

**ADDENDUM NUMBER EIGHT  
TO  
OAK RIDGE WATER TREATMENT PLANT  
CITY OF OAK RIDGE, TENNESSEE**

Addendum Number Eight (8) is issued the 27<sup>th</sup> day of September 2022 to all parties who hold a set of Bid Documents for the above-named project. Each Bidder shall acknowledge receipt of this Addendum on the Bid and shall incorporate all changes in the Bid. This addendum consists of seven (7) pages and three (3) attachments.

**QUESTIONS:**

- 1. Question:** Section 44 42 56.18 2.03.H / Addendum #4 Question 11 – Can you please clarify the response to this question? Sulzer supplies these pumps with Premium Efficiency motors with IEC 60034-30:2008, level IE3, and meet NEMA MG1 part 31. The completely sealed design of these submersible pump motors is such that the installation of shaft grounding rings is not possible. However, for motors of this size, as power comes through the top of the motor housing, the electrically-insulated upper bearings are designed to handle possible transient voltage spikes from VFDs from arcing to the bearing. Will you please consider the use of an insulated bearing as sufficient without the addition of a shaft grounding ring?

**Response:** Insulated bearings are a sufficient form of transient voltage protection to meet the specification requirement.
- 2. Question:** Plan Sheets 105-107 (200-D-2001 thru 200-D-2003) – A flange connection is depicted for the coupling ring. Will a welded coupling ring be considered as an acceptable form of construction? Reference drawing attached to depict the difference.

**Response:** A welded coupling ring is acceptable for this application.
- 3. Question:** Within multiple locations of the Contract Documents a reference is being made to dispute resolution process outlined within the Supplemental Conditions. Supplemental Conditions do not appear to outline DRP process. Please consider adding DRP process guidelines to the project document.

**Response:** General Conditions 17.01.B.3 defines the process if no dispute resolution process is provided for in the Supplementary Conditions or otherwise mutually agreed to.
- 4. Question:** Please clarify the coordination between Contractor, Wigen Water Technologies, and City of Oak Ridge.

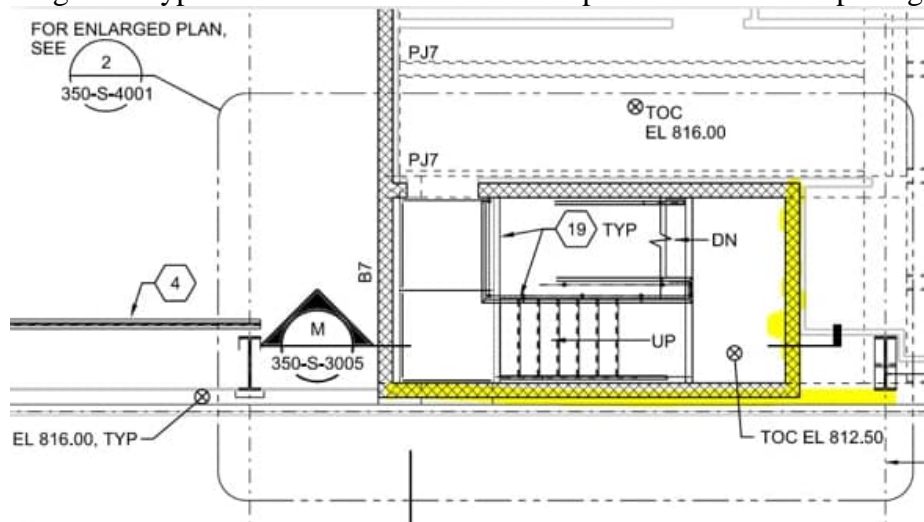
**Response:** The City has a Procurement Agreement with Wigen Water Technologies for the supply of the Membrane Filtration System, as detailed on the Drawings, Specifications, and Appendix A. The Procurement Agreement will be assigned to the Contractor as part of the award of the project. The Contractor will coordinate with Wigen Water Technologies for the delivery of Wigen’s the scope of supply. Should the delivery of certain items of Wigen’s scope (i.e. membrane modules) fall in a time frame before the Contractor is ready for delivery, the City will provide storage for those materials. The

updated Procurement Agreement and General Conditions are provided as an attachment to Addendum No. 8.

5. **Question:** Section cuts M/350-S-3005 and F/350-S-3003 shows a beam/joist around the south and east sides of the stairwell. Nothing is shown on partial plan – area B on drawing 350-S-2202. Please confirm beams/joists are required here and what type.

**Response:** For the “beam” at the perimeter of stairs as highlighted below.

- for the east beam, refer to note on section M on 350-S-3005 which notes to include 8” conc rib between joists at stair opening.
- for south edge, the majority is a concrete wall with an opening at the man door at grade. Typical wall reinforcement is acceptable above door opening.



6. **Question:** Due to the current market conditions, lead times for certain materials are taking longer when compared to recent projects. Please consider providing an Administrative Notice to Proceed period of 120 days prior to the contractual NTP to allow for long lead procurement to begin without affecting the overall schedule.

**Response:** The project duration was increased from 18 to 24 months prior to the advertisement for bids to account for the increased lead times in submittals and deliveries. The City has signed a procurement contract with Wigen, the Membrane Equipment Supplier, to allow them to get a head start on their scope of supply. Additionally, we anticipate that there is flexibility in determining the contractual NTP date that will provide 30-60 days of time between Contract signatures and establishing the contractual NTP date.

7. Question:

|  |  |  |
|--|--|--|
| <p>Sheet 341 of 370<br/>950-A-5008</p> |  | <p>Can you please confirm this roofing component (i.e. gutter leaf guard)?</p> <p>NOTE: MOUNT CANOPY 12" ABOVE DOOR HEAD ROUGH OPENING. SEE ROOF PLAN FOR CANOPY LENGTH.</p> <p>9/4" TYP</p> <p>What is this component?</p> <p>SCULPTED EAVE TRIM</p> <p>CAP TRIM</p> <p>ROOF PANEL</p> <p>HIGH EAVE TRIM</p> <p>SOFFIT PANEL</p> <p>JAMB TRIM</p> <p>HAT TRIM</p> <p>GUTTER</p> <p>DOWNSPOUT BEYOND</p> <p>DOOR CANOPY DETAIL<br/>NTS</p> <p>1334-194</p> <p>If applicable, can you provide product data on what is required?<br/>If applicable, does it apply to the entire building or just the canopies?</p> |
|--|--|--|

**Response:** Manufacturer’s standard gutter support bracket.

8. **Question:** Drawing 140 (350-S-2200) Keynotes: Several of the Sheet Keynotes are not shown on Sheet 140. If applicable, can you please indicate where Notes 5, 6, 10, 12 & 17 apply?

**Response:** Sheet keynotes listed on drawing 350-S-2200 are called out on sheets 350-S-2200 through 350-S-2204. Drawings 350-S-2201 through 350-S-2204 include a general note referring back to 350-S-2200 for general notes and keynotes.

9. **Question:** Chemical Storage Lean-To Roof Details: Can you please provide additional details regarding the Chemical Storage Lean-To Roof/Trim System?

1) Is the Roof Insulation System + Liner Panel the same?

**Response:** The Outdoor Chemical Bulk Storage Tank Area canopy is similar to the door canopies (Drawing 950-A-5008, Detail 1334-194). There are ceiling/soffit liner panels with no insulation.

2) Is the Wall Insulation System + Liner Panel the same?

**Response:** No, there are no wall panels at the Outdoor Chemical Bulk Storage Tank Area canopy.

3) If not, how much of roof girder is wrapped with trim stock (what are limits of trim)?

**Response:** Manufacturer’s standard rake trim shall be installed on east and west side of canopy and eave trim and gutter installed on south side of canopy.

**10. Question:** Louver Schedule: Can you provide dimensions for louver 350-LV6 (not on schedule) from Sheet 181 West Elevation?

**Response:** 3'-2" W x 2'-2" H.

**11. Question:** Building & Lean-To Eave Heights: Can you confirm the Process Building Eave Height is 830.00? Building scales from 26'-0" and 26'-6" from the 1st floor. Can you confirm the Chemical Storage Lean-To Eave Height is 823.33?

**Response:** The eave heights depend on manufacturer's final design based on required depth of main frames. The minimum interior clear height of the building main frame is 21'-0" from the first floor level (825.00'). The minimum interior clear height of the Outdoor Chemical Bulk Storage Tank Area canopy main frame is 18'-0" from the first floor level (822.00').

**12. Question:** Specification Section 04 21 13.13 Masonry Veneer. Paragraph 2.08.A.2 references dovetail slots at the concrete wall behind masonry veneer. What spacing is required for the dovetail slots?

**Response:** Horizontal veneer anchoring is 16" (3.03, C, 4, b, 2)

**13. Question:** Drawings 350-S-2003, 350-S-3002, and 350-S-3004. The chemical containment area at the lower left on 350-S-2003, shown in section on 350-S-3002 and 350-S-3004, shows raised concrete equipment pads.

a. How tall are the raised equipment pads in the chemical containment area?

**Response:** Elevation of pads noted on 350-S-2103

b. How thick are the raised equipment pad slabs?

**Response:** Refer to detail 0330-058

c. With what are the cavities in the raised equipment pads filled?

**Response:** Refer to detail 0330-058

**14. Question:** Specification 03 64 23. I have been unable to ascertain where the epoxy resin injection grouting is to be applied or a quantity of same to be included in our bid. Please provide this missing information.

**Response:** Locations for the need/installation of this product are dependent on quality of contractor work. Repair locations are expected to be for cracks/leaks in new concrete.

**15. Question:** The drawings indicate that the 50" Ventilator on top of the clearwell to be stainless steel. The specification indicates that the Ventilator be fabricated from fiberglass. Please confirm which material should be used.

**Response:** Stainless steel or fiberglass ventilators are acceptable. See Addendum No. 8 – MODIFICATIONS – SPECIFICATIONS and MODIFICATIONS – DRAWINGS.

**16. Question:** The Typical Wall Detail on Drawing 400-C-5001 has a dimension on the clearwell floor thickness of 6". Paragraph 1.06.E.1 of Specification 33 16 13.15 states that concrete membrane floors shall be a minimum of 4 inches thick. Please confirm that 4" thickness is acceptable.

**Response:** 6” min floor thickness is required. See Addendum No. 8 – MODIFICATIONS – SPECIFICATIONS.

- 17. Question:** Detail 3316-133 on Drawing 400-C-5002 shows the clearwell roof hatch with a 6' clear opening and an embedded separate smaller hinged manway. Paragraph 2.10.M of Specification 33 16 13.15 states the hatch opening shall be a minimum 76 inches, but does not mention the separate hinged manway. Please confirm whether the hatch drawing detail or the specification description is preferred.

**Response:** A 72” minimum opening is required. See Addendum No. 8 – MODIFICATIONS – SPECIFICATIONS.

- 18. Question:** In Addendum 7, the response provided to Question 10 stated butt welded fittings are acceptable for SS pipe in accordance with 40 27 00.08, which is the 316 SS pipe specification. However, according to the pipe schedule in 47 27 00, all the SS pipe on the project is Type 304L SS in accordance with 40 27 00.07. Please confirm the response to Question 10 in Addendum 7 was a typographical error, and the stainless steel pipe on the project is per specification 40 27 00.07, 304 SS.

**Response:** Yes, the specification referenced in the answer to Addendum No. 7 – Question 10 was in error. The UF Feed piping is 304L SS in accordance with 40 27 00 Piping Schedule and 40 27 00.07. Butt welded fittings are acceptable for SS pipe in accordance with 40 27 00.07. See Addendum No. 8 – MODIFICATIONS – SPECIFICATIONS.

- 19. Question:** Drawing 070-N-6019 shows a W2 pipeline which has new water softeners, and then feeds out to three chemical storage tanks.

- a. What is the source of this W2 line? It is marked as “FROM PROCESS WATER” but we could not find this connection point on the process nor the plumbing drawings.

**Response:** This W2 line is fed from the softened water plumbing line shown on 350-P-1004. The control valves (43FV0301/0302) on this piping are shown on 350-D-2003, 350-D-2008, and 350-D-3003. See Addendum No. 8 – MODIFICATIONS – DRAWINGS.

- b. Is the water softener system 43WSF0101 the same water softener system shown on the plumbing drawings? We could not locate any other references to “43WSF0101” in the project drawings or the specifications. If this is a stand-alone water softener system, please provide specifications and identify the location on the drawings.

**Response:** Yes, 43WSF0101 supplies the softened water to the chemical storage tanks. See Addendum No. 8 – MODIFICATIONS – DRAWINGS.

- c. Are these lines feeding the chemical storage tanks and CIP tank to branch off the 4” NPW shown on 350-P-1004 and 350-P-2003?

**Response:** Yes.

- 20. Question:** Drawing 220-D-2001 indicates that there will be two tanks installed, one (1) tank for Sodium Permanganate and one (1) tank for Coagulant. However, specification section 43 40 02 does not have a supplement for the Sodium Permanganate tank, is the

Sodium Permanganate tank existing? If not, please provide specification supplement for the Sodium Permanganate tank.

**Response:** The Sodium Permanganate Tank is currently on-site and will be installed by the Owner. Contractor will connect tank to metering pump and 40LT0201. See Addendum No. 8 – MODIFICATIONS – DRAWINGS.

## **MODIFICATIONS:**

### **CONTRACT DOCUMENTS**

The following specification section modifications are hereby made a part of the above referenced Project Contract Documents:

### **MEMBRANE FILTRATION SYSTEM PROCUREMENT AGREEMENT**

REPLACE the Agreement between Buyer and Seller for Procurement Contracts and Standard General Conditions for Procurement Contracts in Volume 4 -Appendix A (pages 71 to 99 of 854) with the attached.

### **SPECIFICATIONS**

The following specification section modifications are hereby made a part of the above referenced Project Contract Documents:

#### **Section 06 82 00 Glass-Fiber Reinforced Plastic**

ADD the attached section to the Project Documents.

#### **Section 33 16 13.15 Prestressed Concrete Tank with Steel Diaphragm**

Paragraph 1.06.E.1 CHANGE 4-inch to "6"inch".

Paragraph 2.10.M. CHANGE 76 inches in the second sentence to "72-inches".

Paragraph 2.10.N. ADD "or stainless steel" after fiberglass in the first and second sentences.

#### **Section 40 27 00.07 Type 304L Stainless Steel Pipe and Fittings**

Joints – CHANGE the Size 2" thru 6" to 2" & larger.

Fittings CHANGE the Size 3" thru 6" to 3" & larger.

Branch Connections - CHANGE the Size 2" thru 6" to 2" & larger.

### **DRAWINGS**

The following drawing modifications are hereby made a part of the above referenced Project Contract Documents:

**220-D-2001** – ADD the following note to the Sodium Permanganate Storage Tank

Sodium Permanganate Storage Tank will be provided and installed by Owner. Contractor to provide and connect ¾" feed piping and 40LE/LT0201.

**350-A-6002** – Window and Louver Schedule – ADD 350-LV6 to the schedule as follows:

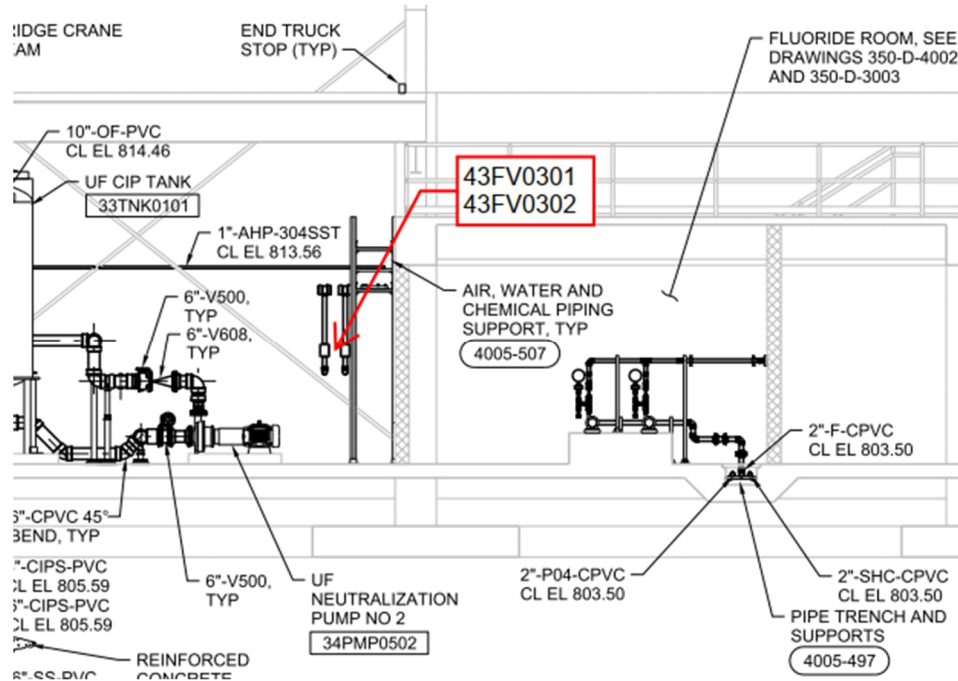
| No.     | Type  | Width | Height | Matl | Finish | Col | Head     | Jamb     | Sill     | Misc |
|---------|-------|-------|--------|------|--------|-----|----------|----------|----------|------|
| 350-LV6 | Fixed | 3'-2" | 2'-2"  | AL   | FCTY   | O-6 | 0890-003 | 0890-003 | 0890-004 |      |

**350-P-1003** – ADD label “43WSF0101” to the Water Softener System in Storage Room No. 2.

**350-D-2003** – CHANGE the labels on 40FV0301 and 40FV0302 to 43FV0301 and 43FV0302.

**350-D-2008** – CHANGE the labels on 40FV0301 and 40FV0302 to 43FV0301 and 43FV0302.

**350-D-3003** – Section F - ADD labels to 43FV0301 and 43FV0302 as shown below:



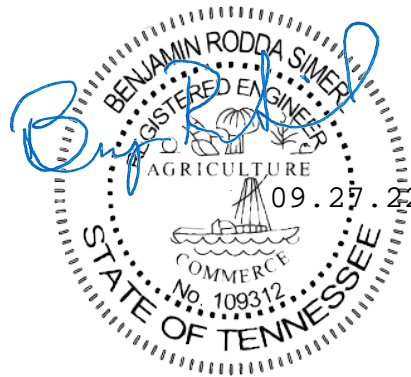
**400-C-5002** – Detail 3316-134 – DELETE “Stainless Steel” from the title of this detail.

This Addendum Number Eight (8) is issued this the 27<sup>th</sup> day of September 2022.

**Ben Simerl, P.E.**

**Jacobs**

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## SECTION 06 82 00

## GLASS-FIBER-REINFORCED PLASTIC

## PART 1 GENERAL

## 1.1 REFERENCES

- A. The following is a list of standards which may be referenced in this section:
1. ASTM International (ASTM):
    - a. C177, Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded Hot-Plate Apparatus.
    - b. D570, Standard Test Method for Water Absorption of Plastics.
    - c. D635, Standard Test Method for Rate of Burning and/or Extent and Time of Burning Plastics in a Horizontal Position.
    - d. D638, Standard Test Method for Tensile Properties of Plastics.
    - e. D695, Standard Test Method for Compressive Properties of Rigid Plastics.
    - f. D696, Standard Test Method for Coefficient of Linear Thermal Expansion of Plastics Between -30 Degrees C and 30 Degrees C.
    - g. D790, Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials.
    - h. D792, Standard Test Methods for Density and Specific Gravity (Relative Density) by Plastics Displacement.
    - i. D2344, Standard Test Method for Apparent Interlaminar Shear Strength of Parallel Fiber Composites by Short-Beam Method.
    - j. D2583, Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor.
    - k. E84, Standard Test Method for Surface Burning Characteristics of Building Materials.
  2. Building Officials and Code Administrators International (BOCA): National Building Code (NBC).
  3. International Conference of Building Officials (ICBO): Uniform Building Code (UBC).
  4. Occupational Safety and Health Act (OSHA): 29 CFR 19.10, Code of Federal Regulations.
  5. Southern Building Code Congress International (SBCCI): Standard Building Code (SBC).
  6. Underwriters' Laboratories, Inc. (UL): 94, UL Standard for Safety Test for Flammability of Plastic Materials for Parts in Devices and Appliances.

## 1.2 DESIGN REQUIREMENTS

- A. This section contains components and connectors that require Contractor design.



### 1.3 SUBMITTALS

- A. Action Submittals:
1. Shop Drawings:
    - a. Product Data: Catalog information and catalog cuts showing materials, design tasks, and showing load, span, and deflection; include manufacturer's specifications.
    - b. Grating: Show dimensions, weight, size, and location of connections to adjacent grating, supports, and other Work.
    - c. Grating Supports: Show dimensions, weight, size, location, and anchorage to supporting structure.
    - d. Stairs, Platforms, Stringers, Handrails, Ladders, and Support Structures:
      - 1) Show dimensions, weight, size, and location of connections to adjacent supports and other Work.
      - 2) Structural calculations for platforms, ladders and cages, handrails, and other fabrications shown.
  2. Samples: Each type of grating, handrail, and handrail connection.
- B. Informational Submittals:
1. Handling and storage requirements.
  2. Manufacturer's installation instructions.
  3. Factory test reports for physical properties of product.
    - a. Test data for handrails and supports may supplement load calculations providing data covers the complete system, including anchorage.
    - b. Test data for all components showing load and deflection due to load, in enough detail to prove handrail is strong enough and satisfies national, state, local standards, regulations, code requirements, and OSHA 29 CFR 19.10, using design loads specified.
    - c. Include test data for the following:
      - 1) Railing and post connections.
      - 2) Railing wall connections.
      - 3) Post and base connections.
      - 4) Railing expansion joint connections.
  4. Manufacturer's Certification of Compliance for specified products.
  5. Fabricator's qualification experience.
  6. Manufacturer's qualification experience.
  7. Independent laboratory test report, dated within 2 years of submittal date, of fire retardant testing conducted on exact type of grating proposed (not a resin test report).

### 1.4 QUALIFICATIONS

- A. Designer: Calculations required for Contractor design shall be stamped by a registered engineer, licensed in state where Project will be constructed.
- B. Fabricator: Minimum of 5 years' experience.
- C. Manufacturer: Minimum of 5 years' experience in manufacturing of products meeting these specifications.

## 1.5 DELIVERY, STORAGE, AND HANDLING

- A. Preparation for Shipment:
  - 1. Insofar as is practical, factory assemble items provided hereunder.
  - 2. Ladders shall be shipped fully shop-fabricated and assembled.
  - 3. Package and clearly tag parts and assemblies that are of necessity shipped unassembled in a manner that will protect materials from damage, and facilitate identification and final assembly in field.
- B. Storage and Handling: In accordance with manufacturer's recommendations and in such a manner as to prevent damage of any kind, including overexposure to sunlight.

## PART 2 PRODUCTS

### 2.1 GENERAL

- A. Like Items of Materials: Where possible, provide end products of one manufacturer in order to achieve standardization for appearance, maintenance, and replacement.
- B. Unless otherwise specified, all products shall be manufactured by a pultruded process using vinyl ester resin.
- C. Products shall be manufactured with ultra-violet (UV) inhibitor additives.
- D. Exterior surfaces shall have a synthetic surface veil covering.
- E. Furnish molded products as an option where permitted by specifications.
- F. Color pigment shall be dispersed in resin system.
- G. Fabricate FRP products exposed to outdoor conditions with an additional 1-mil thick UV coating to shield product from UV light.
- H. All cut ends, holes, and abrasions of FRP shapes shall be sealed with resin to prevent intrusion of moisture.

### 2.2 GRATING AND STAIR TREADS

- A. General:
  - 1. 100 psf minimum, unless otherwise shown.
  - 2. Maximum Deflection: 1/4 inch, unless otherwise shown.
  - 3. Stair Tread: 100 psf uniform load or concentrated load of 300 pounds on area of 4 square inches located in center of tread, whichever produces greater stress.
- B. Molded Type:
  - 1. Nonskid grit affixed to top of bar surface or a concave, meniscus top to all bars, providing skid resistance.
  - 2. Load bars in both directions with equal stiffness.
  - 3. Square mesh with 1-1/2-inch maximum spacing.

- C. Pultruded Type:
  1. Main bars joined by cross bars secured in holes drilled in main bars.
  2. Cross bars with 6-inch maximum spacing shall mechanically lock main bars in position such that they prevent movement.
  3. Intersections: Bond using adhesive as corrosive-resistant as pultrusion resin.
  4. Main Bar Ends: Minimum bearing support width of 1-1/2 inches.
  5. Skid-Resistant Surface: Grit adhesively bonded, manufacturer's standard.
  6. Provide extra stiffness around openings.
- D. Hold-Down Clamps: Same material as grating or Type 316 stainless steel.
- E. Bolts and Connectors:
  1. Corrosion-resistant FRP or Type 316 stainless steel.
  2. Size and strength to meet UBC requirements.
- F. Fabrications:
  1. Field measure areas to receive grating. Verify dimensions of new fabricated supports, and fabricate to dimension required for specified clearances.
  2. Section Length: Sufficient to prevent it falling through clear opening when oriented in span direction when one end is touching either concrete or vertical leg of grating support.
- G. Manufacturers:
  1. Fibergrate Composite Structures, Inc., Addison, TX.
  2. IKG/Borden, Clark, NJ.
  3. Strongwell Corp., Bristol Division, Bristol, VA or Chatfield Division, Chatfield, MN.
  4. International Grating, Inc., Houston, TX.

### 2.3 STRUCTURAL PLATFORMS

- A. Deflection and Safety Factors:
  1. Deflection Criteria: Not to exceed  $L/360$ .
  2. Safety Factors: Minimum ratios of ultimate stress to allowable static service stress:
    - a. Flexural Members: 2.5.
    - b. Compression Members: 3.0.
    - c. Shear: 3.0.
    - d. Connections: 4.0.
  3. Minimum design safety factors for dynamic or impact loads shall be twice the values for static service loads.
- B. Loads:
  1. 100 psf uniform live load over platform.
  2. Static and dynamic loads for equipment shown.
- C. Glass fiber reinforced polyester or vinyl ester resin matrix, approximately 50 percent resin-to-glass ratio.

- D. Continuous glass strand rovings shall be used internally for longitudinal strength.
- E. Continuous strand glass mats shall be used internally for transverse strength.
- F. Material Properties:

| Minimum Ultimate Coupon Properties (UN)                          |             |                                  |
|--|-------------|----------------------------------|
| Material Properties  | Test Method | Units                            |
| Pultruded Fiberglass Structural Shapes                           |             |                                  |
| Ultimate tensile stress in longitudinal direction, psi (MPa)     | ASTM D638   | 30,000 (207)                     |
| Ultimate compressive stress in longitudinal direction, psi (MPa) | ASTM D695   | 30,000 (207)                     |
| Ultimate flexural stress in longitudinal direction, psi (MPa)    | ASTM D790   | 30,000 (207)                     |
| Ultimate short beam shear in longitudinal direction, psi (MPa)   | ASTM D2344  | 4,500 (31)                       |
| Ultimate tensile stress in transverse direction, psi (MPa)       | ASTM D638   | 7,000 (48)                       |
| Ultimate compressive stress in transverse direction, psi (MPa)   | ASTM D695   | 15,000 (103)                     |
| Ultimate flexural stress in transverse direction, psi (MPa)      | ASTM D790   | 10,000 (69)                      |
| Density (lb/in. <sup>3</sup> ) (kg/mm <sup>3</sup> )             | ASTM D792   | 0.060-0.070<br>(0.00166-0.00194) |
| Water absorption (25-hr immersion)                               | ASTM D570   | 0.60 max,<br>% by weight         |
| Barcol hardness  | ASTM D2583  | 45                               |
| Coefficient of thermal expansion<br>10 <sup>-6</sup> in./in./° C | ASTM D696   |                                  |
| Expansion, LW10 <sup>-6</sup> in./in./° F                        |             | 4.4                              |
| Thermal conductivity,<br>Btu-in./ft <sup>2</sup> /hr/° F         | ASTM C177   |                                  |
| Flame-Retardant Properties                                       |             |                                  |
| Flammability test  | ASTM D635   | Self-extinguishing               |
| Surface burning characteristics                                  | ASTM E84    | 25 maximum                       |
| Flammability class   | UL 94       | VO                               |
| Temperature index  | UL 94       | 130 C                            |

- G. Manufacturers and Designers:
1. Strongwell Corp., Bristol, VA.
  2. Fibergate Composite Structures, Inc., Addison, TX.

## 2.4 HANDRAIL

- A. Structural Criteria:
1. Deflection: No permanent set in any member or connection when tested to design load.
  2. Apply load to produce maximum stress and deflection in each of the respective components.
  3. Top Rail and Posts of Handrails: Capable of withstanding the following load cases applied with a safety factor of 1.33:
    - a. Concentrated load of 200 pounds applied at any point and in any direction in accordance with ICBO UBC.
    - b. Concentrated load need not be assumed to act concurrently with uniform loads in accordance with ICBO UBC.
  4. In-Fill Area of Railing Systems:
    - a. Capable of withstanding horizontal concentrated load of 200 pounds applied to 1 square foot at any point in the system including panels, intermediate rails, balusters, or other elements composing in-fill area.
    - b. Horizontal concentrated load need not be assumed to act concurrently with loads on top rails of handrails.
  5. Mid-Rails With Corner Returns: Withstand 300-pound concentrated vertical load applied at any point or direction without damage and loosening of fittings or attachment hardware.
  6. Concrete Anchors for Handrail Wall Brackets: Not to exceed ICBO UBC allowable loads for actual spacing, edge distance, and embedment, with assumed concrete strength of 4,000 psi.
  7. Concrete Anchors: In accordance with ICBO UBC allowable load values for size, length, embedment, spacing, and edge distance to match required loads shown in calculations.
  8. Connections, Mounts, Bases: Withstand all handrail loads without permanent set and with a safety factor of at least 1.65 against failure.
- B. Thermal Movement:
1. Allow for maximum range of ambient temperature change (difference between high or low and installation temperature).
  2. Base design on actual surface temperatures of materials due to both solar heat gain and night time sky heat loss.
  3. Temperature Change Range: 70 degrees F, ambient; 100 degrees F, material surfaces.
- C. Rails and Posts:
1. 2-inch nominal square or round tubing posts.
  2. 1-3/4- or 2-inch nominal round or square rails.
  3. Clearance between Rails: 11-1/2 inches.
- D. Kickplates: Corrugated, 4 inches by 1/2 inch by 0.125 inch thick or 4 inches by 9/16 inch thick at handrail locations.
- E. Kickplate Connectors and Splices: Continuous with provision for expansion and contraction without distortion or buckling.

F. Connections, Mounts, Bases: Fiberglass or Type 316 stainless steel.

G. Pultruded Parts:

| Minimum Mechanical Properties    | Test Method  | Values                                  |
|----------------------------------|--------------|---|
| Tensile Stress                   | ASTM D638    | 30,000 psi                              |
| Tensile Modulus                  | ASTM D638    | 2.5 x 10 <sup>6</sup> psi               |
| Compressive Stress               | ASTM D695    | 30,000 psi                              |
| Compressive Modulus              | ASTM D695    | 2.5 x 10 <sup>6</sup> psi               |
| Flexural Stress                  | ASTM D790    | 30,000 psi                              |
| Flexural Modulus                 | ASTM D790    | 1.6 x 10 <sup>6</sup> psi               |
| Shear Stress                     | ASTM D2344   | 4,500 psi                               |
| Density                          | ASTM D792    | 0.060-0.070 lbs/in. <sup>3</sup>        |
| 24-Hour Water Absorption         | ASTM D570    | 0.6% max.                               |
| Coefficient of Thermal Expansion | ASTM D696    | 4.4 x 10 <sup>-6</sup> in./in./degree F |
| Flexural Stress                  | Full Section | 36,000 psi                              |
| Flexural Modulus                 | Full Section | 3.7 x 10 <sup>6</sup> psi               |

H. Manufacturers:

1. Strongwell Corp., Bristol, VA.
2. Fibergrate Composite Structures, Inc., Addison, TX.

## 2.5 LADDERS AND CAGES

A. Ladder Criteria:

1. Capable of supporting a 250-pound concentrated load plus 30 percent impact at midspan of rung.
2. Side Rails: 1-3/4-inch square tubes, 0.25 inch thick.
3. Rungs: Minimum 1-inch diameter thermal cure rod with pigmented epoxy, nonskid grit surface, or 1-1/4-inch minimum diameter pultruded, fluted, nonslip surface of vinyl ester resin.

B. Cage Criteria:

1. Capable of withstanding a 200-pound load in any direction at any location without permanent distortion.
2. Top and Bottom Hoops: 3-inch minimum width by 1/4-inch minimum thickness.
3. Intermediate Hoops: 2-inch minimum width by 1/4-inch minimum thickness.
4. Hoops manufactured by open-mold hand layup process.
5. Vertical Connecting Straps to Hoops:
  - a. 2-inch-wide by 3/16-inch-thick or 2-inch-wide by 9/16-inch pultruded channels.
  - b. Maximum Spacing: 9 inches.
6. Maximum Vertical Distance Between Hoops: 3 feet 6 inches.

C. Manufacturers:

1. Strongwell Corp., Bristol, VA.
2. Fibergrate Composite Structures, Inc., Addison, TX.

### PART 3 EXECUTION

#### 3.1 GENERAL

- A. Install in accordance with manufacturer's written instructions.
- B. Install plumb or level, rigid and neat, as applicable.
- C. Furnish fasteners and anchorages for complete installation.
- D. Seal field cut holes, edges, and abrasions with catalyzed resin compatible with original resin.

#### 3.2 GRATING

- A. Anchor grating securely to supports to prevent displacement.
- B. Install each grating section such that it is easily removable.
- C. Clearance (Grating to Vertical Surfaces): 1/4 inch (plus or minus 1/8-inch tolerance).

#### 3.3 HANDRAIL

- A. Provide and install expansion and contraction connections as shown on approved Shop Drawings.

#### 3.4 STRUCTURAL SHAPES

- A. Connect parts with approved connectors meeting manufacturer's design requirements and with corrosion resistance equal to structural shapes.
- B. Provide supports and bracings required to comply with applicable codes and design requirements.

#### 3.5 LADDERS AND CAGES

- A. Epoxy and rivet joints and rungs.
- B. Attach hoops to maintain full width clearance between rails, full height of ladder.

END OF SECTION

# AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACTS

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

*and*

*Issued and Published Jointly By*



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TABLE OF ARTICLES

| <u>Article</u>                   | <u>Article No.</u> |
|----------------------------------|--------------------|
| Goods and Special Services ..... | 1                  |
| The Project.....                 | 2                  |
| Engineer .....                   | 3                  |
| Point of Destination.....        | 4                  |
| Contract Times.....              | 5                  |
| Contract Price .....             | 6                  |
| Payment Procedures .....         | 7                  |
| Interest.....                    | 8                  |
| Seller's Representations .....   | 9                  |
| Contract Documents.....          | 10                 |
| Miscellaneous .....              | 11                 |

## **AGREEMENT**

THIS AGREEMENT is between the City of Oak Ridge, Tennessee (“Buyer”) and Wigen Water Technologies, (“Seller”).

Buyer and Seller, in consideration of the mutual covenants set forth herein, agree as follows:

### **ARTICLE 1 - GOODS AND SPECIAL SERVICES**

1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents. The Goods and Special Services to be furnished are described in Article 10 of this Agreement.

### **ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Goods and Special Services to be provided under the Contract Documents may be the whole or only a part is generally described as follows: *Membrane Filtration System*.

### **ARTICLE 3 - ENGINEER**

3.01 The Contract Documents for the Goods and Special Services have been prepared by Jacobs Engineering Group, Inc. who is hereinafter called Engineer and who is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the furnishing of Goods and Special Services.

### **ARTICLE 4 - POINT OF DESTINATION**

4.01 The place where the Goods are to be delivered is defined in the General Conditions as the Point of Destination and is designated as: *proposed City of Oak Ridge Membrane Water Treatment Plant, 100 Woodbury Lane, Oak Ridge, Tennessee, 37830*.

### **ARTICLE 5 - CONTRACT TIMES**

#### 5.01 *Time of the Essence*

A. All time limits for Milestones, if any, the delivery of Goods and the furnishing of Special Services as stated in the Contract Documents are of the essence of the Contract.

#### 5.02 *Days for Submittal of Shop Drawings*

A. All Shop Drawings and Samples required by the Contract Documents shall be submitted to the Buyer for Buyer’s and for Engineer’s review and approval in a timely manner to be coordinated with the Buyer and the Water Treatment Plant Construction General Contractor.

B. Within 21 days of receipt from the Seller,

1. Buyer shall review, approve, and forward the Shop Drawings to the Engineer for review, or
2. Buyer shall review, disapprove and return the Shop Drawings to the Seller for resubmittal.

C. Buyer shall return Shop Drawings to the Seller within 7 days of receipt of reviewed Shop Drawings from the Engineer.

#### 5.03 *Date for Delivery of Goods*

A. The Goods are to be delivered to the Point of Destination and ready for Buyer’s receipt of delivery in a timely manner to be coordinated with the Buyer and the Water Treatment Plant Construction General Contractor.

B. The cumulative amount of time allowed to the Seller for the preparation of approval Shop Drawings and Delivery of Goods shall not exceed 400 days. Unused time under one paragraph may be used to supplement the allowable time under the other paragraph.

## **ARTICLE 6 - CONTRACT PRICE**

6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds as follows:

6.02 Proposer will furnish the Goods and Special Services in accordance with these Contract Documents for the following price(s), which do not include sales tax:

\$4,338,000.00 TOTAL Lump Sum

6.03 Seller agrees that the prices in this Article 6 are based on the condition that shipment of goods may be delayed by the Buyer until a mutually agreeable date, if such storage becomes necessary.

6.04 To the extent permitted by Tennessee law, Seller's total liability under is limited to the purchase price paid by Buyer to Seller.

## **ARTICLE 7 - PAYMENT PROCEDURES**

7.01 *Submittal and Processing of Payments.*

A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by the Buyer and Engineer as provided in the General Conditions.

7.02 *Progress Payment; Retainage.*

A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:

1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions an amount equal to the cost of Shop Drawing preparation and cost of manufacturing of Goods, less any amounts retained by the Owner from the Buyer and less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

2. Upon receipt of the second and subsequent such Application for Payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller by the amount of the costs for Special Services performed to date, less any amounts retained by the Owner from the Buyer and less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

3. Progress Payments:

- a. Submittal of Design Documentation to contractor: 15%
- b. Membrane milestone payment: \$250,000
- c. Delivery of modules to site: \$1,050,000
- d. Delivery of Equipment to site: 90% of contract balance (minus retainage)
- e. Start-Up and Commissioning of Equipment: 95% of contract balance
- f. System acceptance: 100% of contract balance

7.03 *Final Payment*

A. Upon final completion of the delivery of the Goods and performance of all Special Services and upon receipt of the final Application for Payment in accordance with Paragraph 10.06 of the General Conditions, Buyer shall pay the remainder of the Contract Price, including retainage.

## **ARTICLE 8 - INTEREST**

8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the rate of six percent per annum.

## **ARTICLE 9 - SELLER'S REPRESENTATIONS**

9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:

A. Seller has examined and carefully studied the Contract Documents and the other related data.

B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.

C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.

D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.

E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.

F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

## **ARTICLE 10 - CONTRACT DOCUMENTS**

10.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement;

2. General Conditions;

3. Exhibits to this Agreement (enumerated as follows):

a. City of Oak Ridge – Oak Ridge Water Treatment Plant, Membrane Filtration System – Request for Proposals, including Appendices A-N and Addenda 1 and 2.

b. Seller's Proposal - OAK RIDGE WATER TREATMENT PLANT REQUEST FOR PROPOSALS FOR ULTRAFILTRATION SYSTEM", Dated 12/21/2017

c. Seller's Quotation – Updating proposal pricing, Dated 8/11/2022.

4. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Written Amendment(s);

b. Change Order(s);

c. Field Order(s);

d. Engineer's Written Interpretation(s).

B. The documents listed in paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 10.

D. The Contract Documents may only be amended or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 11 - MISCELLANEOUS**

### 11.01 *Defined Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

### 11.02 *Assignment*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the Engineer and the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 11.03 *Successors and Assigns*

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

### 11.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 11.05 *Bonds*

A. Performance Bonds and Payment Bonds are not required.

*[Remainder of this page intentionally left blank. Signatures on the following page.]*

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement in duplicate. One counterpart each has been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

This Agreement will be effective on \_\_\_\_\_ .

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

By: \_\_\_\_\_  
[Corporate Seal]

By: \_\_\_\_\_  
[Corporate Seal]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Agent for service of process:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Designated Representative:

Designated Representative:

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

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

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

## ATTACHMENT A

### Specifications

| <u>Section</u> | <u>Title</u>   |
|----------------|--|
| 00 40 00       | Proposal Form for Procurement Contracts                                      |
| 00 52 00       | Agreement Between Buyer and Seller (to be completed after Proposal accepted) |
| 00 70 00       | General Conditions   |
| 01 21 26       | Equipment Allowances   |
| 01 33 23       | Shop Drawings, Product Data and Samples                                      |
| 01 42 00       | Codes and Standards  |
| 01 43 33       | Manufacturer Services  |
| 01 45 29       | Testing Laboratory Services  |
| 01 61 16       | General Equipment Stipulations   |
| 01 65 00       | Transportation and Handling  |
| 01 66 00       | Storage and Protection   |
| 01 74 00       | Cleaning and Waste Management  |
| 01 75 16       | Starting of Systems  |
| 01 78 23       | Operating and Maintenance Data   |
| 01 78 36       | Warranties and Bonds   |
| 01 78 39       | Project Record Documents   |
| 09 91 00       | Painting   |
| 26 05 53       | Electrical Identification  |
| 26 05 86       | Motors   |
| 26 24 19       | Low Voltage Motor Control Centers  |
| 26 29 23.13    | Adjustable Speed Drives  |
| 40 90 00       | Instrumentation & Controls   |
| 40 91 00       | Instrumentation Devices  |
| 40 94 43       | Programmable Logic Controllers   |
| 40 95 00       | Digital System Hardware  |
| 40 95 13       | Control Panels   |
| 40 96 00       | Digital System Software  |
| 43 00 00       | Minimum Process Equipment Requirements                                       |

### Drawings

| <u>Number</u> | <u>Title</u>                                |
|---------------|---|
| Figure 01     | Preliminary Water Treatment Plant Site Plan |
| Figure 02     | Preliminary Process Flow Diagram            |
| Figure 03     | Preliminary Hydraulic Profile               |



# STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

*Prepared by*

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**TABLE OF CONTENTS**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY 00700-5  
1.01 *Defined Terms*..... 00700-5  
1.02 *Terminology*..... 00700-6

ARTICLE 2 - PRELIMINARY MATTERS 00700-7  
2.01 *Delivery of Bonds*..... 00700-7  
2.02 *Copies of Documents*..... 00700-7  
2.03 *Commencement of Contract Times; Notice to Proceed*..... 00700-7  
2.04 *Designated Representatives*..... 00700-7  
2.05 *Before Starting Fabrication/Assembly of Goods*..... 00700-7  
2.06 *Progress Schedule*..... 00700-7  
2.07 *Preliminary Conference* ..... 00700-7

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND AMENDING 00700-7  
3.01 *Intent* ..... 00700-8  
3.02 *Laws and Regulations, Standards, Specifications and Codes* ..... 00700-8  
3.03 *Reporting and Resolving Discrepancies*..... 00700-8  
3.04 *Amending and Clarifying Contract Documents* ..... 00700-8

ARTICLE 4 - BONDS AND INSURANCE 00700-8  
4.01 *Insurance*..... 00700-8

ARTICLE 5 - SELLER’S RESPONSIBILITIES 00700-10  
5.01 *Supervision and Superintendence* ..... 00700-10  
5.02 *Labor, Materials and Equipment* ..... 00700-10  
5.03 *Compliance with Laws and Regulations, Standards, Specifications and Codes* ..... 00700-10  
5.04 *Or Equals*..... 00700-10  
5.05 *Taxes* ..... 00700-10  
5.06 *Shop Drawings and Samples*..... 00700-10  
5.07 *Continuing Performance* ..... 00700-11  
5.08 *Seller’s Warranties and Guarantees* ..... 00700-11  
5.09 *Indemnification* ..... 00700-11

ARTICLE 6 - SHIPPING AND DELIVERY 00700-12  
6.01 *Shipping*..... 00700-12  
6.02 *Delivery*..... 00700-12  
6.03 *Risk of Loss*..... 00700-12

ARTICLE 7 - CHANGES: SCHEDULE AND DELAY 00700-12  
7.01 *Changes in the Goods and Special Services* ..... 00700-12  
7.02 *Changes in Laws and Regulations* ..... 00700-12  
7.03 *Changing Contract Price or Contract Times*..... 00700-13

ARTICLE 8 - BUYER’S RIGHTS 00700-13  
8.01 *Inspections and Testing* ..... 00700-13  
8.02 *Non-Conforming Goods or Special Services* ..... 00700-14  
8.03 *Correction Period* ..... 00700-14

ARTICLE 9 - ROLE OF ENGINEER..... 00700-14  
9.01 *Duties and Responsibilities*..... 00700-14  
9.02 *Clarifications and Interpretations*..... 00700-14  
9.03 *Authorized Variations*..... 00700-15

|  |  |          |
|--|--|----------|
| 9.04   | <i>Rejecting Non-Conforming Goods and Special Services</i> ..... | 00700-15 |
| 9.05   | <i>Decisions on Requirements of Contract Documents</i> .....     | 00700-15 |
| 9.06   | <i>Claims and Disputes</i> .....                                 | 00700-15 |
| <br>   |  |          |
| ARTICLE 10 - PAYMENT                                   | 00700-15   |          |
| 10.01  | <i>Applications for Progress Payments</i> .....                  | 00700-15 |
| 10.02  | <i>Amount and Timing of Progress Payments</i> .....              | 00700-16 |
| 10.03  | <i>Suspension of or Reduction in Payment</i> .....               | 00700-16 |
| 10.04  | <i>Final Application for Payment</i> .....                       | 00700-16 |
| 10.05  | <i>Final Payment</i> .....                                       | 00700-16 |
| 10.06  | <i>Waiver of Claims</i> .....                                    | 00700-16 |
| <br>   |  |          |
| ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION | 00700-16   |          |
| 11.01  | <i>Cancellation</i> .....  | 00700-16 |
| 11.02  | <i>Suspension of Performance by Buyer</i> .....                  | 00700-17 |
| 11.03  | <i>Suspension of Performance by Seller</i> .....                 | 00700-17 |
| 11.04  | <i>Breach and Termination</i> .....                              | 00700-17 |
| <br>   |  |          |
| ARTICLE 12 - LICENSES AND FEES                         | 00700-17   |          |
| 12.01  | <i>Intellectual Property and License Fees</i> .....              | 00700-17 |
| 12.02  | <i>Seller's Infringement</i> .....                               | 00700-18 |
| 12.03  | <i>Buyer's Infringement</i> .....                                | 00700-18 |
| 12.04  | <i>Reuse of Documents</i> .....                                  | 00700-18 |
| <br>   |  |          |
| ARTICLE 13 - DISPUTE RESOLUTION                        | 00700-18   |          |
| 13.01  | <i>Dispute Resolution Method</i> .....                           | 00700-18 |
| <br>   |  |          |
| ARTICLE 14 - MISCELLANEOUS                             | 00700-19   |          |
| 14.01  | <i>Giving Notice</i> .....                                       | 00700-19 |
| 14.02  | <i>Controlling Law</i> .....                                     | 00700-19 |
| 14.03  | <i>Computation of Time</i> .....                                 | 00700-19 |
| 14.04  | <i>Cumulative Remedies</i> .....                                 | 00700-19 |
| 14.05  | <i>Survival of Obligations</i> .....                             | 00700-19 |

## EJCDC STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

### ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

#### 1.01 *Defined Terms*

A. Whenever used in the Proposal Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Those written or graphic instruments issued prior to the opening of Proposals in accordance with the Proposal Requirements which clarify or change the Proposal Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.

3. *Application for Payment*--The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.

4. *Proposal*--An offer submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.

5. *Proposer*--A person who submits a Proposal directly to Buyer.

6. *Proposal Documents*--The Request for Proposal and the proposed Contract Documents (including all Addenda).

7. *Proposal Requirements*--The Request for Proposals, Proposal Form, and any supplements.

8. *Buyer*--The person, public entity, or successful Bidder for the general construction Project purchasing the Goods and Special Services.

9. *Change Order*--A document recommended by Engineer which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A written demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract.

11. *Contract*--The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--Those items listed in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Unless specifically stated to the contrary in the Agreement, files in electronic media format of text, data, graphics, and the like are not Contract Documents, and may not be relied on by Buyer or Seller. Approved Shop Drawings and other Seller's submittals are not Contract Documents.

13. *Contract Price*--The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.

14. *Contract Times*--The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.

15. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, intent, and character of the Goods and Special Services to be furnished by Seller.

16. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

17. *Engineer*--The person designated as such in the Agreement.

18. *Field Order*--A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.

19. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

20. *Goods*--The tangible and movable personal property that is described in the Contract Documents,

regardless of whether the property is to be later attached to realty.

21. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

22. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.

23. *Point of Destination*--The specific address of the location where delivery of the Goods shall be made as stated in the Agreement.

24. *Project*--The total undertaking of which the Goods and Special Services to be provided under the Contract are a part.

25. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods or Special Services will be judged.

26. *Seller*--The person furnishing the Goods and Special Services.

27. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods or Special Services.

28. *Special Services*--Services associated with the Goods to be furnished by Seller as required by the Contract Documents.

29. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative details applicable thereto.

30. *Successful Proposer*--The responsible Proposer submitting a responsive Proposal which is in the best interest of the Owner as determined by the Owner, to whom Buyer makes an award.

34. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

35. *Written Amendment*--A written statement modifying the Contract Documents, signed by Buyer and Seller on or after the Effective Date of the Agreement and normally dealing with the administrative aspects of the Contract Documents.

## 1.02 Terminology

### A. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods or Special Services. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Goods or Special Services for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.

2. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

3. The word "non-conforming" when modifying the words "Goods" or "Special Services", refers to Goods or Special Services that fail to conform to the Contract Documents.

4. The word "receipt" when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.

### B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 2 - PRELIMINARY MATTERS**

### *2.01 Delivery of Bonds*

A. When Seller delivers the executed Agreements to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish. Bonds, if any, will be identified in the Agreement.

### *2.02 Copies of Documents*

A. Engineer shall furnish Seller up to one copy of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

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

A. The Contract Times will commence to run on the Effective Date of the Agreement

### *2.04 Designated Representatives*

A. Buyer and Seller shall each designate its representative at the time the Agreement is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

### *2.05 Before Starting Fabrication/Assembly of Goods*

A. *Seller's Review of Contract Documents:* Before commencing performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent requirements therein and, if specified, all applicable field measurements. Seller shall promptly report in writing to Buyer and Engineer any conflict, error, ambiguity or discrepancy which Seller may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any work affected thereby.

### *2.06 Progress Schedule*

A. Within 10 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, milestones, Contract Times, stages of the work, Shop Drawing and Sample submittal dates, review times, and fabrication times, tests, and deliveries as required by the Contract Documents.

B. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the submittals, tests, deliveries to completion within the specified Milestones and the Contract Times and it allows

adequate review times for submittals (including resubmittals). Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

### *2.07 Preliminary Conference*

A. Within 20 days after the Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A., procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

## **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND AMENDING**

### *3.01 Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. In resolving inconsistencies among two or more components of the Contract Documents, precedence shall be given in the following order:

- 3.01.A.1. Written Amendments
- 3.01.A.2. Change Orders
- 3.01.A.3. Work Change Directives
- 3.01.A.4. ENGINEER's written interpretations and clarifications
- 3.01.A.5. Addenda
- 3.01.A.7. Agreement
- 3.01.A.8. General Conditions
- 3.01.A.9. Specifications Division 01
- 3.01.A.10. Specifications Division 02 – 17
- 3.01.A.11. Drawings
- 3.01.A.12. Proposal
- 3.01.A.13. Seller's updated quotation dated August 11, 2022

Figure dimensions on Drawings will take precedence over scale dimensions. Detailed Drawings will take precedence over general Drawings.

B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided, whether or not specifically called for, at no additional cost to Buyer.

C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

### 3.02 *Laws and Regulations, Standards, Specifications and Codes*

A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Proposals (or on the Effective Date of the Agreement if there were no Proposals), except as may be otherwise specifically stated in the Contract Documents.

B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Buyer or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Buyer or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Seller's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies: If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract or of any standard, specification, manual or code, or of any instruction of any supplier, Seller shall promptly report it to Buyer in writing for Engineer's review. Seller shall not proceed with the furnishing of the Goods or Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued. Seller shall not be liable to Buyer or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Seller knew or reasonably should have known thereof.

B. Resolving Discrepancies: Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Amending and Clarifying Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods or Special Services or to modify the terms and conditions thereof by a Written Amendment or a Change Order.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Goods or Special Services not affecting Contract Price or Contract Times may be authorized, by a Field Order or Engineer's written interpretation or clarification.

## **ARTICLE 4 - BONDS AND INSURANCE**

### 4.01 *Insurance*

A. Seller shall provide insurance of the types and coverages and in the amounts stipulated here within.

B. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and Special Services and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Contract Documents, whether the furnishing of Goods or Special Service, or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods or Special Services, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;



4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. 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.

C. The policies of insurance so required by this Paragraph 4.02 to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 4.02.B.3 through 4.02.B.6.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Owner, Engineer, their consultants all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 5.09 and 12.02.

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Buyer and Seller and to each other additional insured identified in these Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Seller pursuant to Paragraph 4.02.E will so provide);

6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 8.03; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).

D. The limits of liability for the insurance required by Paragraph 4.02.B shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers Compensation: Statutory

2. Seller's General Liability under Paragraphs 4.02.B.3 through B.6 which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

|  |                |
|--|----------------|
| a. General Aggregate                                   | \$1,000,000.00 |
| b. Products – Completed Operations Aggregate           | \$1,000,000.00 |
| c. Personal and Advertising Injury                     | \$1,000,000.00 |
| d. Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000.00 |

3. Automobile Liabilities:

|                             |                |
|-----------------------------|----------------|
| a. Bodily Injury:           |                |
| Each person                 | \$1,000,000.00 |
| Each Accident               | \$1,000,000.00 |
| b. Property Damage:         |                |
| Each Accident               | \$1,000,000.00 |
| c. Combined Single Limit of | \$1,000,000.00 |

4. The Contractual Liability coverage shall provide coverage for not less than the following amounts:

|                     |                |
|---------------------|----------------|
| a. Bodily Injury:   |                |
| Each Accident       | \$1,000,000.00 |
| Annual Aggregate    | \$1,000,000.00 |
| b. Property Damage: |                |
| Each Accident       | \$1,000,000.00 |
| Annual Aggregate    | \$1,000,000.00 |

E. Seller shall deliver to Buyer, with copies to each additional insured identified in these Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.

F. If Buyer has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained on the basis of non-conformance with the Contract Documents, Buyer shall notify Seller in writing within 10 days after receipt of the certificates or other evidence required by Paragraph 4.02.E. Seller shall provide such additional insurance.

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

### *5.01 Supervision and Superintendence*

A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations. Seller shall be responsible to see that the completed Goods and Special Services conform to the Contract Documents.

### *5.02 Labor, Materials and Equipment*

A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.

B. All equipment, products and material incorporated into the Goods shall be as specified, or if not specified, shall be new, of good quality and protected, assembled, used, connected, applied, cleaned and conditioned in accordance with the original manufacturer's instructions, except as otherwise may be provided in the Contract Documents.

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

A. Seller shall comply with all Laws and Regulations applicable to the furnishing of the Goods and Special Services.

### *5.04 Taxes*

A. *Buyer shall be responsible for all sales and use taxes arising out of the purchase of the Goods and the furnishing of Special Services.*

### *5.05 Shop Drawings and Samples*

A. Seller shall submit Shop Drawings and Samples to Buyer for Buyer's and Engineer's review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Buyer and Engineer the services, materials, and equipment Seller proposes to provide.

B. Where a Shop Drawing or Sample is required by the Contract Documents, any related work performed prior to Buyer's and Engineer's approval of the pertinent submittal will be at the sole expense and responsibility of Seller.

### C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:

a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and

b. that all materials are suitable with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.

2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.

3. Each submittal shall include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.

4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

### D. Engineer's Review

1. Engineer will review and approve or disapprove Shop Drawings and Samples. ENGINEER's review and approval or disapproval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's approval or disapproval of Shop Drawings or Samples will be subject to the standard of Paragraph 1.02.A.1. Engineer's approval or disapproval will not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has in writing called Engineer's

attention to each such variation at the time of each submittal as required by Paragraph 5.06.C.1. and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval.

E. Resubmittal Procedures

1. Seller shall make corrections required by Buyer and Engineer and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.

5.06 *Continuing Performance*

A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A. and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement. Notwithstanding the above, in the event Seller is not able to timely secure materials /product due to no fault of its own, the parties agree to adjust the time for Seller's performance. Further, Seller shall not be liable for project delays in the event Buyer or Owner is unable/unwilling to accept Goods at the scheduled times or Buyer/Owner is unprepared/unwilling to commence commissioning or does not commence commissioning at agreed upon times

B. Seller shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Buyer. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

5.07 *Seller's Warranties and Guarantees*

A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance.

B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Contract Documents, including any Samples approved by Buyer and Engineer, and the Goods will be of merchantable quality. Buyer and Engineer shall be entitled to rely on representation of Seller's written warranty and guarantee.

C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, improper modification or improper maintenance or operation by persons other than Seller, or
2. normal wear and tear under normal usage.

D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Goods or Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:

1. observations by Buyer or Engineer;
2. recommendation by Engineer or payment by Buyer of any progress or final payment;
3. use of the Goods by Buyer;
4. any acceptance by Buyer (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
5. the issuance of a notice of acceptance by Buyer pursuant to the provisions of Article 8;
6. any inspection, test or approval by others; or
7. any correction of non-conforming Goods or Special Services by Buyer.

E. Buyer shall within a reasonable time notify Seller of any breach of Seller's warranties or guarantees. If Buyer receives notice of a suit or claim as a result of such breach, Buyer also may give Seller notice in writing to defend such suit or claim. If Seller fails to defend such suit or claim, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit.

5.08 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations of the State of Tennessee, Seller shall indemnify and hold harmless Buyer, and their officers, directors, shareholders, partners, employees, agents, consultants, contractors and subcontractors from any and all claims, costs, losses, and demands or judgments for damages for claims (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of a negligent act or omission or the breach of any obligation under this Contract by Seller, or its officers, directors, shareholders, partners, employees, agents, consultants, contractors or subcontractors, or anyone for whom Seller is responsible, but only to the extent that any such claim, cost, loss, or damage;

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property

(other than the Goods or Special Services themselves), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of Seller or any individual or entity directly or indirectly employed to furnish any of the Goods or Special Services or anyone for whose acts Seller may be liable.

B. The indemnification obligations of Seller under paragraph 5.09.A shall not extend to the liability of Buyer, Engineer and Engineer's consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

C. Notwithstanding anything to the contrary in these contract Documents, Seller shall not be liable to the Buyer for any economic consequential damages, including but not limited to loss of profits, lost production, or lost business opportunity.

## **ARTICLE 6 - SHIPPING AND DELIVERY**

### *6.01 Shipping*

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

### *6.02 Delivery*

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

B. Seller shall provide written notice to Buyer at least 15 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated hour of delivery.

C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.

D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times set forth in the Agreement, or another date agreed by Buyer and Seller.

E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

### *6.03 Risk of Loss*

A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.

B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods.

## **ARTICLE 7 - CHANGES: SCHEDULE AND DELAY**

### *7.01 Changes in the Goods and Special Services*

A. Buyer may at any time, without notice to any surety, make changes in the Contract Documents within the general scope of the Contract.

B. If any such change or action by Buyer affects the Contract Price or Contract Times, Seller shall notify Buyer within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Buyer within 30 days after such occurrence. If Seller fails to do so, Seller waives any Claim for such adjustment.

C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments.

### *7.02 Changes in Laws and Regulations*

A. Changes in Laws or Regulations which are not in effect and which are not known at the time of opening of Proposals (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of furnishing the Goods and Special Services shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.A.

B. Neither Buyer nor Seller shall be entitled to any damages arising from delays which are beyond the control of both Buyer and Seller, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts of war, acts of terrorism, direction by government authority, and other like matters.

### 7.03 *Changing Contract Price or Contract Times*

A. The Contract Price or Contract Times may only be changed by:

1. a Change Order;
2. a Written Amendment; or
3. a written unilateral order of Buyer, in which case Seller shall be entitled to an equitable adjustment in Contract Price or Contract Times for any reasonable and necessary costs or delays incurred by Seller to accommodate such a change.

B. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include fire, floods, epidemics, abnormal weather conditions, acts of God, acts of war, acts of terrorism, directions by government authority, and other like matters. If such an event occurs and delays Seller's performance, Seller shall notify Buyer in writing within 15 days of the beginning of the event causing the delay, stating the reason therefor.

C. Contract Times will not be modified for delays within the control of Seller, including transportation shortages or delays at Seller's facilities. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.

D. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.

## **ARTICLE 8 - BUYER'S RIGHTS**

### 8.01 *Inspections and Testing*

#### A. General

1. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.

2. Seller shall bear all expenses, except for travel, lodging and subsistence expenses of Buyer's representatives, for inspections and tests at Seller's facility, but Buyer shall be entitled to reimbursement from Seller of travel, lodging and subsistence expenses of Buyer's representatives if the Goods are non-conforming.

3. Buyer shall bear all expenses, except for travel, lodging and subsistence expenses of Seller's representatives, for inspections and tests at the Point of Destination, but Buyer shall be entitled to reimbursement from Seller for Buyer's expenses for reinspection or retesting if, on the basis of an initial inspection or testing, the Goods are determined to be non-conforming.

4. Seller shall provide Buyer 30 days written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.

5. Buyer will give Seller timely notice of all specified tests, inspections and approvals of the Goods which are to be conducted at the Point of Destination.

6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.

7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Contract.

#### B. Inspection on Delivery

1. Buyer 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. Such inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.

2. Within ten days of such inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming.

3. If, on the basis of the inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.

#### C. Final Inspection

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, are functioning as intended, all Special Services are performed, the Project has completed all testing and is ready for final inspection, Buyer and Engineer will make a final inspection.

2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.

3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

#### 8.02 *Non-Conforming Goods or Special Services*

A. If, on the basis of inspections and testing prior to delivery, the Goods appear to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, the Goods are non-conforming, Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods, or, if rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

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

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.

2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.

3. Upon rejection of the Goods, Buyer retains a security interest in the Goods or to the extent of any payments made and expenses incurred in their testing and inspection.

#### C. Remedying Non-Conforming Goods or Special Services

1. If Buyer elects to permit the Seller to modify the Goods to remove the non-conformance, Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.

2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.

#### D. Buyer's Acceptance of Non-Conforming Goods

1. Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.

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

#### 8.03 *Correction Period*

A. Seller's responsibility for correcting all non-conformities in the Goods will extend for a period of one year after final acceptance of the Project or 18 months after delivery of Goods, whichever is sooner, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

### **ARTICLE 9 - ROLE OF ENGINEER**

#### 9.01 *Duties and Responsibilities*

A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Contract Documents.

#### 9.02 *Clarifications and Interpretations*

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract

Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be binding on Buyer and Seller. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

### 9.03 *Authorized Variations*

A. Engineer may authorize minor deviations or variations in the Contract Documents by a Field Order.

### 9.04 *Rejecting Non-Conforming Goods and Special Services*

A. Engineer will have the authority to disapprove or reject Goods or Special Services which Engineer believes to be non-conforming.

### 9.05 *Decisions on Requirements of Contract Documents*

A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.

B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Buyer or Seller and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

### 9.06 *Claims and Disputes*

A. Notice: Written notice of each Claim, dispute or other matter relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within 30

days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. Any opposing data shall be submitted by the other party to ENGINEER within 30 days after receipt of the claimant's written notice unless ENGINEER allows an additional period of time.

B. Engineer's Decision: Engineer will render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, or dispute, or other matter will be final and binding upon Buyer and Seller unless:

1. an appeal from Engineer's decision is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13; or

2. if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by Buyer or Seller to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by Buyer and Seller), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If Engineer does not render a formal decision in writing within the time stated in Paragraph 9.06.B., a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

## **ARTICLE 10 - PAYMENT**

### 10.01 *Applications for Progress Payments*

A. Seller shall submit to Buyer Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.

1. The first Application for Payment may be submitted only after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice or other documentation satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that the Goods are free and clear of all liens. In the case of multiple deliveries of Goods, additional

Applications for Payment accompanied by the required documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.

2. Subsequent Applications for Payment may be submitted after subsequent portions of the work have been completed, such as submission of Operations and Maintenance Manuals, Installation of Goods, testing, and placement into operation.

#### 10.02 Amount and Timing of Progress Payments

A. The amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30-day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

#### 10.03 Suspension of or Reduction in Payment

A. Buyer may suspend or reduce the amount of progress payments, under the following circumstances:

1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents

Buyer has requested in writing assurances from Seller that the Goods or Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.

B. If Buyer refuses to make payment of the full amount requested, Buyer will provide Seller immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Within 10 days after receipt of Buyer's written notice, Engineer shall advise Buyer and Seller in writing whether Engineer agrees with Buyer's state reason for withholding payment. If Engineer rejects Buyer's stated reason, Buyer shall immediately pay Seller the amount withheld. If Engineer agrees Buyer's Stated reason, Buyer shall promptly pay Seller the withheld amount upon Seller correcting the reason for such action, to Buyer's satisfaction. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

#### 10.04 Final Application for Payment

A. After Seller has corrected all non-conformities, if any, to the satisfaction of Buyer and Engineer, furnished all Special Services, and delivered all documents required by the Contract Documents, Engineer will issue to Buyer a notice of acceptability. Seller may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Contract Documents, a list of all unsettled claims and such other data and information as Buyer or Engineer may reasonably require.

#### 10.05 Final Payment

A. If, on the basis of the review of the final Application for Payment and accompanying documentation, Engineer is satisfied that the Goods and Special Services have been furnished in accordance with the Contract Documents, and that Seller's other obligations under the Contract Documents have been fulfilled, Seller will present the Application to Buyer. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount due

#### 10.06 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens and Claims, arising from non-conformities in the Goods or Special Services appearing after final payment, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Seller against Buyer other than those previously made in accordance with the requirements herein and expressly noted in writing by Seller as still unsettled in its final Application for Payment.

### **ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION**

#### 11.01 Cancellation

A. Buyer has the right to cancel the Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Buyer. Upon cancellation:



1. Buyer shall pay Seller for Goods, specially manufactured for the Project, plus any documented reasonable direct and indirect costs incurred by Seller in producing such Goods not recovered by payment for the reasonable value of the Goods.

2. For Goods which are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

#### 11.02 *Suspension of Performance by Buyer*

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

#### 11.03 *Suspension of Performance by Seller*

A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:

1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract. ("Reasonable grounds" shall not include a pending dispute or disagreement with Buyer) and,

2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

#### 11.04 *Breach and Termination*

##### A. Buyer's Breach

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:

- a. wrongful rejection or revocation of Buyer's acceptance of the Goods,
- b. failure to make payments in accordance with the Contract Documents, or
- c. wrongful repudiation of the Contract.

2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer and Engineer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure the alleged breach.

##### B. Seller's Breach

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:

- a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
- b. wrongful repudiation of the Contract, or
- c. delivery or furnishing of non-conforming Goods or Special Services.

2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller and Engineer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure the alleged breach.

### **ARTICLE 12 - LICENSES AND FEES**

#### 12.01 *Intellectual Property and License Fees*

A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing

to Engineer's design, Engineer retains all intellectual property rights in such design.

B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

#### 12.02 *Seller's Infringement*

A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, Owner and their officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States patent or copyright by any of the Goods delivered hereunder.

B. In the event of suit or threat of suit for intellectual property infringement, Buyer will notify Seller within a reasonable time of receiving notice thereof.

C. Upon written demand from Buyer, Seller shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Seller fails to defend such suit or claim after written demand by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.

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

D. If a determination is made that Seller has infringed upon intellectual property rights of another, 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 own expense.

#### 12.03 *Buyer's Infringement*

A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and

all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).

B. In the event of suit or threat of suit for intellectual property infringement, Seller must within a reasonable time after receiving notice thereof notify Buyer.

C. Upon written demand from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Buyer fails to defend such suit or claim after written demand by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.

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

#### 12.04 *Reuse of Documents*

A. Neither Seller nor any other person furnishing any of the Goods or Special Services under a direct or indirect contract with Seller shall: (1) acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions; or (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Seller from retaining copies of the Contract Documents for record purposes.

### **ARTICLE 13 - DISPUTE RESOLUTION**

#### 13.01 *Dispute Resolution Method*

A. Disputes between Buyer and Seller will be resolved as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of Paragraphs 9.05 and 9.06, Buyer and Seller may exercise such rights or remedies as they have under Controlling Law.

## **ARTICLE 14 - MISCELLANEOUS**

### *14.01 Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### *14.02 Controlling Law*

A. This Contract is to be governed by the law of the state in which the Point of Destination is located.

### *14.03 Computation of Time*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### *14.04 Cumulative Remedies*

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

### *14.05 Survival of Obligations*

A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Goods or Special Services and termination or completion of the Agreement.