

**GENERAL  
CONDITIONS**

**00 72 00      GENERAL CONDITIONS**

**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| Article 1 – Definitions And Terminology .....  | 4           |
| 1.01 Defined Terms .....   | 4           |
| 1.02 Terminology .....   | 8           |
| Article 2 – Preliminary Matters.....   | 10          |
| 2.01 Delivery of Bonds and Evidence of Insurance.....                                | 10          |
| 2.02 Copies of Documents.....  | 10          |
| 2.03 Commencement of Procurement Contract Times; Notice to Proceed.....              | 10          |
| 2.04 Seller’s Review .....   | 10          |
| 2.05 Preliminary Conference; Designation of Authorized Representatives .....         | 10          |
| 2.06 Progress Schedule.....  | 10          |
| 2.07 Schedule of Submittals .....  | 11          |
| 2.08 Schedule of Payments .....  | 11          |
| Article 3 – Procurement Contract Documents: Intent, Requirements, Reuse.....         | 11          |
| 3.01 Intent .....  | 11          |
| 3.02 Reference Standards.....  | 12          |
| 3.03 Reporting and Resolving Discrepancies .....                                     | 13          |
| 3.04 Interpretation of the Procurement Contract Documents.....                       | 14          |
| Article 4 – Bonds and Insurance .....  | 14          |
| 4.01 Bonds .....   | 14          |
| 4.02 Insurance .....   | 15          |
| Article 5 – Seller’s Responsibilities .....  | 15          |
| 5.01 Supervision and Superintendence .....   | 15          |
| 5.02 Goods and Special Services.....   | 15          |
| 5.03 Compliance with Laws and Regulations, Standards, Specifications, and Codes..... | 16          |
| 5.04 Safety and Protection .....   | 16          |
| 5.05 Hazard Communication Programs.....  | 16          |
| 5.06 Hazardous Environmental Conditions at Site .....                                | 16          |
| 5.07 Taxes.....  | 17          |
| 5.08 Delegation of Professional Design Services .....                                | 18          |
| 5.09 Continuing Performance.....   | 18          |
| 5.10 Seller’s Warranties and Guarantees .....  | 19          |
| 5.11 Seller’s Warranty of Title .....  | 19          |
| 5.12 Indemnification.....  | 19          |

|  |    |
|--|----|
| Article 6 – Shipping and Delivery .....  | 20 |
| 6.01 Shipping .....  | 20 |
| 6.02 Delivery .....  | 20 |
| 6.03 Risk of Loss .....  | 20 |
| Article 7 – Changes, Schedule, and Delays .....  | 21 |
| 7.01 Amending the Procurement Contract Documents .....   | 21 |
| 7.02 Changes in the Goods and Special Services .....   | 21 |
| 7.03 Change in Procurement Contract Price .....  | 22 |
| 7.04 Change of Procurement Contract Times.....   | 22 |
| 7.05 Change Proposals .....  | 23 |
| 7.06 Execution of Change Orders .....  | 24 |
| 7.07 Notice to Surety .....  | 24 |
| 7.08 Laws and Regulations .....  | 24 |
| Article 8 – Buyer’s Rights .....   | 25 |
| 8.01 Inspections and Testing .....   | 25 |
| 8.02 Defective Goods or Special Services .....   | 25 |
| 8.03 Correction Period.....  | 27 |
| Article 9 – Role of the PCM and Design Professional .....  | 27 |
| 9.01 Duties and Responsibilities .....   | 27 |
| 9.02 Clarifications and Interpretations .....  | 28 |
| 9.03 Rejecting Defective Goods and Special Services.....   | 28 |
| 9.04 Decisions on Requirements of Procurement Contract Documents and Acceptability of Goods<br>and Special Services..... | 28 |
| Article 10 – Payment .....   | 29 |
| 10.01 Applications for Progress Payments .....   | 29 |
| 10.02 Final Payment .....  | 31 |
| 10.03 Waiver of Claims.....  | 32 |
| Article 11 – Claims .....  | 32 |
| 11.01 Claims Process .....   | 32 |
| Article 12 – Cancellation, Suspension, and Termination .....   | 33 |
| 12.01 Suspension of Performance by Buyer .....   | 33 |
| 12.02 Cancellation .....   | 33 |
| 12.03 Buyer May Terminate for Cause .....  | 34 |
| 12.04 Seller May Suspend Performance of the Procurement Contract or Terminate.....                                       | 35 |
| Article 13 – Licenses and Fees .....   | 35 |
| 13.01 Intellectual Property and License Fees .....   | 35 |
| 13.02 Seller’s Infringement.....   | 36 |

|   |    |
|---|----|
| 13.03 Reuse of Documents .....                  | 36 |
| Article 14 – Final Resolution of Disputes ..... | 37 |
| 14.01 Methods and Procedures .....              | 37 |
| Article 15 – Miscellaneous.....                 | 37 |
| 15.01 Independent Contractor .....              | 37 |
| 15.02 Controlling Law .....                     | 37 |
| 15.03 Computation of Times .....                | 37 |
| 15.04 Cumulative Remedies .....                 | 37 |
| 15.05 Limitation of Damages.....                | 38 |
| 15.06 No Waiver .....                           | 38 |
| 15.07 Severability .....                        | 38 |
| 15.08 Survival of Obligations .....             | 38 |
| 15.09 No Third Party Beneficiaries .....        | 38 |
| 15.10 Assignment of Contract .....              | 38 |
| 15.11 Successors and Assigns .....              | 38 |
| 15.12 No Waiver of Sovereign Immunity.....      | 38 |
| 15.13 Accrual of Claims .....                   | 39 |
| 15.14 Execution .....                           | 39 |
| 15.15 Non-Exclusivity .....                     | 39 |
| 15.16 Conflicts of Interest .....               | 39 |
| 15.17 Due Authorization; Good Standing.....     | 39 |
| 15.18 Conflict.....                             | 39 |

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

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

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

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

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



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

## 1.02 Terminology

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

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

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

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

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

### **2.02 Copies of Documents**

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

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

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

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

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

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

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

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

#### 2.06 Progress Schedule

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

#### 2.07 Schedule of Submittals

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

#### 2.08 Schedule of Payments

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

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

#### 3.01 Intent

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

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

### 3.02 Reference Standards

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

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

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

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

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies:

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

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

#### 3.04 Interpretation of the Procurement Contract Documents

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

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

#### 4.01 Bonds

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

Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed each bond.

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

#### 4.02 Insurance

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

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

#### 5.01 Supervision and Superintendence

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



## 5.02 Goods and Special Services

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

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

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

## 5.04 Safety and Protection

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

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

5.05 Hazard Communication Programs

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

5.06 Hazardous Environmental Conditions at Site

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

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

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

#### 5.07 Taxes

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

#### 5.08 Delegation of Professional Design Services

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

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

#### 5.09 Continuing Performance

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

#### 5.10 Seller's Warranties and Guarantees

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

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

#### 5.11 Seller's Warranty of Title

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

#### 5.12 Indemnification

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

### ARTICLE 6 – SHIPPING AND DELIVERY

#### 6.01 Shipping

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

#### 6.02 Delivery

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

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

#### 6.03 Risk of Loss

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

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

#### 7.01 Amending the Procurement Contract Documents

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

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

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

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

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

#### 7.03 Change in Procurement Contract Price

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

#### 7.04 Change of Procurement Contract Times

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



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

#### 7.05 Change Proposals

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

#### 7.06 Execution of Change Orders

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

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

#### 7.07 Notice to Surety

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

#### 7.08 Laws and Regulations

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

### **ARTICLE 8 – BUYER'S RIGHTS**

#### 8.01 Inspections and Testing

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

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

#### 8.02 Defective Goods or Special Services

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

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

### 8.03 Correction Period

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

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

### 9.01 Duties and Responsibilities

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

### 9.02 Clarifications and Interpretations

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

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

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

#### 9.03 Rejecting Defective Goods and Special Services

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

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

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

### **ARTICLE 10 – PAYMENT**

#### 10.01 Applications for Progress Payments

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

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

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



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

#### 10.02 Final Payment

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

#### 10.03 Waiver of Claims

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

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

## **ARTICLE 11 – CLAIMS**

### 11.01 Claims Process

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

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

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

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

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

### **12.02 Cancellation**

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

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

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

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

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

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

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

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

#### 13.01 Intellectual Property and License Fees

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

### 13.02 Seller's Infringement

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

### 13.03 Reuse of Documents

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

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

### 14.01 Methods and Procedures

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

## ARTICLE 15 – MISCELLANEOUS

### 15.01 Independent Contractor

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

### 15.02 Controlling Law

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

### 15.03 Computation of Times

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

### 15.04 Cumulative Remedies

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

### 15.05 Limitation of Damages

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

15.06 No Waiver

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

15.07 Severability

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

15.08 Survival of Obligations

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

15.09 No Third Party Beneficiaries

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

15.10 Assignment of Procurement Contract

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

15.11 Successors and Assigns

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

15.12 No Waiver of Sovereign Immunity

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

15.13 Accrual of Claims

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

15.14 Execution

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



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

15.15 Non-Exclusivity

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

15.16 Conflicts of Interest

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

15.17 Due Authorization; Good Standing

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

15.18 Conflict

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

**END OF SECTION**

# INSURANCE REQUIREMENTS

**00 72 01 INSURANCE REQUIREMENTS**

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

1.1 INSURANCE COVERAGE AMOUNTS

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

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

| <b>Buyer's Liability Insurance</b>                  |             |
|---|-------------|
| General Aggregate                                   | \$1,000,000 |
| Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |

1.2 POLICY REQUIREMENTS

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

and the Seller's professional liability insurance.

- N. All insurance policies must include a waiver of subrogation, except workers' compensation insurance and the Seller's professional liability insurance, in favor of the Additional Insured identified in Section 00 73 00 "Supplementary Conditions."

### 1.3 SELLER'S INSURANCE

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

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

agents, consultants, and subcontractors for each named insured or additional insured;

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

#### 1.4 BUYER'S LIABILITY INSURANCE

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

#### 1.5 PROPERTY INSURANCE

- A. Purchase and maintain builder's risk insurance in the amount of the full replacement cost of the Project. This policy is subject to the deductible amounts requirements in this Section or those required by Laws and Regulations and must comply with the requirements of Paragraph 1.06. This insurance must:

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

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

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



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

## 2.2 INSURANCE POLICIES

- A. Provide a copy of certificates of insurance , declaration pages and endorsements, and documentation of applicable self-insured retentions and deductibles if requested by the Buyer. Seller shall not be required to provide insurance policies as certificates of insurance provided in accordance with the requirements of this Article 2 shall be deemed sufficient evidence of insurance for Buyer's purposes. Notwithstanding the foregoing, however, Seller hereby warrants that the insurances coverages provided will be in strict accordance with the requirements of this Form 00 72 00 – Insurance Requirements and the Procurement Contract.
- B. Buyer may require the deletion, revision, or modification of policy terms, conditions, limitations, or exclusions (except where policy provisions are established by Laws or Regulations binding upon either of the parties hereto or the underwriter of any such policies). Comply with these requests and submit a copy of the replacement certificate of insurance to Buyer at the address provided below within 10 days of the requested change.

## 2.3 CERTIFICATES OF INSURANCE

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

2.4 CONTINUING EVIDENCE OF COVERAGE

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

2.5 NOTICES REGARDING INSURANCE

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

**City of Pflugerville, Texas**

**Attn: CIP**

**Engineering PO**

**Box 589**

**Pflugerville, TX 78691-0589**

**END OF SECTION**

**SUPPLEMENTARY  
CONDITIONS**

**00 73 00 SUPPLEMENTARY CONDITIONS**

**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

*SC-1.01 Defined Terms*

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

**ARTICLE 10 – PAYMENT**

*SC-10.01 Applications for Progress Payments*

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

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

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

**END OF SECTION**

**BID BOND**

**00 43 13      BID BOND**

|   |   |
|---|---|
| <p><b>Offeror as Principal</b></p> <p>Name: Ovivo USA, LLC</p> <p>Mailing address (principal place of business):</p> <p style="padding-left: 40px;">2404 Rutland Drive<br/>Austin, TX 78758</p>                 | <p><b>Surety</b></p> <p>Name: Liberty Mutual Insurance Company</p> <p>Mailing address (principal place of business):</p> <p style="padding-left: 40px;">175 Berkeley Street<br/>Boston, MA 02116</p>  |
| <p><b>Buyer</b></p> <p>Name: <b>City of Pflugerville, Texas</b></p> <p>Mailing address (principal place of business):</p> <p><b>100 E. Main Street, Suite 100<br/>Pflugerville, TX 78660</b></p>                | <p>Physical address (principal place of business):</p> <p style="padding-left: 40px;">175 Berkeley Street<br/>Boston, MA 02116</p> <p>Telephone (Main): 617-357-9500</p> <p>Telephone (Claims): 617-357-9500</p>  |
| <p><b>Procurement Contract for BNR Process Equipment</b></p> <p>Project name and number:</p> <p><b>Central WWTP Expansion<br/>PFL16607</b></p> <p>Bid/Proposal Due Date: November 28, 2018</p>                  | <p>Surety's state of incorporation: Massachusetts</p> <p><b><i>By submitting this bond, Surety affirms it is authorized to do business and licensed to execute bonds in the state of Texas.</i></b></p>   |
| <p><b>Bond</b></p> <p>Procurement Contract</p> <p>Price Offered:</p> <p>Penal Sum of Bond: 5% of Procurement Contract Price offered</p> <p>Date of Bond: November 28, 2018</p>                                  | <p><b>Local Agent for Surety</b></p> <p>Name: Debra J. Scarborough / Kansas City Series of Lockton Companies, LLC</p> <p>Mailing address (principal place of business):</p> <p style="padding-left: 40px;">444 W. 47th Street, Suite 900<br/>Kansas City, MO 64112-1906</p> <p>Telephone (Main): 816-960-9000</p> |
| <p><b><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.</i></b></p> |   |

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

|  |   |
|--|---|
| <b>Offeror as Principal</b> Ovivo USA, LLC | <b>Surety</b> Liberty Mutual Insurance Company                              |
| Signature: <u><i>Robert R Palmer</i></u>   | Signature: <u><i>Debra J Scarborough</i></u>                                |
| Name: <u>Robert R Palmer</u>               | Name: <u>Debra J. Scarborough</u>   |
| Title: <u>VP + Finance Director</u>        | Title: <u>Attorney-in-Fact</u>  |
| Email: <u>rob.palmer@ovivowater.com</u>    | Email: <u>dscarborough@lockton.com</u><br><i>(Attach Power of Attorney)</i> |



**END OF SECTION**

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8155965

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Christy M. Braille; Laura M. Buhmester; Megan L. Burns-Hasty; Jeffrey C. Carey; Mary T. Flanigan; Tahitia M. Fry; C. Stephens Griggs; Rebecca S. Leal; Charissa D. Lecuyer; Patrick T. Pribyl; Debra J. Scarborough; Evan D. Sizemore; Charles R. Teter, III

all of the city of Kansas City state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 20th day of July, 2018.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 20th day of July, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this NOV 28 2018 day of \_\_\_\_\_, 20\_\_\_\_\_.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.





## Important Notice

TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT:

You may write to Liberty Mutual Surety at:

Liberty Mutual Surety  
Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### Premium or Claim Disputes

Should you have a dispute concerning a premium, you should contact the agent first. If you have a dispute concerning a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### Attach This Notice To Your Policy:

This notice is for information only and does not become a part or condition of the attached document.



## NOTIFICACION IMPORTANTE

PARA OBTENER INFORMACION O REALIZAR UNA QUEJA:

Usted puede escribir la notificación y dirigirla a Liberty Mutual Surety en la siguiente dirección:

Liberty Mutual Surety  
Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19462-8284

Usted puede contactar al Departamento de Seguros de Texas para obtener información acerca de las compañías, coberturas, derechos o quejas:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a la siguiente dirección:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### **Disputas acerca de primas o reclamos**

En caso de que usted quiera elevar una disputa concerniente al tema de primas, por favor contacte en primer lugar a su agente. Si el tema de la disputa es relativo a un reclamo, por favor contacte a la compañía de seguros en primer término. Si usted considera que la disputa no es apropiadamente resuelta en estas instancias, entonces usted puede contactar al Departamento de Seguros de Texas..

### **Adjunte esta notificación a su póliza:**

Esta notificación es a los solos fines de su información y la misma no forma parte o condiciona de manera alguna el documento adjunto.