable construction industry standards.
 3. Engineer determines whether a code or standard is applicable, which of several are applicable, or if the 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 report conflicts, errors, ambiguities, or discrepancies that Seller discovers or has actual knowledge of 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 Contract Documents issued pursuant to Paragraph 7.01.
 2. Immediately notify the PCM of conflicts, errors, ambiguities, or discrepancies in the Contract Documents or discrepancies between the 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.

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 Contract Documents issued pursuant to Paragraph 7.01
 3. Seller is liable to the BPT for failure to report conflicts, errors, ambiguities, or discrepancies in the Contract Documents of which Seller has actual knowledge.
 4. Seller is deemed to have included the most expensive item, system, procedure, etc. in the Contract Price if a conflict, error, ambiguity, or discrepancy in components of the Contract Documents was known, but not reported prior to submitting the Proposal or when Seller negotiates the Contract Price.

3.04 *Interpretation of the Contract Documents*

- A. Submit questions concerning the design requirements of the Contract Documents or relating to the acceptability of the Goods and Special Services to the PCM immediately after the question arises. Engineer is to be the initial interpreter of the design requirements of the Contract Documents and judge of the acceptability of the Goods and Special Services. Engineer is to render an interpretation of the Contract Documents or initiate a Modification to the Contract Documents through the PCM if a change is required in the Contract Documents. Seller may appeal Engineer's interpretation by submitting a Change Proposal.
- B. Submit questions concerning the non-technical or contractual / administrative requirements of the Contract Documents to the PCM immediately after the question arises. PCM is to be the initial interpreter of these requirements of the Contract Documents. PCM is to render an interpretation of the Contract Documents or initiate a Modification to the Contract Documents if a change is required in the 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 Contract Price, as security for the faithful performance and payment of Seller's obligations under the 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 Contract Documents.
- B. Provide bonds in the form prescribed by the 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 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.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.
- E. Seller is to use amounts paid by Buyer to Seller under the Contract for the performance of the Contract and to satisfy claims against the payment bond.
- F. 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.

- G. 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.
- H. Buyer may exercise Buyer's termination rights under Article 12 if Seller fails to obtain or maintain required bonds.
- I. 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 shall provide insurance of the types and coverages and in the amounts stipulated in the 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 in accordance with the 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 shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.
- B. Use only new materials and equipment in producing the Goods. Provide special warranties and guarantees required by the Contract Document. 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 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, start-up, and completion of the Goods and Special Services, whether or not these items are specifically called for in the Contract Documents.

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.

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 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 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. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT DOCUMENTS, SELLER SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR AND BUYER'S INDEMNITEES FROM AND AGAINST 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 A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY SELLER TO THE FULLEST EXTENT PERMITTED BY LAW. NOTHING IN THIS PARAGRAPH OBLIGATES THE SELLER TO INDEMNIFY THE BUYER'S INDEMNITEES OR CONTRACTOR FROM THE CONSEQUENCES OF THE BUYER, BUYER'S INDEMNITEES OR CONTRACTOR'S OWN NEGLIGENCE. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, SELLER INDEMNIFIES EACH OF BUYER'S INDEMNITEES AND CONTRACTOR AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE SELLER OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF BUYER'S INDEMNITEES OR CONTRACTOR.**
- 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 Contract. Buyer may have this deleted portion of the 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 Contract Price or 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 in the Contract Price any applicable sales and use taxes 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.

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 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 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 Texas Professional Engineer 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. Engineer'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 Contract Documents. Engineer's review and approval of Shop Drawings and other submittals is only for the purpose stated in the 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 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 to Buyer that the Goods and Special Services are in accordance with the 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 Contract Documents.
- B. 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.
- C. The Contract Documents may require the Seller to accept the assignment of the Contract between the Buyer and Seller to the Contractor. The specific warranties, guarantees, and correction obligations contained in this Contract govern with respect to Seller's performance obligations to Buyer for the Goods and Special Services described in an assigned contract.
- D. Seller's obligation to provide the Goods and Special Services in accordance with the Contract Documents is absolute. None of the following constitute 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 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 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 LAW, THE SELLER SHALL RELEASE, INDEMNIFY, AND HOLD HARMLESS THE BUYERS'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS FEES OR DISPUTE RESOLUTION COSTS, ARISING OUT OF OR RESULTING FROM PROVISION OF THE GOODS AND SPECIAL SERVICES, VIOLATIONS OF LAWS OR REGULATIONS, OR BODILY INJURY, DEATH, OR DESTRUCTION OF TANGIBLE PROPERTY CAUSED BY THE ACTS OR OMISSIONS OF THE SELLER, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED IN PART BY AN BUYER'S INDEMNITEES OR CONTRACTOR HEREUNDER, SUBJECT TO THE BUYER'S DEFENSES AND LIABILITY LIMITS UNDER THE TEXAS TORT CLAIMS ACT. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE SELLER TO INDEMNIFY A BUYER'S INDEMNITEE OR**

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CONTRACTOR AGAINST A CLAIM, LOSS, DAMAGE OR EXPENSE CAUSED BY THE (I) NEGLIGENCE OR FAULT, (II) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR (III) THE BREACH OF CONTRACT BY A BUYER'S INDEMNITEES OR CONTRACTOR PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, SELLER INDEMNIFIES EACH OF BUYER'S INDEMNITEES AND CONTRACTOR AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE SELLER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A BUYER'S INDEMNITEE OR CONTRACTOR.

- 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 Engineer arising out of the preparation of the 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 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. Buyer will be responsible for unloading the Goods from carrier and paying costs for unloading the Goods.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the 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 receipt 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 DELAY

7.01 *Amending the Contract Documents*

- A. The 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 Contract Documents without the recommendation of the Engineer 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 engineering or technical matters.
 - 2. Change Order: All changes to the Contract Documents that include a change in the Contract Price or the Contract Times for previously authorized Goods and Special Services, or changes to the Goods and Special Services requiring Engineer's approval must be made by Change Order. A Change Order may also be used to establish modifications of the Contract Documents that do not affect the Contract Price or Contract Times.
 - 3. Change Directive: A Change Directive does not change the Contract Price or the 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 Contract Price and Contract Times. Seller must submit a Change Proposal seeking an adjustment of the Contract Price or the 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 Contract Documents.
 - 4. Field Order: Engineer may authorize minor changes in the Goods and Special Services that do not change the Contract Price or 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 Contract Price or 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 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 Engineer to the extent the change:
 - 1. Involves the design as described in the Contract Documents;
 - 2. Involves acceptance of the Goods and Special Services; or
 - 3. Involves other engineering 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 Contract Documents or Laws and Regulations.

- C. Seller is not entitled to an increase in the Contract Price or an extension of the Contract Times with respect to Goods and Special Services provided that are not required by the Contract Documents.
- D. Seller is responsible for costs and time delays associated with variations from the requirements of the Contract Documents unless the variations are specifically approved by Change Order.

7.03 *Change in Contract Price*

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

7.04 *Change of Contract Times*

- A. The Contract Times can only be changed by Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 7.05. Any Claim for an adjustment in the 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 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 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 Contract Price or Contract Times for delays, disruptions, or interference caused by or within the control of Seller.
 - 3. Seller is entitled to an equitable adjustment in 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;
 - b. Acts of war or terrorism.

These adjustments in Contract Times are the Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph.

- 4. Notify the PCM immediately of a potential delaying, disrupting, or interfering event. Submit a Change Proposal seeking an adjustment in Contract Times within 30 days of the commencement of the delaying, disrupting, or interfering event.
- 5. Seller is only entitled to an adjustment of the 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 Contract Times. No adjustments in Contract Times are

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allowed for delays on components of the Goods and Special Services which were or could have been completed without impacting the Contract Times.

6. Seller is not entitled to an adjustment in Contract Price or 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 Contract Price or Contract Times;
 2. Appeal an initial decision by BPT concerning the requirements of the Contract Documents or relating to the acceptability of the Goods and Special Services under the Contract Documents;
 3. Contest a set-off against payment due; or
 4. Seek other relief under the 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 Contract Price, 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 Contract Price or Contract Times which are agreed to by Buyer and Seller, including undisputed sums or amount of time for Goods and Special Services actually provided in accordance with a Change Directive;
 2. Changes in 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 Contract Documents, or changes in Contract Price or 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 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 Proposal is submitted or when Seller negotiates the Contract Price.

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 Contract Price or 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 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 Contract Documents.
 - 3. Include all expenses for inspections and tests at the Point of Destination in the Contract Price. 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 Contract Documents.

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4. Notify Buyer 30 days in advance of the readiness of the Goods for all inspections, tests, or approvals specified in the 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 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 Contract.
- B. 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 assure 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.
 2. PCM will notify Seller of Defective Goods and Special Services of which BPT has actual knowledge.
 3. Promptly correct Defective Goods and Special Services.
 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 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 Contract will be completed within the 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 Contract Documents and acceptable to BPT. Buyer may delete the Special Services and reduce the 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. Engineer confirms that the Defective Goods are in general accordance with the design intent and applicable engineering principles; and
 - 3. Engineer 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 engineers, 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 Contract Price to compensate Buyer for the diminished value of Defective Goods and Special Services accepted.

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 of time prescribed by the 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 CONTRACT DOCUMENTS, THE SELLER SHALL INDEMNIFY THE BUYER'S INDEMNITEES AND CONTRACTOR AND PAY INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE CORRECTION OF DEFECTIVE GOODS AND SPECIAL SERVICES TO THE FULLEST EXTENT PERMITTED BY LAW. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, SELLER INDEMNIFIES EACH OF BUYER'S INDEMNITEES AND CONTRACTOR AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE SELLER EVEN IF**

CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN BUYER'S INDEMNITEES OR CONTRACTOR.

- 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 ENGINEER

9.01 *Duties and Responsibilities*

- A. BPT issues communications to Seller through PCM except as otherwise provided in the 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 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 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 Contract Documents or relating to the acceptability of the Goods and Special Services to the PCM immediately after the question arises. Engineer is to interpret the design requirements of the Contract Documents and judge the acceptability of the Goods and Special Services. Engineer is to render an interpretation of the Contract Documents or initiate a Modification to the Contract Documents through the PCM if a change is required in the Contract Documents. Seller may appeal Engineer's interpretation by submitting a Change Proposal.
- B. Submit questions concerning the non-technical or contractual / administrative requirements of the Contract Documents to the PCM immediately after the question arises. PCM is to interpret these requirements of the Contract Documents. PCM is to render an interpretation of the Contract Documents or initiate a Modification to the Contract Documents if a change is required in the 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. 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 Contract Documents and Acceptability of Goods and Special Services*

- A. Engineer is to render decisions regarding compliance with the design requirements of the Contract Documents or relating to the acceptability of the Goods and Special Services. Engineer is to render decisions regarding the Contract Documents through the PCM. Engineer will provide documentation for a Modification if a change is required in the

Contract Documents. PCM will issue a Request for a Change Proposal if a Modification is required. Seller may appeal Engineer's decision by submitting a Change Proposal if Seller does not agree with the Engineer's decision.

- B. PCM is to render decisions regarding non-technical or contractual / administrative requirements of the Contract Documents. PCM will prepare documentation for a Modification if a change is required in the 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 a draft 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 Contract Documents and accompanied by the supporting documentation required by the 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 appropriate property insurance 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 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 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 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 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 Contract Price has been reduced by Change Orders;
 - f. Liquidated damages have accrued as a result of Seller's failure to achieve Milestones or completion of the Goods and Special Services within the 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 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 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 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 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 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 Contract Documents or the terms of specified special guarantees; or
 - 4. Seller's continuing obligations under the 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 9 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 Contract Documents:
 - a. Seeking an adjustment of Contract Price or Contract Times;
 - b. Contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Goods and Special Services under the Contract Documents;
 - c. Contesting Engineer'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 Contract;
 - 2. A demand or assertion by Seller to Buyer, submitted in accordance with the requirements of the 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 Contract Price or 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 Contract Documents, the Contract Price, or the Contract Times if the Buyer and Seller reach a mutual agreement regarding a Claim.

ARTICLE 12 – CANCELLATION, SUSPENSION, AND TERMINATION

12.01 Suspension of Performance by Buyer

- A. Buyer may suspend performance of the 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 Contract. Seller is entitled to adjustments in the Contract Price and 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 Contract.

12.02 Cancellation

- A. Buyer has the right to cancel the 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. Upon cancellation:
 - 1. Buyer will pay Seller for reasonable documented direct and indirect costs incurred by Seller in producing Goods fabricated or assembled specifically to fulfill this Contract.
 - 2. Buyer will pay Seller a restocking charge of 10 percent of the unpaid Contract Price for Goods which are not specially manufactured to fulfill this Contract.
- 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 Contract Document;
 - 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 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; or
 6. Seller's repeated disregard of the authority of BPT.
- B. Seller and surety must provide adequate assurance of future performance of the Contract in accordance with the 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 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 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 Contract for cause.
- E. Buyer may elect not to proceed with termination of the 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 Contract Price remaining is to be paid to the Seller if the unpaid balance exceeds the cost to complete the Contract. This cost to complete the Contract may include related claims, costs, losses, damages, and the fees and charges of engineers, architects, attorneys, and other professionals retained by Buyer. Pay the difference to Buyer if the cost to complete the Contract including related claims, costs, losses, and damages exceeds the unpaid balance of the 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 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 Contract or Terminate*

- A. Seller may terminate the 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 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 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 Contract Price or 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 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 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 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 shall 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.
 - 1. 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.

2. Buyer shall be barred from any remedy against Seller for the suit or claim if Buyer fails to provide Seller the opportunity to defend such suit or claim after written demand by Seller.
- 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 CONTRACT OR THE CONTRACT DOCUMENTS, THE SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE BUYER'S INDEMNITEES AND CONTRACTOR FROM AND AGAINST INDEMNIFIED COSTS RESULTING FROM INFRINGEMENT ON PATENT RIGHTS OR COPYRIGHTS BY SELLER TO THE FULLEST EXTENT PERMITTED BY LAW.**

13.03 *Reuse of Documents*

- A. Seller has no rights to the Contract Documents and may not use the Contract Documents, or copies or electronic media editions of the Contract Documents, other than for providing the Goods and Special Services under the Contract. This provision survives final payment or termination of the Contract.
- B. Seller is allowed to retain a copy of the Contract Documents for record purposes, unless specifically prohibited by the Buyer for security reasons. Surrender paper and digital copies of the 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 Seller*

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

15.02 *Controlling Law*

- A. This 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 Travis County, Texas.

15.03 *Computation of Times*

- A. Exclude the first day and include the last day when determining dates for a period of time referred to in the 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 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 Contract Documents.

The provisions of this paragraph are as effective as if repeated specifically in the Contract Documents in connection with each particular 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 Contract does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Contract.

15.07 *Severability*

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

15.08 *Survival of Obligations*

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

15.09 *No Third Party Beneficiaries*

- A. Nothing in this 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 Contract.

15.10 *Assignment of Contract*

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

15.11 *No Waiver of Sovereign Immunity*

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

END OF SECTION

00 72 01 INSURANCE REQUIREMENTS

1.00 INSURANCE REQUIREMENTS

1.01 SELLER'S INSURANCE AMOUNTS

- A. Provide Workers' Compensation and Employer's Liability Insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations.

Workers' Compensation, etc.,	
State	Statutory
Applicable Federal (e.g., Longshore)	Statutory
Employers' Liability	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease - Each Employee	\$500,000
Bodily Injury by Disease - Policy Limit	\$500,000
Maritime Coverage Endorsement	

- B. Provide Liability Insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations:

Insurance for Claims of Damages	
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
Watercraft Liability Policy (Include coverage for all self-propelled vessels)	\$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

- C. Provide Automobile Liability Insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations:

Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident, or	\$1,000,000
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

Coverage is to cover owned, hired and non-owned, and leased and rented vehicles.

- D. Provide an Installation Floater for at least the following amounts unless greater amounts are required by Laws and Regulations:

Contractor's Installation Floater	
Installation Floater	Contract Price

- E. Provide Professional Liability Insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations:

Contractor's Professional Liability Insurance:	
Contractor's Professional Liability Insurance	\$1,000,000

1.02 POLICY REQUIREMENTS

- A. Provide insurance meeting the requirements for insurance in accordance with Article 6 of the General Conditions.

END OF SECTION

00 73 00 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement Section 00 72 00 - General Conditions and other provisions of the Contract Documents. All provisions not amended or supplemented in these Supplementary Conditions remain in effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below.

ARTICLE 10 - PAYMENT

SC-10.01 Progress Payments

- A. Compensation for services of BPT staff will be at the following rates:

Position	Hourly Rate
Principal in Charge	\$260
Project Manager	\$160
Project Designer	\$140
Construction Manager	\$130
Senior Resident Representative	\$160
Resident Project Representative	\$130
Designer	\$130
Technician	\$110
Clerk	\$80
Expenses will be billed at the actual cost multiplied by 1.15	

END OF SECTION