

EXHIBIT B

00 42 23 PROPOSAL FORM

ARTICLE 1 – PROPOSAL RECIPIENT

- 1.01 This Proposal is submitted to:
City of Pflugerville, Texas
Central Wastewater Treatment Plant Expansion
UV Disinfection System

ARTICLE 2 – OFFEROR’S ACKNOWLEDGMENTS

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

Addendum No.	Addendum Date	Signature Acknowledging Receipt
1	11/01/2018	Joseph Jordan
2	11/20/2018	Joseph Jordan
3	11/20/2018	Joseph Jordan

ARTICLE 3 – OFFEROR’S REPRESENTATIONS

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

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

ARTICLE 4 – BASIS OF OFFER

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

ARTICLE 5 – TIME OF COMPLETION

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

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

ARTICLE 6 – ATTACHMENTS TO THIS PROPOSAL

6.01 The following documents are attached to and made a condition of this Proposal:

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

ARTICLE 7 – DEFINED TERMS

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

ARTICLE 8 – VENUE

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

ARTICLE 9 – PROPOSAL SUBMITTAL

9.01 This Proposal is submitted by:

Offeror: Xylem Water Solutions USA, Inc.
(typed or printed name of organization)

Signature: 
(individual's signature)

Name: Matthew Fisher
(typed or printed)

Title: Vice President
(typed or printed)

Address for giving notices:
14125 South Bridge Circle - Charlotte, NC - 28273

Phone: 980-216-9473 Email: lucinda.jooste@xylem.com

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

END OF SECTION

XYLEM WATER SOLUTIONS U.S.A., INC.

UNANIMOUS CONSENT OF THE BOARD OF DIRECTORS

WHEREAS, the undersigned, constituting all of the members of the Board of Directors of Xylem Water Solutions U.S.A., Inc., a Delaware corporation formed pursuant to the laws of the State of Delaware (the "Corporation"), do hereby consent, pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, to the adoption of the resolutions set forth below, with the same effect as if said actions were taken by unanimous approving vote at a meeting at which all of the directors were present in person:

RESOLVED: That the lawful actions taken by the current and former officers of the Corporation, in the name of and on behalf of the Corporation are hereby adopted, ratified, and approved.

RESOLVED FURTHER: That the following named persons are appointed as officers of the Corporation in the capacities indicated opposite their respective names, to serve as officers from this date forward until their resignation, removal, termination of employment with the Corporation or its affiliates, or death or until their successors are duly appointed.

Individuals

Ron Askin
Peter Bilolis
Matthew Fisher
Theresa Gladstein
Robert Lyons
Kyle Roushee
Michael Malerfo
Joseph McCausland
Kenneth Napolitano
James D. Peterson
Michael McGeover
Patrick Rionks
Stavo Schalklor
Christino Valencia
Peter Van Winkle

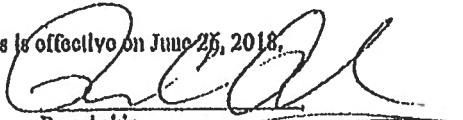
Office (s)

President
Vice President, General Counsel & Secretary
Vice President & Treasurer
Vice President & Assistant Treasurer
Vice President & Assistant Treasurer
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President
Vice President

RESOLVED: That any previous appointments of officers for the Corporation are hereby revoked.

RESOLVED FURTHER: That this Unanimous Written Consent may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same document, and that the different directors of the Corporation need not be signatories to the same counterpart.

This Unanimous Written Consent of the Board of Directors is effective on June 25, 2018.



Ron Askin



Peter Bilolis



Matthew Fisher

00 45 01 COMPLIANCE TO STATE LAW ON NONRESIDENT BIDDERS

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

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

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

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

Check the statement that is correct for Offeror:

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

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

Offeror: Xylem Water Solutions USA, Inc. (typed or printed name of organization)

Signature: (individual’s signature)

Name: Matthew Fisher (typed or printed)

Title: Vice President (typed or printed)

Business Address: 14125 South Bridge Circle - Charlotte, NC - 28273

Phone: 980-216-9473 Email: lucinda.jooste@xyleminc.com

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

END OF SECTION

00 45 02 COMPLIANCE TO STATE SALES TAX CODE

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

Tax exempt products, materials, and services (See Notes 1 and 2)	\$	<u>699,500</u>
Taxable products, materials, and services (See Note 3)	\$	<u>0</u>
Total (See Note 4)	\$	<u>699,500</u>

Offeror: Xylem Water Solutions USA, Inc.
(typed or printed name of organization)

Signature: 
(individual's signature)

Name: Matthew Fisher
(typed or printed)

Title: Vice President
(typed or printed)

Business Address:
14125 South Bridge Circle - Charlotte, NC -28273

Phone: 980-216-9473 Email: lucinda.jooste@xylem.com

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

Notes:

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

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

Xylem Water Solutions USA, Inc.

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

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

Sabrina Schmidt - Purchasing Supervisor

Name of Officer

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

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

Yes No

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

Yes No

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

Xylem Water Solutions USA, Inc. will be submitting a bid for the Pflugerville, TX UV Disinfection Pre-Selection project. Bid will be delivered to Sabrina Schmidt per the instructions within the bidding documents.

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

7  Matthew Fisher, VP

Signature of vendor doing business with the governmental entity

11/27/18

Date

00 45 17 PROPOSAL FORM 4 - TECHNICAL REQUIREMENTS

ARTICLE 1 – TECHNICAL DATA

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

Seller: Xylem Water Solutions USA,

Project: UV Disinfection System

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

END OF SECTION

Scope of Supply

Pflugerville, TX



prepared for:

City of Pflugerville, TX
Ms. Sabrina Schmidt

November 28, 2018

1 General Process Description

1.1 DESIGN

- Design Flow Rates
 - Peak Design Flow 35.0 MGD
 - Average Design Flow 10.0 MGD
 - Minimum Design Flow 3.85 MGD
- Total Suspended Solids (Maximum) 20 mg/l
- Maximum Particle Size 30 microns
- Allowable Effluent Temperature Range 41-86°F
- UV Transmittance at 253.7 nm 60%, minimum
- Maximum Influent E. Coli Count 100,000 E. Coli/100 mL
- Effluent Disinfection Standard
 - E. Coli (30 day geometric mean) 120 E. Coli/100 mL
 - E. Coli (daily maximum) 379 E. Coli/100 mL
- UV Dose
 - Minimum Design UV Dose (based on NWRI 2012 (MS2) bioassay) 30 mJ/cm²

1.2 PROCESS DESCRIPTION

The proposed UV system has been designed to treat a tertiary effluent down to the permit limits stated above. Pre-treatment to the UV system will be filtration.

2 Technical Description

CONFIGURATION:	Duron 24 i 2 – 5 x 2 eW eL	
DESCRIPTION	UNITS	VALUE
Total Number of lamps		240
Number of lamps per channel		120
Number of channels		2
Number of banks per channel		5 (4 duty, 1 standby)
Number of modules per bank		2
Number of lamps per module		12
CHANNEL DIMENSIONS:	Inches	
Width along UV banks		57.68
Width along weir		TBD (by Contractor)
Design water depth @ influent		42.13
Overall channel height		74.76
Approx. length		475.9
HEADLOSS (at peak flow):	Inches	
Across UV system		3.8
Across level control		3.0
Allowable freefall		4.0
Total Headloss		10.8
POWER CONSUMPTION:	kW	
Peak Flow (lamp and ballast only)		137.2
Average Flow (lamp and ballast only) *		51.7
Total Connected System Power		169.2

3 Price & Scope of Supply

3.1 WEDECO SCOPE OF SUPPLY

3.1.1 UV Modules: Twenty (20) modules will be supplied completely assembled containing UV lamps, quartz sleeves, wiping equipment, and support framework for installation into the channels. Each module contains twelve (12) UV lamp assemblies.

Material: Stainless steel 316 frame

3.1.2 Lamp Cables: Two-hundred and forty (240) lamp-to-ballast cables of standard length (82 feet) will be supplied. **Field terminations of these cables are the responsibility of the installing CONTRACTOR.**

3.1.3 Instrumentation Control Automation (ICA): One (1) ICA-200 UL unit will be supplied to monitor and control the UV system and shall contain the PLC system together with the operator interface. The PLC will include a communication module to import and export all UV plant data from/to the SCADA system.

Model & Make: Allen Bradley ControlLogix PLC
 Operator interface: Allen Bradley PanelView Plus 1500
 Rating, Cooling & Material: Type 4X, 316 Stainless Steel
 Dimensions: 31.5"W x 23.6"D x 86.6"H (ICA 100/200)
 Accessories:
 - 120V Surge Suppression
 - 120V Convenience Receptacle
 - 24VDC UPS (60 minute PLC backup)
 - LED Work Light
 - Red Alarm Light and Horn

3.1.4 Ballast 48: All required Ballast 48 cabinets will be supplied completely assembled containing the ballast that will operate the UV lamps. All units will be equipped with fan for cooling.

Quantity: Six (6)
 Rating, Cooling & Material: Type 4X, Air Conditioned, 316 Stainless Steel
 Dimensions: 46.8"W x 23.6"D x 86.6"H (Type 4X)

3.1.5 Isolation Transformer: Isolation transformers will be provided to receive the existing 480V, 3 phase, 3 wire power feed and provide a 480V, 3 phase, 4 wire + ground power feed output.

Quantity: Two (2)

3.1.6 Water Level Sensor: Low water level sensor(s) will be supplied to indicate high/low water level conditions to the UV PLC.

Make & Model: Endress+Hauser Liquipoint T FTW31
 Quantity: One (1) per channel

3.1.7 UV Intensity Monitoring & Control System: UV intensity monitoring and control system will be provided with one (1) sensor per bank.

3.1.8 Full Automatic Lifting Device: Full automatic motorized lifting device will be provided for individual module lifting, including accessory control box(es):

- a. **Module Lift Control Box (MLC):** Lift control boxes will be supplied, providing controls for the fully automatic module lifting system.

Material: Type 4X, 316 Stainless Steel
Quantity: Three (3) per channel

3.1.9 Automatic Electric Wiping System: An automatic mechanical wiping system, electric motor-driven, will be supplied including accessory control boxes:

- a. **Electric Wipe Control Box:** Electric wipe control boxes will be supplied, providing controls for the electric wiping system.

Material: Type 4X, 316 Stainless Steel
Quantity: Three (3) per channel

3.1.10 On-line Transmittance Monitor: An on-line transmittance monitor shall be provided for continuous measurement of UV transmittance.

Make: YSI
Model: DIQ/S 282 Controller with IQ UVT-254 Probe
Cleaning: Air Cleaning System
Quantity: One (1)

3.1.11 Performance & Payment Bond: A performance & payment bond equal to the UV systems contract price will be provided upon award of contract. Bond will run for a 3 year period from Notice of Award.

3.1.12 Programming Software: One (1) licensed programming software package will be provided for the Allen Bradley ControlLogix PLC and Panelview Plus HMI. License will be valid for one (1) year. Renewal of license is the responsibility of the Owner.

3.1.13 Spare Parts and Safety Equipment: The following spare parts and safety equipment will be supplied with the UV system:

- Twenty-four (24) UV Lamps
- Twenty-four (24) Quartz Sleeves
- Forty-eight (48) Cleaning Wiper Rings
- Twelve (12) Electronic Ballasts with Plug-In Connectors
- Four (4) UV Intensity Sensors
- One (1) EcoTouch Controller
- One (1) Allen Bradley ControlLogix PLC
- One (1) Allen Bradley PLC Power Supply
- One (1) Allen Bradley PanelView Plus 1500 HMI

- One (1) Communication card for each type used
- Two (2) Pairs of personnel goggles
- Four (4) UV area warning signs (2 x English, 2 x Spanish)

3.1.14 Field Services: WEDECO will provide the services of a qualified technician for the following:

- Six (6) days, two (2) trips for installation inspection, start-up, and commissioning.
- Three (3) days, one (1) trip for instrument calibration, hydraulic testing, and training.
- Six (6) days, one (1) trip for Initial Performance Testing.
- Electrical Acceptance Testing to be completed during Initial Performance Testing. Electrical Acceptance Test shall be completed by Xylem.
- Additional days as required will be made available on a per diem rate plus travel.

Xylem Services GmbH
Boschstr. 4 – 14, 32051 Herford, Germany
Tel. +49 5221 930-0, Fax +49 5221 930-222

Xylem Services GmbH, Postfach 5114, 32055 Herford, Germany

Dr.-Ing. Christian Bokermann
Head of Validation / Certification
tel +49 (0)5221 930 172
fax +49 (0)5221 930 222
christian.bokermann@xyleminc.com

November 27, 2018

Xylem Wedeco UV System Performance Guarantee

Xylem Services GmbH hereby writes this letter to guarantee performance of the offered Wedeco UV open channel DURON system Duron 24i2-5x2 for the Pflugville project, TX.

Kindly note that the proposed UV system will disinfect wastewater with the below specified parameters to meet the following disinfection performance for E. Coli based on MS2, NWRI 2012:

- UVT: 60% minimum (@ 253.7 nm)
- TSS : 20 mg/l (daily max); 5 mg/l (daily ave.)

General Disinfection

- @ 35 MGD (peak), 10 MGD (ave.)
- **E.coli < 120 CFU / 100 ml @ 30 days geometric mean**
- **E.coli < 379 cfu/100ml @ daily max**

The UV system is designed to deliver a minimum UV dose of 30 mJ/cm² at peak flow of 35 MGD with one UV bank out of service per channel and capable of delivering water of reuse standard based on following:

Type I Reuse Standards (TCEQ 210.33):

- @ 10 MGD (reuse water capacity)
- **E.coli < 20 CFU / 100 ml @ 30 days geometric mean**
- **E.coli < 75 cfu/100ml @ daily max**

The performance guarantee is also contingent upon proper care and maintenance of the provided Wedeco UV system, as detailed within the Operation and Maintenance Manual, and the use of Wedeco original spare parts. Wedeco is liable for any upgrades, time, or parts needed in case the proposed UV system fails to meet the guaranteed disinfection target.

As a specialized disinfection and oxidation supplier Xylem has supplied more than 1,700 open channel UV systems in the municipal market worldwide. Xylem Wedeco has a proven tracking record on the system performance and always stays behind the product provided.

We trust this letter will meet your requirement on the performance guarantee. If you have any further questions or clarification is being needed please do not hesitate to contact us.

Best regards,



Dr.-Ing. Christian Bokermann

Pflugerville, TX

February 13th, 2019

Coby Gee, PE, ENV SP
Freese and Nichols, Inc.
10431 Morado Circle, Suite 300
Austin, TX 78702

Subject: City of Pflugerville, TX – Central Wastewater Treatment Plant Expansion
Conference Call Follow-Up (2/12/19)

As discussed during our conference call, we would like to follow up on the outstanding items that require additional information.

1. Regarding the two items below we want to confirm that Wedeco’s proposal includes the transformer needed to convert the 120 V supplied power by the Contractor to the 24 V power needed for the PLC/UPS. This is inferred based on the Contractor’s Scope of Supply noted in the proposal but we want to confirm now to avoid any coordination issues with the construction contractor in the future.

46 66 56 - 2.02.L.6	Please note, the PLC system will be based on a 24VDC power	Acknowledged. 120 v power will be supplied. Seller to derive 24V system.
46 66 56 — 2.02.G.7 & Addendum #3 — 3.01.C.1	A 24V rack mounted UPS will be provided for a PLC back-up time of 60 minutes.	Acknowledged. UPS and 24v connectivity to be provided by Seller.

Wedeco Response: The proposed ICA enclosure will contain the transformer to convert the 120V power feed provided by the Contractor to the necessary 24V power required by the internal control system (includes PLC system and rack mounted UPS).

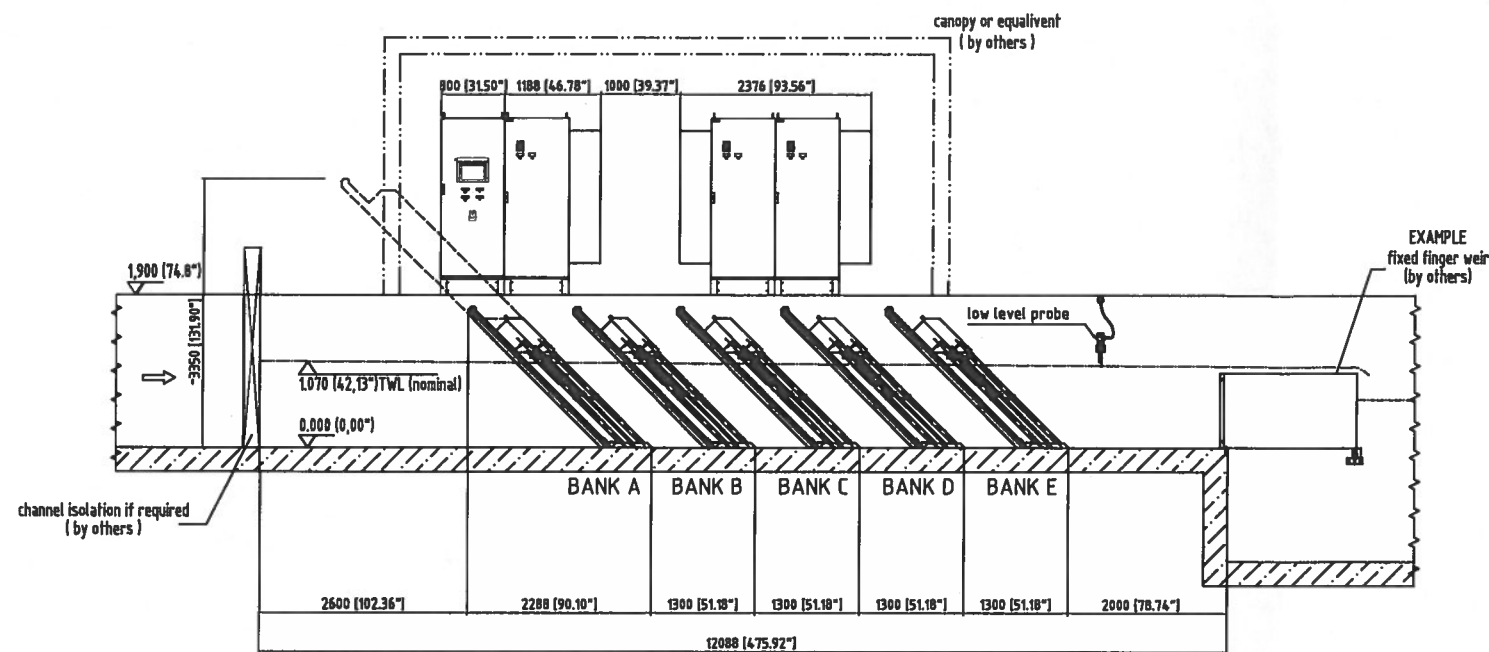
2. 0045 17 Attachment 7 required a letter acknowledging that Seller will meet specified warranty requirements. Please submit such a signed letter with the required statement. The warranty letter included in the proposal has the correct acknowledgements but can you provide a signed copy of the letter?

Wedeco Response: Please find a signed copy of the letter attached to this document.

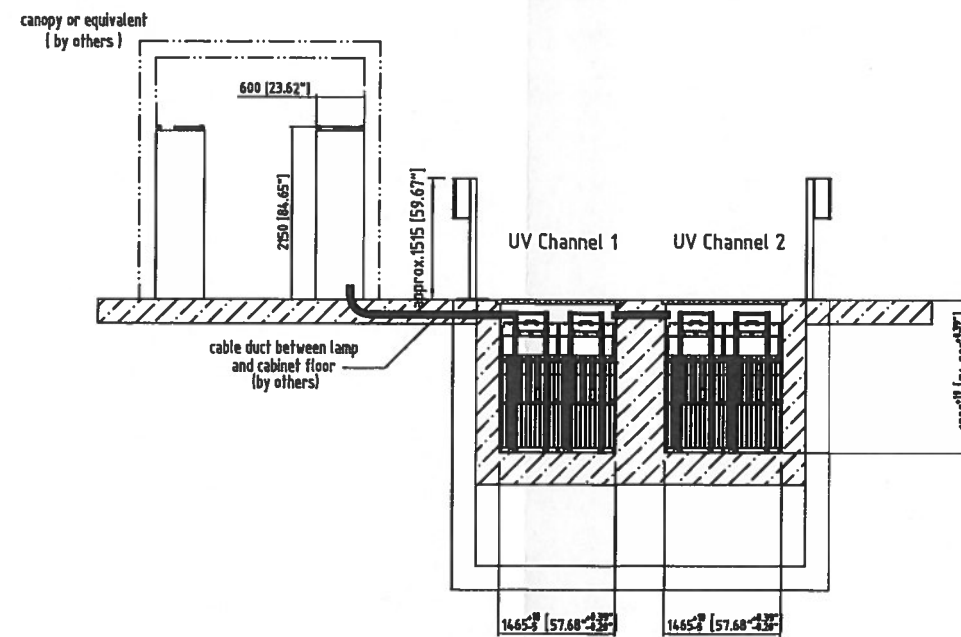
Sincerely,
Lucinda Jooste
Senior Sales Engineer
(980) 216-9473

Joseph Jordan
Senior Application Engineer
(704) 572-6783

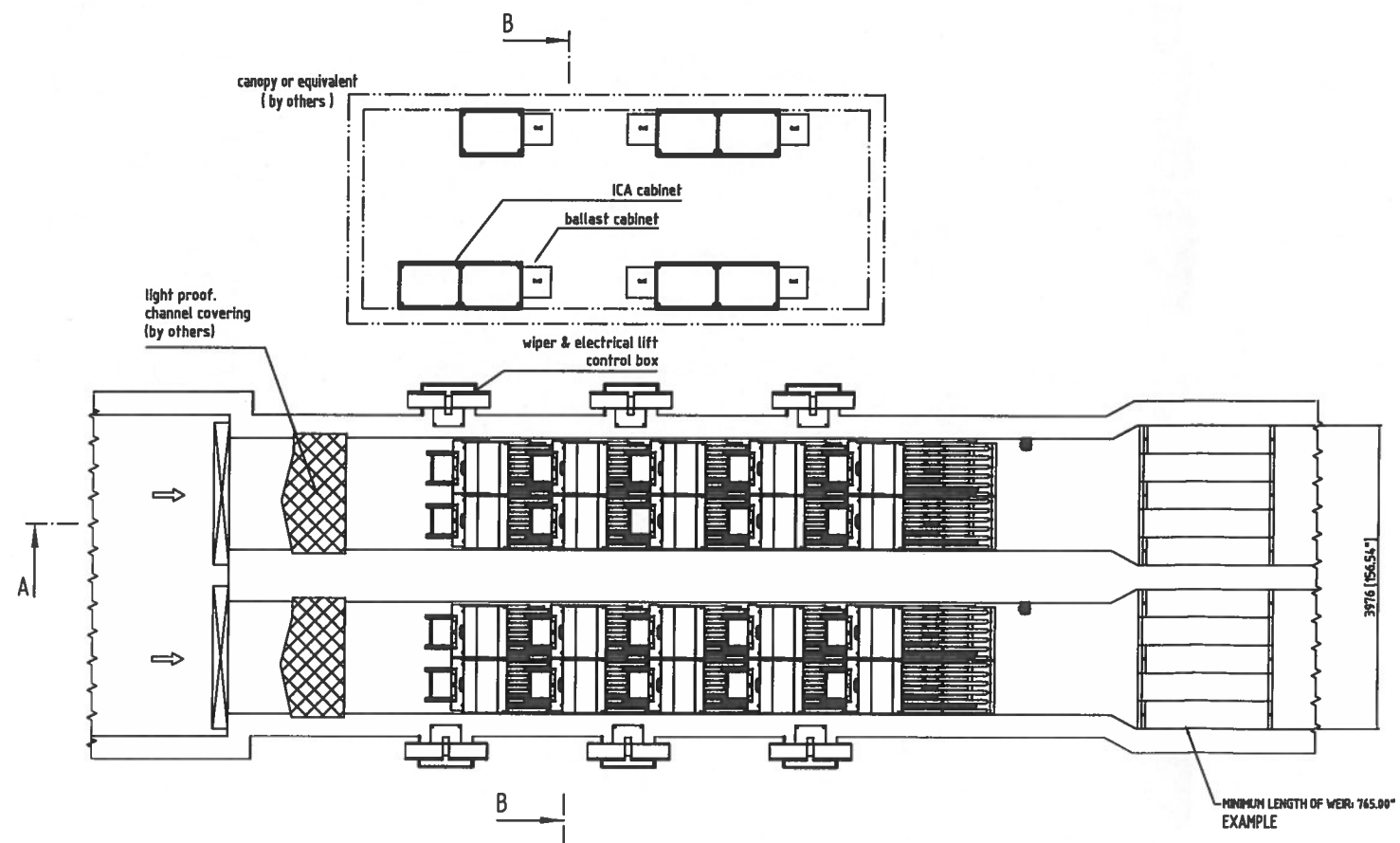
SECTION A-A



SECTION B-B



PLAN VIEW



Equipment Weights:
 Duron Module: 331 lbs
 ICA Enclosure: 772 lbs
 Ballast Enclosure: 1,144 lbs (per enclosure)
 Lift/Wipe Enclosure: 265 lbs (per pedestal)

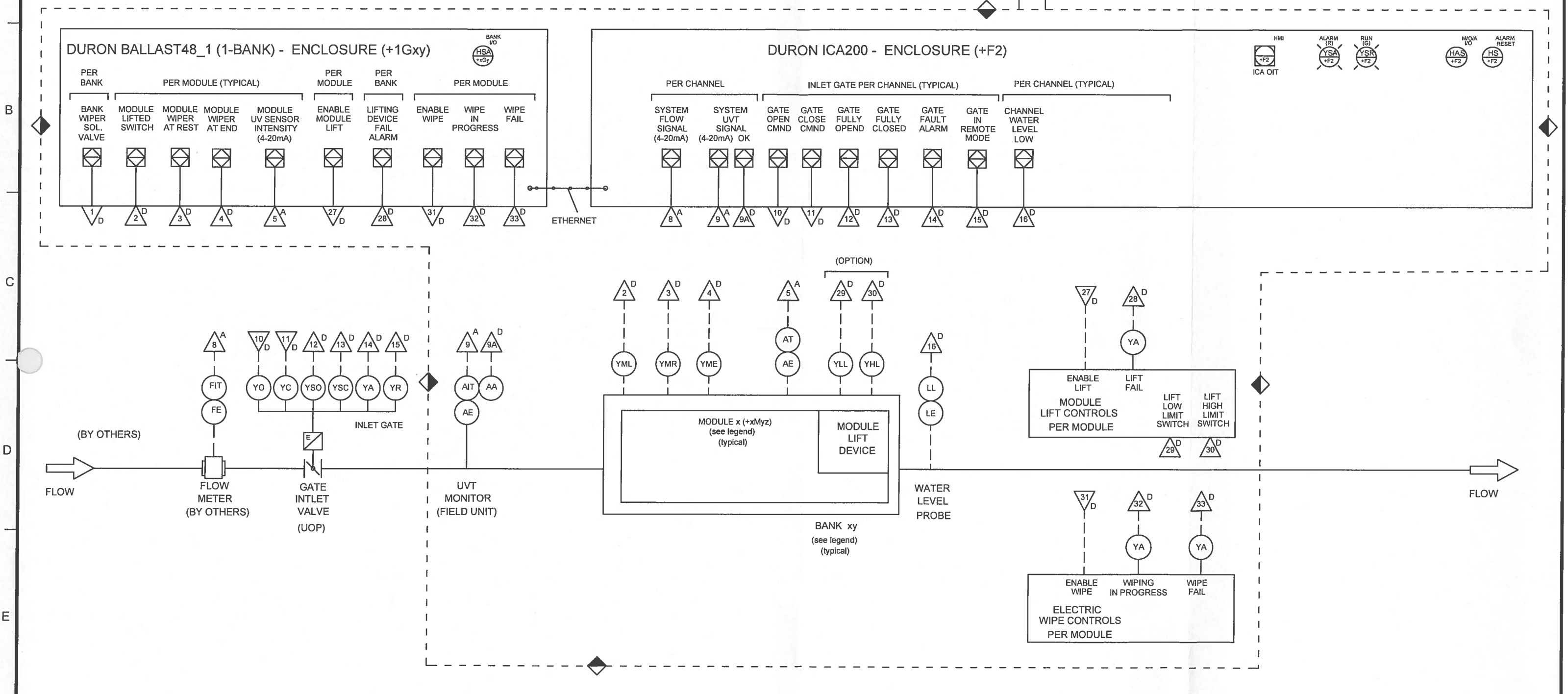
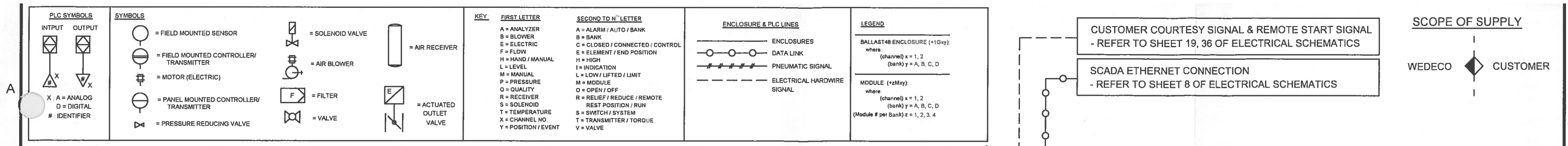
Notes

- All odd dimensions are a 1/8" unless otherwise shown. Channel width and height are critical dimensions.
- The UV channel floor and walls should not deviate more than a 5 mm from vertical and should not deviate more than a 5 mm along the channel.
- The UV channel face walls should not deviate more than a 5 mm from the vertical and should not deviate more than a 5 mm in width of UV channel. Flatness of the concrete surface to be acc. to EN 12002, Table 2, line 2.
- Surface finish of UV channel and flooring to be plane and smooth without irregularities.
- Xylan Water Solutions can only provide critical odd dimensions to suit the installation requirements of the UV System. All civil and structural design by others. Xylan Water Solutions does not accept any responsibility for providing equal flow rates in multi-channel systems.
- Cable conduits to be installed acc. to the dimensions shown in the drawing, in straight lines and as short as possible by others. Long radius bends (approx. 500) and to be used. Conduits should and should above floor level. In any case strong fast wires (as nylon draw wires etc.) are to be installed in all cable conduits to be installed.
- Xylan Water Solutions will be unable to install the UV system, unless the positioning of the cable conduits is within the dimensions shown in this drawing.
- Concrete quality to be minimum C30/37 according to EN12616 to suit the requirements of anchor bolt supplier.
- No closures allowed on face side of UV channel at pedestal weirs.
- Water trap with base rod and coverage recommended by others for cleaning purposes.
- Cross beam working load 220 kgf required for removal of UV modules and for maintenance purposes by others.
- UV bank to be provided with suitable heating and ventilation to maintain an internal temperature within the range of +5 to +20 °C during all possible weather conditions by others. Particularly the heat generated by UV equipment should be taken into account plus auxiliary equipment and solar gain.
- Modifications of the drawing have to be approved by Xylan Water Solutions.
- 1:200 slope to maintenance floor area recommended.
- The cable length of the lamp connecting cables is limited to 12 - 15 or 12 - 25 m respectively. The required length of the lamp connecting cables within the electrical cabinets must be included. All cables to be cut to the necessary length and not to be wound up to cable coils (particularly in underground and aboveground cable channels, electrical cabinets, etc.).
- The electrical cabinets are designed for cable entry through the cabinet bottom and underground cable conduits. In the case of aboveground cable routing, glands can be removed from the glands for cable entry through the glands.
- In order to avoid unacceptable overloading of the cable trays, all lamp cables to be evenly distributed in all of the cable conduits. The number of 12 lamp cables per cable conduit must not be exceeded (see details).
- For underground and aboveground cable channels, electrical cabinets, etc. it must be made sure that no more than 12 lamp cables in a cable tray. In the case of more than one cable tray, trays to be laid at intervals of min. 10 mm in each direction. Do not expose the lamp cables to direct sunlight.

NOT FOR CONSTRUCTION!
 FOR DISCUSSION PURPOSES ONLY!

Project Name	Project No.	Revision	Date
Client	Contract No.	Drawn by	Checked by
Site	Scale	Author	Project Manager
Drawn by	Scale	Author	Project Manager
Checked by	Scale	Author	Project Manager
Approved by	Scale	Author	Project Manager

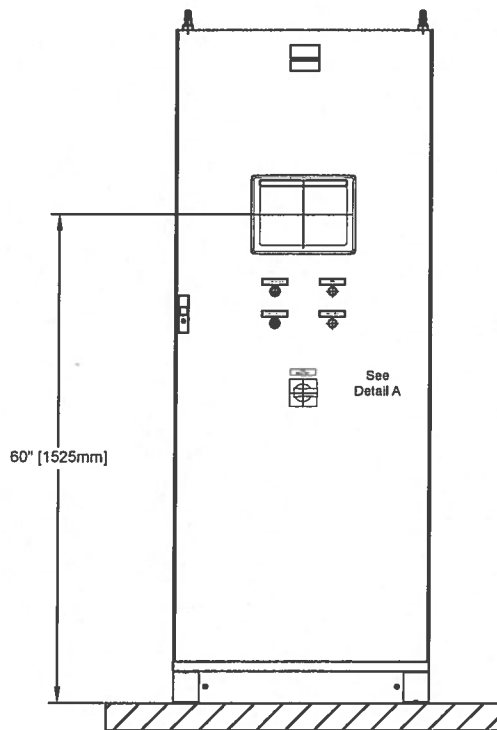
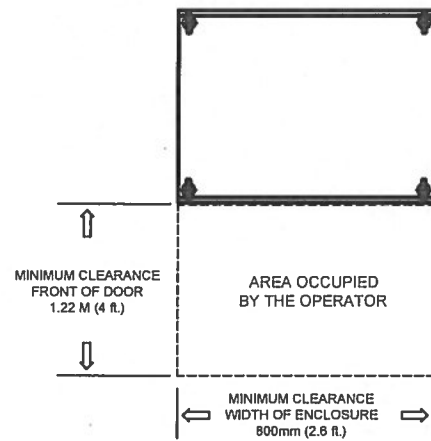
GENERAL ARRANGEMENT DRAWING
 UV SYSTEM
 W-12878



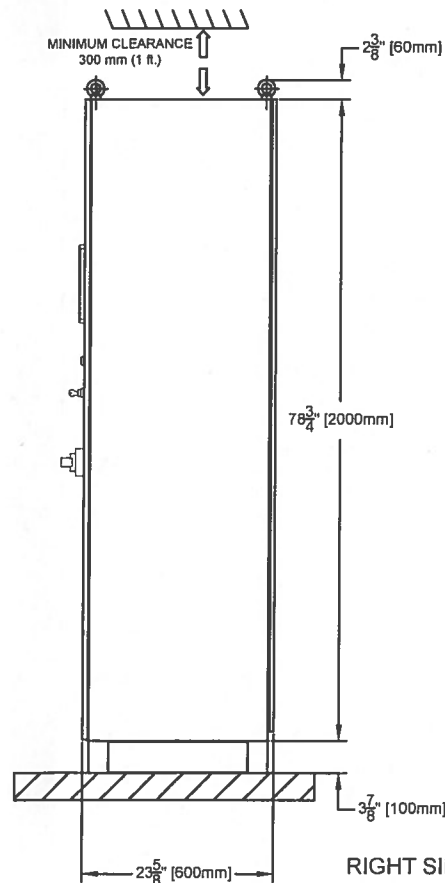
STANDARD PRODUCT					UNLESS OTHERWISE SPECIFIED TOLERANCES ARE X/X = ±1/16, .X = ±.05, .XX = ±.02, .XXX = ±.005 ANG = ± 1°		 www.xyleminc.com		TITLE PROCESS AND INST. DRAWING				
PROJECT DURON ICA200 BALLAST48					THIRD ANGLE PROJECTION 				MODEL NO. DURON ICA200 - BALLAST48_1				
LOCATION					DESIGNER SC		DATE 10/03/2012		SIZE B		DRAWING NO. DURON ICA200 B48_1-PID	REV 2.2	
CUSTOMER					APPROVED BY		DATE		SCALE	WEIGHT	MATERIAL	FINISH	SHEET
2.2 ADD UVT MONITOR ALARM 01/18/2016 SC 2.1 ADD ULTRASONIC FOR FLOW CALC. 10/24/2014 SC					CONSULTING ENGINEER								
REV	REV #	SHEET ECN #	DESCRIPTION	DATE	APPROVAL	NAVIGATION NUMBER	JOB NUMBER						

- TYPE 12 ENCLOSURE

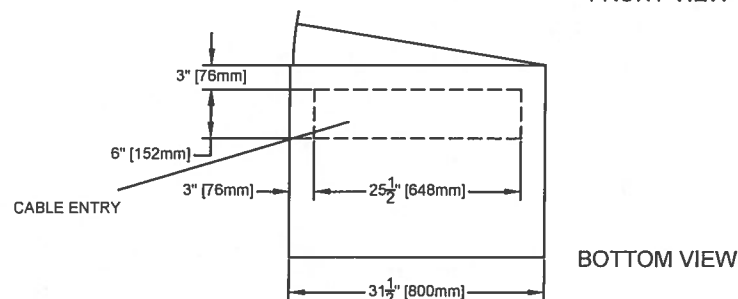
TOP VIEW



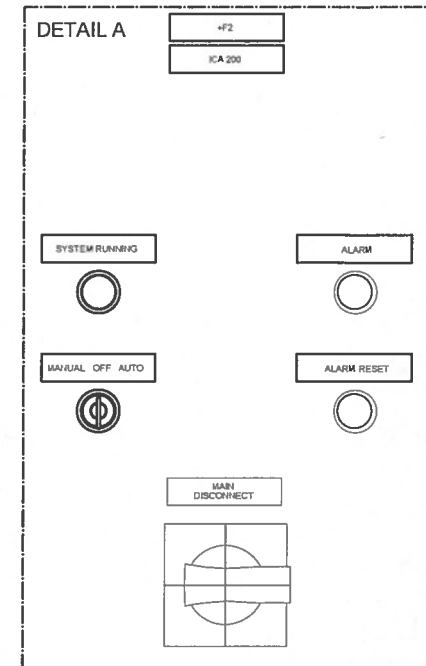
FRONT VIEW



RIGHT SIDE VIEW



BOTTOM VIEW



FOR APPROVAL ONLY

REV	REV #	SHEET ECN #	DESCRIPTION	DATE	APPROVAL
2.6			12/16/20 - LAMP MODULE UVT OK SIGNAL	03/02/2018	SC
2.5			MOA RELAY, UPS BATTERY	09/11/2015	SC
2.4			ADD B48_3, B48_4 & OUTLET ACTUATOR DETAILS	08/25/2014	SC
2.3			PLINTH SIZE, BACKPANEL COMP., DC FUSE, LWL CKT.	04/03/2014	SC
2.2			ADD TYPE 12 DETAIL	07/30/2013	SC

PROJECT		DURON ICA200 - TYPE 12	
LOCATION			
CUSTOMER			
CONSULTING ENGINEER		SC	
NAVISON NUMBER	DURON ICA200	JOB NUMBER	

UNLESS OTHERWISE SPECIFIED TOLERANCES ARE	
X/X = ±.125 X = ±.05 .XX = ±.02 .XXX = ±.005 ANG = ± 1°	
THIRD ANGLE PROJECTION	
DESIGNER	DATE
SC	09/25/2012
APPROVED BY	DATE
-	-/-

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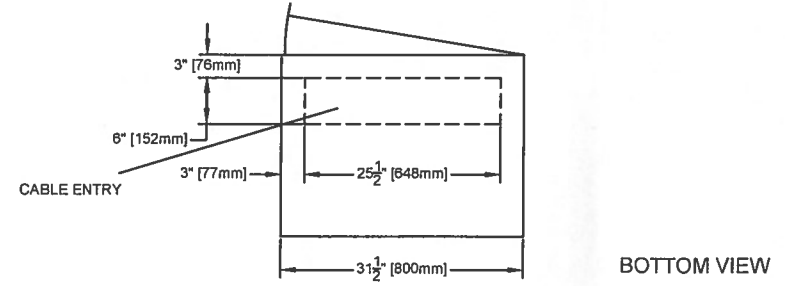
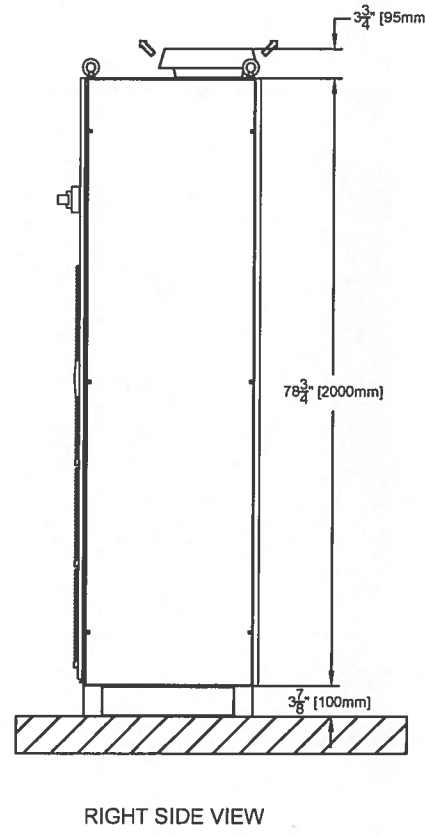
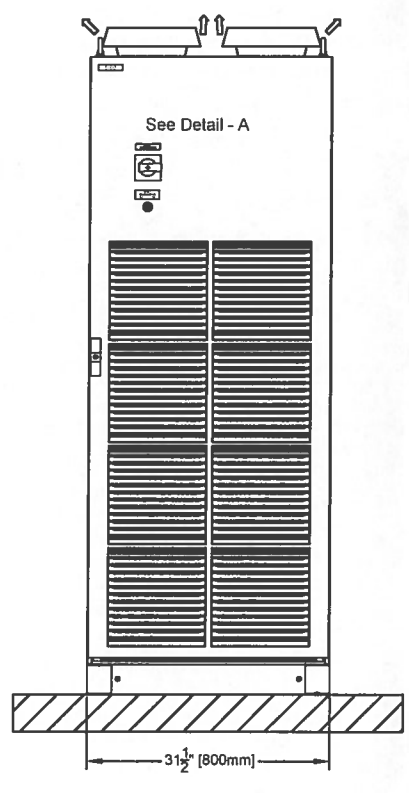
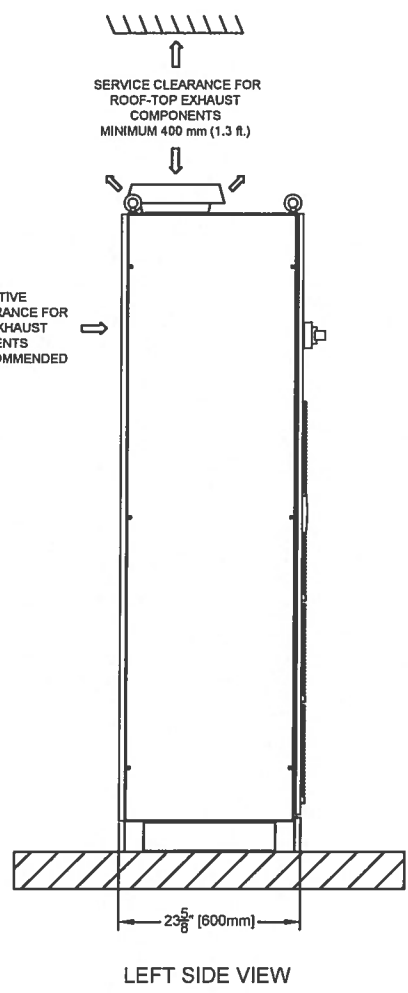
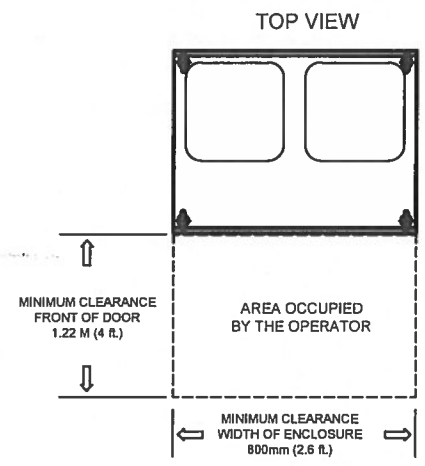
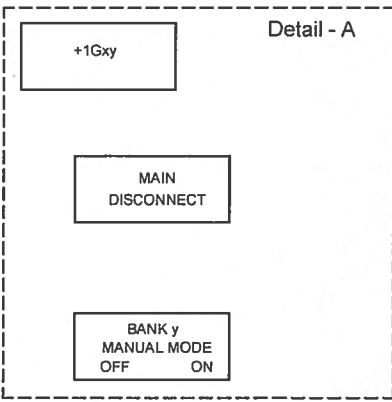
www.xyleminc.com

THIS DRAWING CONTAINS DESIGNS AND OTHER INFORMATION WHICH ARE THE PROPERTY OF XYLEM INC., EXCEPT FOR RIGHTS EXPRESSLY GRANTED BY CONTRACT TO THE UNITED STATES GOVERNMENT. THIS DRAWING MAY NOT, IN WHOLE OR IN PART, BE DUPLICATED OR DISCLOSED OR USED FOR MANUFACTURE OF THE PART DISCLOSED HEREIN, WITHOUT THE PRIOR WRITTEN PERMISSION OF XYLEM INC. XYLEM INC., ACCEPTS NO RESPONSIBILITY FOR UNDOCUMENTED CUSTOMER-INITIATED DRAWING CHANGES TO ELECTRONICALLY TRANSMITTED DRAWINGS.

TITLE					ENCLOSURE LAYOUT (1/2)				
MODEL NO.					DURON cUL ICA200 - TYPE 12				
SIZE	DRAWING NO.				REV				
B	DURONuICA200-12-DOC_002				2.6				
SCALE	WEIGHT	MATERIAL	FINISH	SHEET					
N/A	N/A	N/A	N/A	2 OF 16					

Note:
- Type 12 Enclosure

Enclosure Label:
Where: Channel x = 1, 2, 3, 4
Bank y = A, B, C, D



REV	REV #	SHEET ECN #	SHEET (ZONE)	DESCRIPTION	DATE	APPROVAL
2.6				12/16/20-LAMP MODULE. UPDATE CLEARANCE, ECOTOUCH INSIDE	02/10/2016	SC
2.5				REMOVE SIDE FILTERS. ADD FANDIS, RACK GND	09/04/2015	SC
2.4				ADD ICA 300/400 DETAIL	09/01/2014	SC
2.3				PLINTH SIZE. BACKPANEL COMP., DC FUSE	04/03/2014	SC
2.2				ADD TYPE 12 DETAIL	07/23/2013	SC
REVISIONS						

FOR DISCUSSION ONLY	
PROJECT	DURON B48_1
LOCATION	
CUSTOMER	
CONSULTING ENGINEER	SC
NAVISON NUMBER	DURON B48
JOB NUMBER	

UNLESS OTHERWISE SPECIFIED TOLERANCES ARE	
X/XX = ±.10, X = ±.05, .XX = ±.02, .XXX = ±.005 ANG = ± 1°	
THIRD ANGLE PROJECTION	
DESIGNER	DATE
SC	09/25/2012
APPROVED BY	DATE
-	-/-

WEDECO
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TITLE				
ENCLOSURE LAYOUT (1/2)				
MODEL NO.				
DURON cUL B48_1 - FAN				
SIZE	DRAWING NO.	REV		
B	DURONuB48_1-FN-DOC_002	2.6		
SCALE	WEIGHT	MATERIAL	FINISH	SHEET
N/A	N/A	N/A	N/A	2 OF 11

Wedeco Manufacturing & Service Capabilities

As emergency system service and maintenance may be required with UV systems, we would like to bring some assurance and confidence to our future customers through our service capabilities. Listed below are typical manufacturing & service questions regarding our UV equipment and service capabilities.

1) What are the locations of manufacturing facilities and factory witness testing?

- Xylem Wedeco's manufacturing facilities are located in Herford, Germany. This is the location of all factory testing as well.

2) How many service technicians are currently making service calls within the United States, and in the vicinity of the Owner, on the Manufacturer's equipment? Are these service technicians full-time employees of the Manufacturer or contractors? What are the normal response time for on-site services from the time of order to the arrival of a service technician.

- Wedeco has 16 service technicians whose primary focus is UV and Ozone technology. Xylem as a corporation currently has 113 Service and Technical support personnel in the US and vicinity of the Owner with the closest office in Carrollton, Texas.
- All of the technicians referenced above are full time employees of the manufacturer
- For response times, we utilize both road and air dispatched crews.
 - For pre-scheduled calls (typically maintenance or contracts), we will respond to the mutually agreed upon customer's schedule.
 - For unscheduled, non-emergency calls we will work with the customer to meet their time frame based upon severity of the issue.
 - For emergency/critical system down situations, we are typically on site within 24 to 48 hours or sooner depending on resource deployment at the time.

3) What are the locations of the Manufacturer's service facilities in the United States and Canada?

- | | |
|--------------------------|-----------------------------|
| • Fairfield, California | • Suwanee, Georgia |
| • Mira Loma, California | • Milford, Ohio |
| • Corpus Christi, Texas | • Charlotte, North Carolina |
| • Carrollton, Texas | • Rochester, New York |
| • Portland, Oregon | • Malvern, Pennsylvania |
| • Ft. Myers, Florida | • Woburn, Massachusetts |
| • Riviera Beach, Florida | • Tinley Park, Illinois |
| • Apopka, Florida | • Pewaukee, Wisconsin |
| • Garden City, Georgia | • Indianapolis, Indiana |
| • Evansville, Indiana | • Freedom, Pennsylvania |

4) What are the parts-stocking warehouse locations in the United States and Canada?

- Our central stocking warehouse is in South Haven, MS. We also stock in Charlotte, NC; Freedom, PA; and Hereford Germany.

Wedeco Manufacturing & Service Capabilities

- 5) Are all parts for the proposed UV equipment type or model available at these locations at all times? If not, which parts are available?
- All normal wear parts, consumables, preventative maintenance parts and system safety parts (fuses, etc.) are stocked as needed from the central stocking warehouses in South Haven and Herford, Germany.
- 6) What are the normal delivery schedule for parts from time of order?
- All normal wear parts, consumables, preventative maintenance parts and system safety parts (fuses, etc.) are stocked as needed for a 24 hour delivery. Structural parts such as fabricated parts that are project specific are typically not stocked since they are not normally subject to failure.

Submittal & Delivery schedule

1.1.1 Delivery time

- Submittals are available within 8 weeks after acceptance of purchase order.
- Equipment delivery is within 18 weeks after approved submittals.
- Delivery times are based upon an approval period of four (4) weeks, which approval shall not be unreasonably withheld.

As required, by Section 00 45 17 – Article 1, Item 7, we are providing this document as an acknowledgement of meeting warranty requirements.

EQUIPMENT WARRANTIES:

General

Please note, Xylem warrants that for a period of one (1) year from successful completion of the Initial Performance Testing, new Equipment Systems which are manufactured by Xylem will be free from defects in material and workmanship, excluding Consumables for which specific warranties are provided, and will function in accordance with the specifications specified in the Scope of Supply.

CONSUMABLE WARRANTIES:

Lamp Warranty

Xylem warrants 14,000 hours operating time as measured by the controller for each lamp under normal operating conditions. Normal operating conditions are defined as operation and maintenance according to the O&M Manual and include the following conditions:

- On/off cycles max. 4 per 24 operating hours,
- Lamps are controlled by Wedeco approved ballast operated within its specified limits
- Requires lamps to be operated submerged in water.

In case of premature lamp failure, the customer is requested to send the lamp back prepaid to Xylem complete with UV unit serial number, lamp runtime hours, and lamp on/off cycles. Xylem then offers the following:

- Lamp failure before 9,000 hours: Xylem will send a replacement lamp free of charge,
- Lamp failure after 9,000 hours: Xylem will issue a credit proportional to the hours not used from the 14,000 hour lamp warranty toward the purchase of like replacement parts from Xylem.

The warranty is limited to 36 months after the date of delivery (maximum storage period), regardless of whether or not lamps have been operated. The lamps must be stored in their original WEDECO packaging. Within the 36 month period the individual lamp life guarantee will apply.

As part of Xylem's corporate commitment to the environment, used and failed but intact lamps returned to our Charlotte, NC facility will be properly recycled and safely disposed of at no charge to the client. For every new lamp purchased, Xylem will accept one back for disposal. A Return Goods Authorization (RGA) number must be requested from the Xylem Returns Department and written on the outside of the shipping container(s). Lamps should be shipped back prepaid in good packaging that avoids the possibility of breakage.

Pflugerville, TX

Ballast Warranty

Xylem warrants 5 years of ballast life under normal operating conditions. Normal operating conditions are defined as operation and maintenance according to the O&M Manual and include the following conditions:

- On/off cycles max. 4 per 24 operating hours
- Ballasts operated within ballast data sheet specified limits

In case of premature ballast failure, the customer is requested to send the ballast back prepaid to Xylem complete with UV unit serial number, ballast runtime hours, and ballast on/off cycles. A Return Goods Authorization (RGA) number must be requested from the Xylem Returns Department and written on the outside of the shipping container(s). Xylem then offers the following:

- Ballast failure before 2 years: Xylem will send a replacement ballast free of charge,
- Ballast failure after 2 years: Xylem will issue a credit proportional to the time not used from the 5 year warranty toward the purchase of like replacement parts from Xylem.

Quartz Sleeve Warranty

Xylem warrants a 20-year lifetime for each quartz sleeve under normal operating conditions based upon operation and maintenance according to the O&M manual.

In case of premature quartz sleeve failure, the customer is requested to send the quartz sleeve back prepaid to Xylem complete with UV unit serial number, bank runtime hours, and bank on/off cycles. A Return Goods Authorization (RGA) number must be requested from the Xylem Returns Department and written on the outside of the shipping container(s). Xylem then offers the following:

- Quartz sleeve failure before 5 years: Xylem will send a replacement quartz sleeve free of charge,
- Quartz sleeve failure after 5 years: Xylem will issue a credit proportional to the time not used from the 20 years warranty toward the purchase of like replacement parts from Xylem.

Intensity Sensor Warranty

Xylem warrants a 10-year intensity sensor lifetime after Initial Performance Testing for each UV intensity sensor under normal operating conditions based upon operation and maintenance according to the O&M manuals.

In case of premature sensor failure, the customer is requested to send the sensor back prepaid to Xylem complete with UV unit serial number, bank runtime hours, and bank on/off cycles. A Return Goods Authorization (RGA) number must be requested from the Xylem Returns Department and written on the outside of the shipping container(s). Xylem then offers the following:

- Sensor failure before 2 years: Xylem will send a replacement sensor free of charge,
- Sensor failure after 2 years: Xylem will issue a credit proportional to the time not used from the 10 years warranty toward the purchase of like replacement parts from Xylem.

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In the event of a conflict between this letter and the Buyer's warranty requirements, the Buyer's warranty requirements shall govern.

As mentioned above, this document serves as an acknowledgement of meeting warranty requirements for this project.

Best Regards,

Joe McCausland
Vice President
Tel: 704-887-9138



Andrew J. Thomas, P.E.
Senior Project Manager



Experience:

- 2014 to Present Senior Project Manager
- Manage customer relations on assigned projects
 - Responsible for overall project schedule and site deliveries.
 - Responsible for customer invoicing and overall project schedules.
 - Manage projects ranging in value from \$50k up to \$9million
 - Responsible for execution of all commercial aspects of the project from PO to customer acceptance.
- 2009 to 2014 Project Engineer Manager – Treatment (ITT Water and Wastewater US)
- Supervise Filtration Project Engineering Staff for Leopold filtration and Wedeco disinfection projects.
 - Provide technical direction for Project Engineer's, Project Managers, designers, and drafters
 - Perform duties of a Project Engineer on selected projects
 - Allocate Project Engineering Resources to meet project schedules.
- 2008 to 2009 Project Engineer Manager – Filtration (Leopold)
- Supervise Filtration Project Engineering Staff
 - Provide technical direction for other Project Engineer's designers, and drafters
 - Perform duties of a Project Engineer on selected projects
 - Allocate Project Engineering Resources
- 2002 to 2008 Project Engineer - Leopold
- Supervise drafting personnel
 - Perform all engineering support for project execution
 - Generation of bid proposals and costing
 - Select mechanical equipment for project
 - Oversee a design team that prepares engineering submittal packages, fabrication packages, and IOM manuals.
 - Design and procurement of pumping systems, blower system, and chemical feed systems for municipal and industrial projects.
- 2001 – 2002 Senior Applications Engineer - Leopold
- Consultant for other Applications Engineers
 - Review in-house project drawings for filtration and clarification systems
 - Perform functions of an Applications Engineer
- 1997 – 2001 Application Engineer - Leopold
- Preparation of bid packages comprised of project costing and proposal generation
 - Review of project specifications and drawings
 - Provide engineering support for project execution
 - Design of various types of filtration and clarification systems.
 - Oversee a design team that prepares engineering submittal packages, fabrication packages, and IOM manuals.
 - Design and procurement of pumping systems, blower system, and chemical feed systems.

Professional Qualifications:

Registered Pennsylvania Professional Engineer License Number PE061394

Education:

Bachelor of Science in Civil Engineering, The Pennsylvania State University
Minor in Environmental Engineering, The Pennsylvania State University
Certificate for Civil Engineering Review, The Pennsylvania State University

Caleb Burton
Field Service Technician
Xylem Water Solutions – WEDECO Products
M: +1.704.620.0014
caleb.burton@xylem.com

PROFESSIONAL EXPERIENCE

Xylem Inc.

October 2012-Present

Field Service Technician

I am currently a Field Service Technician specializing in drinking water and wastewater disinfection through the use of Ultraviolet light systems. I perform startups, performance testing, power consumption testing, and perform preventative maintenance through TotalCare contract visits. I'm also responsible for the training of site personnel on the use of all WEDECO equipment. I received specialized training in Herford, Germany pertaining to the WEDECO Duron systems. I Support the Engineering department by assisting with PLC programming changes in the field. This job requires nationwide and international travel along with detailed service and expense reports.

NDT Systems & Services

February 2011- October 2012

Service Technician

Service Technician inspecting pipelines for the oil & gas industry through the use of non-destructive testing. Responsible for building, repairing and performing preventative maintenance on ultrasonic, deformation, and magnetic flux leakage tools (smart pigs) used for in-line inspections. Conducted countless smart pig calibrations of various technologies. I maintained a class B CDL, and was also responsible for transporting the smart pig and calibration equipment to the jobsite. Assisted in many test runs of various tools and technologies at the NDT Pull Yard and the NDT Flow Loop. Licensed by the National Commission for the Certification of Crane Operators, and was responsible for loading/removing smart pig in launch/trap barrel. Daily use of forklifts, telescopic boom cranes, knuckle boom cranes, and overhead cranes was performed. I was also responsible for booking travel and maintaining expense reports.

WEDECO/ITT

October 2007 - June 2009

Field Service Technician

Worked as a Field Service Technician for the Southwest US region performing start-ups and service calls on ozone and ultraviolet water disinfection systems at various drinking water and wastewater plants across the US. The home office was located in Charlotte, NC, but I live within the Greater Houston Area and therefore would travel to each project. This job required me to travel approximately 90% of the year. The components I would install, troubleshoot, or repair on a daily basis include: PLC's (Programmable Logic Controllers by Modicon, and Allen-Bradley), ultraviolet lamps, ballast circuit cards, ballast interface boards, lamp matrix boards, compressed air driven wiping systems, ultraviolet intensity sensors, Auma valves, automatic & isolation transformers, ozone reactors, ozone destruct units, and ozone detectors. At this job I proved my ability to perform at peak levels with little or no supervision. I was also responsible for maintain detailed service reports, thorough expense reports, and booking all aspects regarding my travel arrangements.

US Navy, Bremerton, WA

July 2003 - July 2007

Interior Communications Electrician 3rd Class Petty Officer

Achieved the rank of Third Class Petty Officer while serving in the US Navy as an Interior Communications Electrician and work center supervisor. I have earned many Naval qualifications including: CPR, Electrical Load Center Rover, Interior Communications Electrician Trouble Call, Quality Assurance Craftsman, Advanced Firefighting, Advanced Damage Control, Divisional Maintenance Manager Officer, Electro Hydraulic Steering Gear Electrician, and 400hz Switchboard Operator. Experienced in the installation, troubleshooting, repair, and preventative maintenance procedures of various circuits including: Intrusion Alarms, Refrigerant Monitors, Microphone Control Stations, High Temp Alarms, Flooding Alarms, Airflow monitors, CCTV (Closed Circuit Television), Tank Level Indicators, Valve Position Indicators, Halon Release Alarm Systems, Flight Deck Announcing System, the Shipboard Announcing System, and PLC's (Programmable Logic Controllers). Skilled in the reading of electrical prints/diagrams, soldering, and the troubleshooting and repair of printed circuit boards. I also held a level "Secret" security clearance. This job was very beneficial in technical training as well as a strong builder of teamwork and individual achievement. Honorably discharged on July 29, 2007.

EDUCATION

Certifications:

2012

Houston Area Safety Council
Basic Plus Certification

8/2008

Control Logix 5000 | Addison, TX
Rockwell Automation classes specializing in basic knowledge pertaining to Control Logix 5000, and Introduction to Control Logix 5000 Ladder Logic. Certificates were awarded

2009-2010

College of the Mainland | Texas City, TX
Earned credits in Process Technology courses: Intro to Process Technology, Safety Health & Environment, Equipment, and Instrumentation.

00 61 13 PERFORMANCE BOND

<p>Seller as Principal</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p>Surety</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p>Buyer</p> <p>Name: City of Pflugerville, Texas</p> <p>Mailing address (principal place of business):</p> <p>PO Box 589 Pflugerville, TX 78691-0589</p>	<p>Physical address (principal place of business):</p> <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p>Procurement Contract</p> <p>Project name and number:</p> <p>Central WWTP Expansion UV Disinfection Equipment PFL16607</p> <p>Procurement Contract Price: Effective Date of Procurement Contract:</p>	<p>Surety's state of incorporation:</p> <hr/> <p><i>By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in the state of Texas.</i></p> <hr/> <p>Local Agent for Surety</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p>Bond</p> <p>Bond Amount: 100 percent of Procurement Contract Price</p> <p>Date of Bond:</p> <p>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</p>	<p>Telephone (Main):</p> <hr/> <p><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></p>

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

Seller as Principal

Signature: _____

Name: _____

Title: _____

Email: _____

Surety

Signature: _____

Name: _____

Title: _____

Email: _____

(Attach Power of Attorney and place surety seal below)

END OF SECTION

00 61 16 PAYMENT BOND

<p>Seller as Principal</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p>Surety</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p>Buyer</p> <p>Name: City of Pflugerville, Texas</p> <p>Mailing address (principal place of business):</p> <p>PO Box 589 Pflugerville, TX 78691-0589</p>	<p>Physical address (principal place of business):</p> <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p>Procurement Contract</p> <p>Project name and number:</p> <p>Central WWTP Expansion UV Disinfection Equipment PFL16607</p> <p>Procurement Contract Price: Effective Date of Procurement Contract:</p>	<p>Surety's state of incorporation:</p> <p><i>By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in the state of Texas.</i></p> <p>Local Agent for Surety</p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p>Bond</p> <p>Bond Amount:</p> <p>Date of Bond:</p> <p>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</p>	<p>Telephone (Main):</p> <p><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></p>

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

Seller as Principal

Signature: _____
 Name: _____
 Title: _____
 Email: _____

Surety

Signature: _____
 Name: _____
 Title: _____
 Email: _____

(Attach Power of Attorney and place surety seal below)

END OF SECTION

**GENERAL
CONDITIONS**

00 72 00 GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

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

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

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

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

1.02 Terminology

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

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

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

2.02 Copies of Documents

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

2.03 Commencement of Procurement Contract Times; Notice to Proceed

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

2.04 Seller's Review

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

2.05 Preliminary Conference; Designation of Authorized Representatives

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

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

2.06 Progress Schedule

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

2.07 Schedule of Submittals

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

2.08 Schedule of Payments

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

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

3.01 Intent

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

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

3.02 Reference Standards

A. Standard Specifications, Codes, Laws and Regulations:

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

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

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

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

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

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

3.04 Interpretation of the Procurement Contract Documents

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

ARTICLE 4 – BONDS AND INSURANCE

4.01 Bonds

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

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

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

4.02 Insurance

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

ARTICLE 5 – SELLER'S RESPONSIBILITIES

5.01 Supervision and Superintendence

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

5.02 Goods and Special Services

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

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

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

5.04 Safety and Protection

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

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

5.05 Hazard Communication Programs

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

5.06 Hazardous Environmental Conditions at Site

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

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

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

5.07 Taxes

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

5.08 Delegation of Professional Design Services

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

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

5.09 Continuing Performance

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

5.10 Seller's Warranties and Guarantees

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

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

5.11 Seller's Warranty of Title

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

5.12 Indemnification

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

ARTICLE 6 – SHIPPING AND DELIVERY

6.01 Shipping

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

6.02 Delivery

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

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

6.03 Risk of Loss

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

ARTICLE 7 – CHANGES, SCHEDULE, AND DELAYS

7.01 Amending the Procurement Contract Documents

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

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

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

7.02 Changes in the Goods and Special Services

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

7.03 Change in Procurement Contract Price

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

7.04 Change of Procurement Contract Times

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

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

7.05 Change Proposals

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

7.06 Execution of Change Orders

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

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

7.07 Notice to Surety

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

7.08 Laws and Regulations

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

ARTICLE 8 – BUYER'S RIGHTS

8.01 Inspections and Testing

- A. General:
 - 1. Provide inspections and require tests of the Goods at the Point of Destination in accordance with the Procurement Contract Documents as part of the Special Services.
 - 2. Reserved.
 - 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 plus a Profit of ten percent (10%) of 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

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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.

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

from both ongoing and completed operations.

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

1.4 BUYER'S LIABILITY INSURANCE

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

1.5 PROPERTY INSURANCE

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

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

ARTICLE 2 – SELLER'S EVIDENCE OF INSURANCE

2.1 ACCEPTABLE EVIDENCE OF INSURANCE

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

2.2 INSURANCE POLICIES

- A. Provide 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 insurance coverages provided will be in strict accordance with the requirements of this Form 00 72 01- 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:

Position	Hourly Rate
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


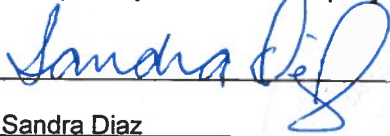
- B. Expenses will be billed at the actual cost multiplied by 1.15.

END OF SECTION

BID BOND

<p>Offeror as Principal</p> <p>Name: Xylem Water Solutions USA, Inc.</p> <p>Mailing address (principal place of business): 14125 South Bridge Circle Charlotte, NC 28273</p>	<p>Surety</p> <p>Name: Atlantic Specialty Insurance Company</p> <p>Mailing address (principal place of business): 605 Highway 169 North Plymouth, MN 55441</p>
<p>Buyer</p> <p>Name: City of Pflugerville, Texas</p> <p>Mailing address (principal place of business): 100 E. Main Street, Suite 100 Pflugerville, TX 78691-0589</p>	<p>Physical address (principal place of business): 605 Highway 169 North Plymouth, MN 55441</p> <p>Telephone (Main): (781) 332-7000 Telephone (Claims): (877) 248-9876</p>
<p>Procurement Contract for UV Disinfection Equipment</p> <p>Project name and number: Central WWTP Expansion PFL16607</p> <p>Bid/Proposal Due Date: 11/28/2018</p>	<p>Surety's state of incorporation: New York</p> <p><i>By submitting this bond, Surety affirms it is authorized to do business and licensed to execute bonds in the state of Texas.</i></p>
<p>Bond</p> <p>Procurement Contract Price Offered: \$797,000.00 Penal Sum of Bond: 5% of Procurement Contract Price offered Date of Bond: 11/20/2018</p>	<p>Local Agent for Surety</p> <p>Name: Aon Risk Solutions Inc.</p> <p>Mailing address (principal place of business): 165 Broadway, New York, NY 10006</p> <p>Telephone (Main): (212) 441-1000</p>
<p><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></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.

Offeror as Principal Xylem Water Solutions USA, Inc. Signature: <u></u> Name: <u>Patrick Rienks</u> Title: <u>Vice President</u> Email: <u>patrick.rienks@xylem inc.com</u>	Surety Atlantic Specialty Insurance Company Signature: <u></u> Name: <u>Sandra Diaz</u> Title: <u>Attorney-in-Fact</u> Email: <u>sandra.diaz@aon.com</u> (Attach Power of Attorney)
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END OF SECTION



Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Debra A. Deming, Sandra Diaz, Cynthia Farrell, Anne Potter, Jane Gilson, Peter Healy, Susan A. Welsh, Frances Rodriguez, Aklima Noorhassan, Francesca Kazmierczak**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **sixty million dollars (\$60,000,000)** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-sixth day of October, 2017.

STATE OF MINNESOTA
HENNEPIN COUNTY



By 
Paul J. Brehm, Senior Vice President

On this twenty-sixth day of October, 2017, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.




Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated Nov 20 2018



This Power of Attorney expires
October 1, 2019


Christopher V. Jerry, Secretary



Atlantic Specialty Insurance Company
Period Ended 12/31/2017

Dollars displayed in thousands

Admitted Assets		Liabilities and Surplus	
Investments:		Liabilities	
Bonds	\$ 988,817	Loss Reserves	\$ 858,058
Preferred Stocks	-	Loss Adjustment Expense Reserves	175,047
Common Stocks	723,252	Total Loss & LAE Reserves	1,033,105
Mortgage Loans	-		
Real Estate	-	Unearned Premium Reserve	536,888
Contract Loans	-	Total Reinsurance Liabilities	32,722
Derivatives	-	Commissions, Other Expenses, and Taxes due	48,831
Cash, Cash Equivalents & Short Term Investments	148,999	Derivatives	-
Other Investments	51,777	Payable to Parent, Subs or Affiliates	43,581
Total Cash & Investments	1,912,848	All Other Liabilities	148,428
		Total Liabilities	1,641,550
Premiums and Considerations Due	223,311	Capital and Surplus	
Reinsurance Recoverable	31,509	Common Capital Stock	8,000
Receivable from Parent, Subsidiary or Affiliates	-	Preferred Capital Stock	-
All Other Admitted Assets	92,138	Surplus Notes	-
Total Admitted Assets	2,259,803	Unassigned Surplus	(42,484)
		Other Including Gross Contributed	851,547
		Capital & Surplus	618,053
		Total Liabilities and C&S	2,259,803

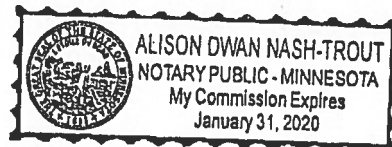
State of Minnesota
County of Hennepin

I, Christopher Jerry, Secretary of Atlantic Specialty Insurance Company do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said OneBeacon Insurance Company, on the 31st day of December, 2017, according to the best of my information, knowledge and belief.

Secretary

Subscribed and sworn to, before me, a Notary Public of the State of Minnesota on this 9th day of March, 2018.

Notary Public



IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Atlantic Specialty Insurance Company and its affiliates' toll-free telephone number for information or to make a complaint at:

1-877-248-9876

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

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact your Agent or Atlantic Specialty Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR BOND:

This notice is for information only and does not become a part or condition of the attached document and is given to comply with Texas legal and regulatory requirements.