

**Specifications for**  
**SOUTH WOODSTOCK WASTEWATER TREATMENT FACILITY UPGRADE**  
**SEQUENCING BATCH REACTOR PRE-SELECTION REQUEST FOR PROPOSALS**  
**for the**  
**TOWN OF WOODSTOCK, VERMONT**

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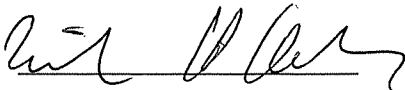
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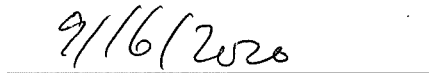
Figure 1: SBR System Direct Purchase Suggested Site Plan

## ADVERTISEMENT FOR BIDS

1. Separate sealed BIDS for the manufacture and delivery of South Woodstock, VT Sequencing Batch Reactor (SBR) Equipment will be received by the Town of Woodstock, Vermont (OWNER) electronically until 2 pm (prevailing local time), September 30, 2020, and then opened and read aloud via video conferencing technology. Prospective bidders shall notify the Engineer (at [jauster@hoyletanner.com](mailto:jauster@hoyletanner.com)) of their intention to bid at least seven (7) days prior to the bid opening date to receive a secure site for uploading proposals. One (1) hard copy of bids shall be delivered to the Owner within five (5) days of bid opening at: 31 The Green, P.O. Box 488, Woodstock, VT 05091
2. All Bids must be made on the blank form of the BID proposal attached hereto. No lines on the BID may be left blank. **Failure to fully complete the BID will render the Bidder non-responsive, and the Bid will not be read.** The OWNER may waive any informalities or minor defects or reject any or all bids. In the event there is any discrepancy in the PROPOSAL between any price in words, figures, or the extended totals, the price in words shall govern and the extended totals in each case shall be corrected accordingly. A conditional or qualified bid will not be accepted.
3. A Bid Bond or Certified Check in the amount of 5% of the total Bid submitted must accompany the Bid. **Failure to submit such with the Bid will render the Bidder non-responsive, and the Bid will not be read.**
4. A Bidder may withdraw any proposal submitted prior to the hour set for the closing of the Bids provided the request is signed in a manner identical with the proposal being withdrawn. No Bidder may withdraw a Bid within 60 days after the actual date of the opening.
5. All questions by prospective BIDDERS as to the interpretations of the INFORMATION FOR BIDDERS, Forms of PROPOSAL, Form of CONTRACT, Plans, Specifications or BONDS, must be submitted in writing to the Consulting Engineer, at least seven (7) days before the date herein set for the opening of BIDS. An interpretation will be provided to prospective BIDDERS at the addresses given by them no later than five (5) days before the date of opening BIDS. Failure of any BIDDER to receive any such ADDENDUM or interpretation shall not relieve such BIDDER from any obligation under its BID as submitted. All ADDENDA so issued shall become part of the CONTRACT DOCUMENTS.
6. The prospective Bidders are responsible for inspecting the site (if they feel one is warranted) and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of a Bidder to do any of the foregoing shall, in no way, relieve any Bidder from any obligation in respect to his Bid.
7. Owner is seeking bids for the South Woodstock SBR System for inclusion as an allowance in a general construction contract. Manufacturer as "Seller" shall be required to furnish equipment as specified here-in to the awardee of the general contract ("Buyer") at the bid price submitted.
8. American Iron and Steel (AIS) is a requirement of this project. All listed iron and steel products used in this project must be produced in the United States. **Fabricated equipment assemblies are exempt from AIS requirements.** The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The de minimis and minor components waiver will apply to this project.
9. The BIDDING DOCUMENTS will be distributed electronically upon request by sending an email to: [jauster@hoyletanner.com](mailto:jauster@hoyletanner.com)



Authorized Representative



Date

# INSTRUCTIONS TO BIDDERS

## ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below.
- A. *Issuing Office*—The office from which the Procurement Bidding Documents are to be issued and where the bidding procedures are to be administered.
- 1.02 General Conditions – The General Conditions included in these Pre-Selection Bidding Documents are for informational purposes and reference only. These General Conditions will be included as requirements in the Contract for the Installation Contractor (“Buyer”).

## ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder may obtain complete sets of the Bidding Documents, in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid, from the Issuing Office.
- 2.02 Bidder must use a complete set of the Bidding Documents in preparing the Bid; neither the Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer make copies of Bidding Documents available on the above terms only for obtaining Bids for furnishing Goods and Special Services, and do not authorize or confer a license for any other use.

## ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 Owner may at any time conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidder, and after the opening of Bids may require a Bidder to submit documentation of its qualifications, including but not limited to financial data and documentation of previous experience providing goods and services comparable to the specified Goods and Special Services.
- 3.02 Bidder is to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.
- 3.03 Bidder shall submit the qualifications required by the equipment specification(s), including but not limited to, documentation of previous experience and operating information of comparable goods and services.

## ARTICLE 4—SITE VISIT; PRE-BID CONFERENCE

- 4.01 Owner recommends that Bidder visit the Point of Destination and the site where the Goods are to be installed and Special Services will be provided, taking into account observable local and site

conditions that may affect the delivery, cost, progress, and furnishing of the Goods and Special Services. Arrangements for such a visit may be made through Engineer.

- 4.02 A pre-bid conference will not be held for this procurement.
- 4.03 Only answers in the Addenda will be binding. Oral or informal email statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid, and will not be binding or legally effective.

#### **ARTICLE 5—INTERPRETATIONS AND ADDENDA**

- 5.01 All questions about the meaning or intent of the Procurement Bidding Documents are to be submitted to Engineer in writing at: **jauster@hoyletanner.com**
- 5.02 Interpretations or clarifications considered necessary by Engineer in response to such written questions will be issued by Addenda mailed or delivered to all parties recorded as having received the Bidding Documents. Questions received less than **7** days prior to the date for opening of Bids will not be answered. Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid, and will not be binding or legally effective.
- 5.03 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

#### **ARTICLE 6—BID SECURITY**

- 6.01 A Bid must be accompanied by Bid security made payable to Owner (“Town of Woodstock, Vermont”) in an amount of **5** percent (5%) of Bidder’s maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions (included herein as reference). Such Bid bond will be issued in the form included in the Bidding Documents.
- 6.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the Installation Contract to the Contractor (“Buyer”), and such Buyer has executed the Installation Contract, including procurement of Bidder’s Equipment, and Buyer has furnished the required contract security, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver equipment covered under this Bid, Owner may consider Bidder to be in default, and the Bid security of that Bidder will be forfeited, in whole in the case of this penal sum bid bond.
- 6.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the

Contract or 180 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

- 6.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

#### **ARTICLE 7—PROCUREMENT SCHEDULE**

- 7.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment will be included in the Installation Contract for general contractors.
- 7.02 The general schedule for the Installation Contract is to complete design over the winter/spring of 2020/21, bid the project in early spring 2021, and commence construction (including procurement of equipment, submittals, fabrication) in spring 2021.

#### **ARTICLE 8—LIQUIDATED DAMAGES**

- 8.01 Successful Bidder recognizes that time is of the essence on this project. **Bidders on this SBR Equipment Proposal are informed that the Installation Contract will contain provisions for Liquidated Damages.**

#### **ARTICLE 9—CONFIDENTIALITY OF BID INFORMATION**

- 9.01 Confidential information is information in the Bid, or in documents submitted by Bidder with the Bid or submitted subsequent to the opening of Bids in support of the Bid, that Bidder clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Bids will be opened and accompanying documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- 9.02 Bidder shall clearly and prominently mark confidential information with the word “CONFIDENTIAL” on each page or sheet or on the cover of bound documents. Place “CONFIDENTIAL” stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.
- 9.03 If Owner is requested to disclose confidential information, becomes legally compelled to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by these Procurement Bidding Requirements, Owner will provide Bidder with prompt notice so Bidder may seek a protective order or other appropriate remedy. Bidder will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.
- 9.04 Owner’s obligations with respect to confidential information are nullified by the following exceptions:
- A. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Owner;

- B. Owner can demonstrate through suitable documentation that the confidential information was already in the Owner's possession, and not previously marked as confidential, or was otherwise publicly available prior to the date of Bid submittal;
  - C. The confidential information is subsequently and independently disclosed to the Owner by a third party who has a lawful right to disclose such information;
  - D. Owner concludes in good faith that the information is not confidential, or that disclosure is required or justified; or
  - E. Owner is required to disclose the confidential information by court order or by applicable Laws and Regulations.
- 9.05 Notwithstanding any other provision of the Procurement Bidding Documents, it is stipulated and agreed that by accepting a Bid, Owner has not and does not waive its legal immunity (if any) from suit or liability.

#### **ARTICLE 10—"OR-EQUAL" ITEMS**

- 10.01 Refer to the technical equipment specification.
- 10.02 RESERVED

#### **ARTICLE 11—PREPARATION OF BID**

- 11.01 The Bid Form is included with the Bidding Documents. Additional copies of Bidding Documents may be obtained from the Issuing Office.
- 11.02 All blanks on the Bid Form must be completed and the Bid Form must be signed by an individual authorized to act on behalf of the Bidder. Alterations must be initialed by an individual authorized to act on behalf of the Bidder. A Bid price must be indicated for each item in the Bid Form. In the case of optional alternates, the words "No Bid" may be entered.
- 11.03 Bidder must acknowledge all Addenda by filling in the number and date of each Addendum in the Bid Form and sign where indicated to verify that the Addenda were received. A Bid that does not acknowledge receipt of all Addenda may be considered non-responsive.
- 11.04 Bidder shall:
- A. Sign the Bid Form as indicated in the Bid Form.
  - B. Include evidence of authority to sign.
  - C. Provide information on the individual to be contacted for any communications regarding the Bid.
  - D. Provide evidence of the Bidder's authority and qualification to do business in the locality of the Project, to the extent required, or indicate the ability to obtain such authority and qualification prior to award of the Procurement Contract.

- 11.05 The responsibilities of each Bidder submitting a Bid are described in the Bidder's representations and certifications set forth in Article 6 of the Bid Form.

## **ARTICLE 12—BASIS OF BID; COMPARISON OF BIDS**

### **12.01 *Basis of Bid and Comparison of Bids***

- A. Bidder shall submit a Bid on a lump sum basis for Capital Cost of equipment as well as operational and maintenance costs as set forth in the Bid Form.
- B. The Owner will evaluate each responsive Bid on multiple criteria to objectively select the system best suited to their needs. The evaluation will be based on information provided by the manufacturer as required by Sections II and VI of the Project Description, SBR Performance Requirements and Selection Criteria.
- C. The Engineer will perform an initial scoring for review and approval by the Owner. The Engineer may require individual Bidders to provide supplemental information to make an informed evaluation and ranking of Bids.
- D. The Owner will make a final selection based on the Engineer's recommendation and their own final evaluation of each Bid.

## **ARTICLE 13—SUBMITTAL OF BID**

- 13.01 Bidder shall refer to the advertisement for bids for specific identification of the date, time, and place where Bids are to be submitted.
- 13.02 Bidder must submit one separate unbound copy of the completed Bid Form, and, if required, the Bid Security and the other documents required to be submitted under the terms of Article 4 of the Bid Form.
- 13.03 A Bid must be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid. Submit the Bid in an envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and the name and address of Bidder. Enclose the Bid security and other documents required to be submitted with the Bid as listed in the Bid Form. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."

## **ARTICLE 14—MODIFICATION OR WITHDRAWAL OF BID**

- 14.01 A Bid may be modified or withdrawn by a document duly signed in the same manner that a Bid must be signed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 14.02 If, within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a

material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned.

#### **ARTICLE 15—OPENING OF BIDS**

- 15.01 Bids will be publicly opened at the time and place indicated in the advertisement for bids and read aloud via video conferencing technology, unless obviously non-responsive. An abstract of the amounts of the Base Bids and Alternate Bids, if any, will be made available to Bidders after Bids have been opened and reviewed by the Owner.
- 15.02 RESERVED

#### **ARTICLE 16—BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 16.01 All Bids will remain subject to acceptance for the period stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

#### **ARTICLE 17—EVALUATION OF BIDS AND PRE-SELECTION OF EQUIPMENT**

- 17.01 Owner reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Goods and Special Services.
- 17.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data as may be requested in the Bid Form or may be requested from Bidders prior to Selection.
- 17.04 If Owner pre-selects equipment manufacturer, such pre-selection will be to the responsible Bidder submitting the best suited system as outlined in Article 12.

#### **ARTICLE 18—BONDS AND INSURANCE**

- 18.01 The successful Bidder ("Seller") will be expected to enter into an procurement agreement with the Installation Contractor ("Buyer"), at which time performance and payment bonds and insurance will be negotiated. For the purposes of this pre-selection, the Bid Bond of the Seller will be held as described in Article 6.

#### **ARTICLE 19—NOTICE OF PRE-SELECTION**

- 19.01 Upon completion of pre-selection as described in Article 17, Owner will notify successful Bidder of their selection. The successful Bidder will be expected to assist the Engineer by providing



information, data, layout drawings and details as requested by Engineer so that Engineer may complete the final design.

#### **ARTICLE 20—SALES AND USE TAXES**

- 20.01 Owner is exempt from Vermont state sales and use taxes on materials and equipment to be incorporated in the Project (Exemption No. 03-6003791). Exempt taxes must not be included in the Bid.

# BID FORM

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

## ARTICLE 1—OWNER AND BIDDER

1.01 This Bid is submitted to:

**Town of Woodstock, Vermont**  
**31 The Green**  
**Woodstock, VT 05091**

1.02 Bids will be submitted and received as noted in the Advertisement for Bids.

1.03 The undersigned Bidder proposes and agrees, if this Bid is accepted, to furnish the Goods and Special Services as specified or indicated in these Bidding Documents, for the prices and within the times indicated in this Bid, in accordance with the other terms and conditions of these Bidding Documents, and to enter into a Procurement Contract with the Installation Contractor (“Buyer”).

## ARTICLE 2—BASIS OF BID

2.01 *Lump Sum Bids*

A. Bidder will furnish the Goods and Special Services in accordance with the Bidding Documents for the following Contract Price(s):

1. Capital Cost for Equipment and Services as specified herein:

A-1	Total Capital Cost for SBR Equipment, Appurtenances and Manufacturer’s Services (lump sum)	\$
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\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents

2.02 *Operational & Maintenance Cost Information*

A. Bidder shall provide the following information to assist the Owner and Engineer in selecting the equipment best suited for this application, as described in Section VI of the Project Description, SBR Performance Requirements and Selection Criteria:

Item No.	Description	Unit	Quantity
B-1	Total Energy Use for SBR Equipment and Appurtenances, given design average daily flows, over a 20-year period	kW-hr	
B-2	Estimated Equipment Cost (not including labor) for all maintenance and equipment replacements, given current average daily flows, over a 20-year period	\$	

B-3	Estimated Level of Effort for all maintenance and replacement activities, given current average daily flows, over a 20-year period	hours	
B-4	Estimated Chemical Usage, given current average daily flows, over a 20-year period, in total pounds or gallons consumed on a per-chemical basis	Lbs or gallon	
	Chemical 1: _____	Lbs or gallon	
	Chemical 2: _____	Lbs or gallon	
	Chemical 3: _____	Lbs or gallon	

- B. Bidder shall provide documentation for each of their responses to the items in Article 2.02.A included in this Bid.

### 2.03 Notes

- A. Bidder's must bid on each item. All entries in the entire Bid must be made clearly and in ink. In the event there is a discrepancy between the
- B. In the event that there is a discrepancy between the written quantities/prices in words and figures, the words shall govern.
- C. The Bid Award (Selection) will be based on the lowest responsive and responsible Bid comprised of the amounts above, and the criteria identified in these Bidding Documents.

## ARTICLE 3—TIME OF COMPLETION

- 3.01 Bidder agrees that the Lump Sum Bid Price in Article 2.01.A.1 of this Bid Form shall be held constant over a ten (10) month period, which will commence on the Bid Opening date specified in the Advertisement for Bids. The Bidder's Lump Sum Bid Price shall be carried as an allowance for Bidding and Contracting with an Installation Contractor, whom will act as "Buyer" of the equipment and services covered by these Bidding Documents.
- 3.02 Should the ten (10) month period commencing on Bid Opening elapse without execution of a Procurement Contract between Bidder, as "Seller", and the Buyer, the Bidder's lump sum bid price will be allowed an equitable adjustment tied to the Materials Price Index, as reported by Engineering News-Record (ENR).
- 3.03 Bidder recognizes that time is of the essence on this project. **Bidders on this SBR Equipment Proposal are informed that the Installation Contract will contain provisions for Liquidated Damages.**

## ARTICLE 4—ATTACHMENTS TO THIS BID

- 4.01 The following documents are attached to and made a condition of this Bid:
- A. Required Bid security in the form prescribed in the Instructions to Bidders.
- B. Evidence of authority to do business in the state of Vermont; or a written covenant to obtain such authority within the time for acceptance of Bids.
- C. Equipment Data Sheets.

- D. **All Documents required by Sections II and VI of the Project Description, SBR Performance Requirements and Selection Criteria and Figure 1: SBR System Direct Purchase Suggested Site Plan.**

#### **ARTICLE 5—BIDDER’S ACKNOWLEDGMENTS**

- 5.01 Bidder accepts all terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for ten (10) months after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Owner.
- 5.02 Bidder has examined and carefully studied the Bidding Documents, the related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<b>Addendum No.</b>	<b>Addendum Date</b>

- 5.03 Bidder understands that the Owner reserves the right to reject any or all Bids, if it is deemed in the best interest of the Owner.
- 5.04 Bidders understands that if the South Woodstock Wastewater Treatment Facility Upgrade Construction Contract is not awarded, the Owner will have no obligation to the selected SBR Equipment Manufacturer.
- 5.05 Bidder understands that the selected SBR Manufacturer’s system shall be used as the basis of design for the SBR system, that the manufacturer shall assist the Engineer in preparation of the detailed design, and that the Procurement Agreement that will include shop drawings and fabrication of equipment will be executed between the SBR Manufacturer and the Installation Contractor as Buyer.

#### **ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents that:
1. Bidder has examined and carefully studied the Contract Documents.
  2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Bidder’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Bidder has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
  3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under this Bid.

4. Bidder has carefully studied, considered, and correlated the information known to Bidder with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution (if any) thereof by Engineer is acceptable to Bidder.
6. These Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract with "Buyer".
7. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Requirements, that without exception the Bid (including all Bid prices) is premised upon furnishing the Goods and Special Services as required by these Bidding Documents.

6.02 *Bidder's Certifications*

A. Bidder certifies that:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Procurement Contract. For the purposes of this Paragraph 6.02.A.4:
  - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Buyer, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
  - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process.

This Bid is offered by:

Bidder:

\_\_\_\_\_  
*(typed or printed name of organization)*

By:

\_\_\_\_\_  
*(individual's signature)*

Date:

\_\_\_\_\_  
*(date signed)*

Name:

\_\_\_\_\_  
*(typed or printed)*

Title:

\_\_\_\_\_  
*(typed or printed)*

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

Attest:

\_\_\_\_\_  
*(individual's signature)*

Title:

\_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
Designated Representative:

Name:

\_\_\_\_\_  
*(typed or printed)*

Title:

\_\_\_\_\_  
*(typed or printed)*

Address:

Phone:

Email:

License No.:

Classification:

Limitation:

## BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

### BID

Bid Due Date:

Description (*Project Name— Include Location*):

### BOND

Bond Number:

Date:

Penal sum \_\_\_\_\_ \$

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

#### BIDDER

#### SURETY

\_\_\_\_\_  
Bidder's Name and Corporate Seal

(Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal

(Seal)

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

*Note: Addresses are to be used for giving any required notice.*

*Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



# STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

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## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Whenever used in the Procurement Bidding Requirements or Procurement 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 Procurement Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Procurement Contract Documents.
  2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Contract Documents.
  3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
  4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
  5. *Buyer*—The individual or entity purchasing the Goods and Special Services.
  6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Contract, ordering an addition, deletion, or revision in the Goods and Special Services.
  7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Contract Documents or an adjustment in the Procurement Contract Price or the Procurement Contract Times, issued on or after the Effective Date of the Procurement Contract. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
  8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Contract Price or Procurement Contract Times, or both, or other relief with respect to the terms of the Procurement Contract. A demand for money or services by a third party is not a Claim.
  9. *Contractor/Assignee*—A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Buyer, assigns this Procurement Contract.
  10. *Effective Date of the Procurement Contract*—The date indicated in the Procurement Agreement on which the Procurement Contract becomes effective.
  11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions, including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *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 Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer's acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.
21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
24. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services.

25. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
26. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.
27. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
28. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
29. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
30. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods and Special Services are a part.
31. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.
32. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
33. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer's review of the Submittals.
34. *Seller*—The individual or entity furnishing the Goods and Special Services.
35. *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 and Special Services. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
36. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
37. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals

may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Contract.
39. *Supplementary Conditions*—The part of the Procurement Contract that amends or supplements these General Conditions.
40. *Unit Price Goods and Special Services*—Goods and Special Services to be paid for on the basis of unit prices (if any).

#### 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*
  1. The Procurement 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 and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will 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 Procurement Contract Documents.
  2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
    - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
    - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or

- c. in the case of Special Services, have not been completed.
- 3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
- 4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- 5. The word "furnish," when used in connection with the Goods and Special Services means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.
- C. *Procurement Contract Price or Procurement Contract Times*: References to a change in “Procurement Contract Price or Procurement Contract Times” or “Procurement Contract Times or Procurement Contract Price” or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term “or both” is not expressed.
- D. Unless stated otherwise in the Procurement Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Contract Documents in accordance with such recognized meaning.

## ARTICLE 2—PRELIMINARY MATTERS

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

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Contract requires Seller to furnish such bonds).
- B. *Evidence of Seller’s Insurance*: When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer’s Insurance*: After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Contract), certificates and other evidence of insurance (if any) required to be provided by Buyer.

### 2.02 *Copies of Documents*

- A. Buyer shall furnish to Seller four printed copies of the Procurement Contract (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.



### 2.03 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Procurement Contract, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Contract does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### 2.04 *Preliminary Schedules*

- A. Within 15 days after the Effective Date of the Procurement Contract, Seller shall submit to Buyer and Engineer for timely review:
  - 1. a progress schedule of activities, consistent with the Procurement Contract Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Contract Documents.
    - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Contract Times.
    - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Contract, nor interfere with or relieve Seller from Seller's full responsibility therefor.
    - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
  - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

### 2.05 *Preliminary Conference*

- A. Within 20 days after the Procurement 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 schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

### 2.06 *Safety*

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.

- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.
- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

### **ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS**

#### **3.01 *Intent***

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

#### **3.02 *Reference Standards***

- 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, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer 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 part of the Procurement Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Contract Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Contract Documents, or between the Procurement Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer (or if the Procurement Contract is assigned, then directly to Contractor/Assignee) in writing. Seller shall not proceed with the Goods and Special Services affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer (or if the Procurement Contract is assigned, then by Contractor/Assignee) or by an amendment or supplement to the Procurement Contract Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Contract Documents unless Seller had actual knowledge thereof.

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

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement 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 Procurement Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Procurement Drawings and Procurement Specifications*

#### A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods and Special Services, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods and Special Services thereunder.

1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.

#### B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer's written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the

Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.

- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

### 3.05 *Reuse of Documents*

- A. Seller and its subcontractors and suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without Buyer's express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND SCHEDULE**

### 4.01 *Commencement of Procurement Contract Times*

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

### 4.02 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Contract Times.
- B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

### 4.03 *Adjustments to Progress Schedule*

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.

1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Contract Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
2. Proposed adjustments in the progress schedule that will change the Procurement Contract Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Contract Times may only be made by a Change Order.

#### 4.04 *Delays*

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:
  1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. inspection delays by governmental authorities, and custom delays;
  4. international shipping delays;
  5. acts or failures to act of third-party entities; and
  6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller's entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
  1. Seller's entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller's obligations, as of the time of the delay, disruption, or interference.
  2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.

3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller's progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller's progress; (4) the number of days' increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

## **ARTICLE 5—BONDS AND INSURANCE**

### **5.01 *Performance, Payment, and Other Bonds***

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Contract.

- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer's termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Seller shall provide a copy of the payment bond to such person or entity.

#### 5.02 *Insurance*

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.
- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Procurement Contract, Seller shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.
- D. Buyer does not represent that insurance coverage and limits established in this Procurement Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability under the indemnities and other rights granted to Buyer in the Procurement Contract.

#### 5.03 *Surety or Insurance Companies*

- A. All bonds and insurance required by the Procurement Contract Documents to be purchased and maintained by Buyer or Seller shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies must also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### **ARTICLE 6—LICENSES AND FEES**

#### 6.01 *Intellectual Property and License Fees*

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights,

or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.

- D. 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 Procurement Contract Documents.

#### 6.02 *Seller's Infringement*

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable 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 patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
  - 1. If Seller fails to defend such suit or claim after written notice 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, 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 the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

#### 6.03 *Buyer's Infringement*

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.



- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
  - 1. If Buyer fails to defend such suit or claim after written notice 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, Seller shall be barred from any remedy against Buyer for such suit or claim.

## **ARTICLE 7—SELLER’S RESPONSIBILITIES**

### **7.01 *Performance of Obligations***

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Contract Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Contract Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

### **7.02 *Labor, Materials and Equipment***

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Contract Documents, must be:
  - 1. new, and of good quality;
  - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer’s instructions; and
  - 3. shop-assembled to the greatest extent practicable.

### **7.03 *Laws and Regulations***

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller’s compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (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 such performance. It will not be Seller’s responsibility to make certain

that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement 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 Article 12.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
  - 1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or equal" item.
  - 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data:* Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 *Taxes*

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Contract Price, except as noted in the Supplementary Conditions.

7.06 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Seller shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Contract Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
- 3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Contract Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Seller shall submit the number of copies required in the Procurement Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.

2. *Samples*

- a. Seller shall submit the number of Samples required in the Procurement Specifications.

- b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
3. Where a Shop Drawing or Sample is required by the Procurement Contract Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Seller shall make corrections required by 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 revisions other than the corrections called for by Engineer on previous Submittals.

2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. *Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
  - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Contract Documents as to general form and content of the Submittal.
  - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

7.07 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, and damages (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 the performance of Seller's obligations under the Procurement Contract, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**7.08** *Concerning Subcontractors and Suppliers*

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods and Special Services. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.

**ARTICLE 8—SHIPPING AND DELIVERY**

**8.01** *Shipping*

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

**8.02** *Delivery*

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must 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 time 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 at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

**8.03** *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 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of

Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

## **ARTICLE 9—BUYER’S RIGHTS**

### **9.01 *Seller’s Warranties and Guarantees***

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Procurement Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller’s warranty and guarantee. If the Procurement Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller’s warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
  - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Contract Documents and the Procurement Contract Documents required the Goods to withstand such conditions;
  - 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
  - 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents will be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller’s obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents:
  - 1. observations by Buyer, Engineer, or Project Owner;
  - 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
  - 3. use of the Goods by Buyer or Project Owner;
  - 4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
  - 5. the end of the correction period established in Paragraph 9.04;
  - 6. the issuance of a notice of acceptance;
  - 7. any inspection, test or approval by others; or
  - 8. any correction of non-conforming Goods and Special Services by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller’s warranties or guarantees.

## 9.02 *Inspections and Testing*

### A. *General Provisions*

1. The Procurement Contract Documents specify required inspections and tests. 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 reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement 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, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of 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 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.

### B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual 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. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of 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, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

9.03 *Non-Conforming Goods and Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found 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 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are 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 Procurement Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Buyer's Rejection of Non-Conforming Special Services*

1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
2. Seller shall promptly provide conforming Special Services acceptable to Buyer.
3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.

- D. *Remedying Non-Conforming Goods:* If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.

- E. *Buyer's Acceptance of Non-Conforming Goods:* 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 reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.

- F. *Seller Obligations:* 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 and Special Services. Seller's obligations will include the costs of 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, and obtaining conforming Special Services from others.
- G. *Buyer's Rejection of Conforming Goods:* If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, 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 associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

#### 9.04 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the acceptance of the Goods and Special Services in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### **ARTICLE 10—ENGINEER'S STATUS**

#### 10.01 *Engineer's Role Defined*

- A. Engineer will be Buyer's representative until assignment (if any) of the Procurement Contract.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Contract, are set forth in the Procurement Contract Documents.
- C. Engineer's responsibilities, if any, after an assignment (if any) of the Procurement Contract, are set forth in the Procurement Agreement.

#### 10.02 *Duties and Responsibilities; Authority; Limitations*

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods and Special Services, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller's failure to furnish the Goods and Special Services in accordance with the Procurement Contract Documents.

### **ARTICLE 11—CHANGES**

#### 11.01 *Amending and Supplementing the Procurement Contract*

- A. The Procurement Contract may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Contract includes a change in the Procurement Contract Price or the Procurement Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Contract that involve (1) the conformance or acceptability of the Goods and Special Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Contract without the recommendation of the Engineer.

#### 11.02 *Change Orders*

- A. Buyer and Seller shall execute appropriate Change Orders covering:
  - 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods and Special Services furnished in accordance with a Change Directive;
  - 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
  - 3. Changes in the Goods and Special Services which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods and Special Services involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 *Change Directives*

- A. A Change Directive will not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modification ordered or documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Contract Price and Procurement Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Contract Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Contract Price.
- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Contract Times or Procurement Contract Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Contract Price or the Procurement Contract Times and are compatible with the design concept as indicated by the Procurement Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods and Special Services involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, then before proceeding with the Goods and Special Services at issue, Seller shall submit a Claim as provided herein.

11.05 *Buyer-Authorized Changes in the Goods and Special Services*

- A. Without invalidating the Procurement Contract and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods and Special Services. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods and Special Services may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Contract Times or Procurement Contract Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods and Special Services involved; or, in the case of a deletion in the Goods and Special Services, promptly cease activities with respect to such deletion. Added or revised Goods and Special Services must be performed under the applicable conditions of the Procurement Contract Documents.

11.06 *Buyer's Contingency Allowance*

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.
- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.
- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Contract.

11.07 *Unauthorized Changes in the Goods and Special Services*

- A. Seller shall not be entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to any work performed that is not required by the Procurement Contract Documents, as amended, modified, or supplemented.

11.08 *Change of Procurement Contract Price*

- A. The Procurement Contract Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Contract Price will be determined as follows:
  - 1. For changes in Unit Price Goods and Special Services, by application of the unit prices to the quantities of the items involved;
  - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
  - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

#### 11.09 *Change of Procurement Contract Times*

- A. The Procurement Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 12.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Goods and Special Services or the provisions of the Procurement Contract (including, but not limited to, Procurement Contract Price or Procurement Contract Times), the giving of any such notice will be Seller's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION**

#### 12.01 *Claims*

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.
- B. Claimant shall deliver to Engineer and the other party to the Procurement Contract written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.
- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and 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.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Contract Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller

are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Paragraph 12.02.

- H. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 12.01, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02.
- I. If Article 12 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 12, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- J. No Claim for an adjustment in Procurement Contract Price or Procurement Contract Times will be valid if not submitted in accordance with Article 12.
- K. The effect on Claims of an assignment of the Procurement Contract by Buyer to a Contractor/Assignee is addressed in the Procurement Agreement, Article 5.

#### 12.02 *Dispute Resolution Method*

- A. Either Buyer or Seller may initiate the mediation of (1) any Claim decided in writing by Engineer under Paragraph 12.01 before such decision becomes final and binding, or (2) any other dispute between the parties, including but not limited to any dispute arising after final inspection of the Goods and Services. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Procurement Contract. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to the Procurement Contract. Timely submission of the request will stay Engineer's decision from becoming final and binding.
- B. Mediation is a condition precedent to seeking final dispute resolution under Paragraph 12.01.C. Buyer and Seller shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation will be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the dispute, then Engineer's written Claim decision under Paragraph 12.01.D or a Claim denial pursuant to Paragraph 12.01.E becomes final and binding, or if applicable such other dispute is deemed resolved in favor of respondent, unless, within 30 days after termination of the mediation, Buyer or Seller:
  - 1. elects in writing to invoke any final dispute resolution process provided for in the Supplementary Conditions, or
  - 2. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
  - 3. if no final dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim

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or dispute to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

## **ARTICLE 13—PAYMENT**

### **13.01 *Applications for Progress Payments***

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Contract Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

### **13.02 *Review of Applications for Progress Payments***

#### **A. *Review of Applications***

- 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.
- 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Goods and Special Services or other obligations of Seller have progressed to the point indicated;
  - b. the quality of the Goods and Special Services or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
  - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
- 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Goods and Special Services or other obligations of Seller have been exhaustive, extended to every aspect of the Goods and Special Services or other obligations of Seller in progress, or involved detailed inspections of the Goods and Special Services or other



- obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
- b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Seller's performance or furnishing of Goods and Special Services or other obligations of Seller; or
  - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
  - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
  - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
  - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
- a. the Goods and Services are non-conforming, requiring correction or replacement;
  - b. the Procurement Contract Price has been reduced by Change Orders;
  - c. Buyer has been required to correct non-conforming Goods and Special Services in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E; or
  - d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

**13.03 *Basis and Amount of Progress Payments***

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

**13.04 *Suspension of or Reduction in Payment***

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, 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 Procurement Contract Documents, and
  2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
  3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
    - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods and Special Services, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
    - c. Seller has failed to provide and maintain required bonds or insurance;
    - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
    - e. the Goods and Special Services are non-conforming, requiring correction or replacement;
    - f. Buyer has been required to correct non-conforming Goods and Special Services, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E;
    - g. the Procurement Contract Price has been reduced by Change Orders;
    - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
    - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods and Special Services; or
    - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

### 13.05 *Final Payment*

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Contract Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Procurement Contract Documents, and that Seller has fulfilled all other obligations under the Procurement Contract Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.
- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods and Special Services are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.
- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

### 13.06 *Waiver of Claims*

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

## ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

### 14.01 *Cancellation*

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
  - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
  - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Contract Price of such Goods.

### 14.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Procurement Contract for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Contract Times and Procurement Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

### 14.03 *Suspension of Performance by Seller*

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

### 14.04 *Breach and Termination*

#### A. *Buyer's Breach*

- 1. Seller shall have the right to terminate the Procurement Contract for cause by declaring a breach if Buyer fails to comply with any material provision of the Procurement Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
- 2. If Seller believes Buyer is in breach of its obligations under the Procurement Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 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 or to proceed diligently to cure such alleged breach.

#### B. *Seller's Breach*

- 1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the

Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 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 or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

## **ARTICLE 15—MISCELLANEOUS**

### **15.01 *Giving Notice***

- A. Whenever any provision of the Procurement Contract requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
  1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **15.02 *Controlling Law***

- A. This Procurement Contract is to be governed by the law of the state in which the Goods are to be installed.
- B. In the case of any conflict between the express terms of this Procurement Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Contract will apply.

### **15.03 *Computation of Time***

- A. When any period of time is referred to in the Procurement Contract by number of 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 will be omitted from the computation.

### **15.04 *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 Procurement Contract, and the provisions of this paragraph will be as effective as if repeated specifically in the Procurement Contract in connection with each particular duty, obligation, right, and remedy to which they apply.

15.05 *Survival of Obligations*

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

15.06 *Entire Agreement*

- A. Buyer and Seller agree that this Procurement Contract is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Contract may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

15.07 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Contract.

15.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

15.09 *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 Procurement Contract.

**SOUTH WOODSTOCK WASTEWATER TREATMENT FACILITY UPGRADE**  
**SEQUENCING BATCH REACTOR PRE-SELECTION REQUEST FOR PROPOSALS**  
**PROJECT DESCRIPTION, SBR PERFORMANCE REQUIREMENTS AND SELECTION CRITERIA**

**I. PROJECT DESCRIPTION**

The following information presents the requirements for the basis of design and selection criteria for the Sequencing Batch Reactor (SBR) pre-selection bid process for upgrades to the South Woodstock Wastewater Treatment Facility. The Town of Woodstock, Vermont is in the early stages of final design for upgrades to the South Woodstock municipal wastewater treatment facility. The existing facility, which has been in continuous operation for approximately 54 years, has a permitted average daily flow hydraulic capacity of 50,000 gallons per day (gpd). The upgrades to the facility will include changing the treatment process from the package activated sludge process that currently exists to a new SBR facility. The information in this document provides the basis for the Town of Woodstock to conduct a pre-selection of the SBR Manufacturer, in order to select the optimal SBR process and associated equipment for their given conditions and site constraints, and to streamline the design of the facility upgrades with the pre-selected SBR process and equipment as a critical component of those upgrades.

Presented in this document are the design analysis submittal requirements, which define the actual design information required by prospective bidders. In addition, influent and effluent design parameters are included. Seven (7) criteria are identified that will be the basis for comparison of prospective SBR processes and Manufacturers.

**II. PROCESS DESIGN ANALYSIS SUBMITTAL REQUIREMENTS**

The Manufacturer of the SBR system shall be responsible for the proper design of the SBR system, including but not limited to: aeration system, transfer pumps, aeration/mixers/decanter, instrumentation and controls for all components, including but not limited to, the SBR system, pre-equalization, if proposed, and sludge transfer. It is the intent of these design requirements to establish a standard for quality and performance most suitable for the service intended. It is not intended to eliminate other products of equal quality and performance. The Owner has established design criteria, including the maximum space available and access clearances for the system. The influent design criteria for the SBR system shall be as listed in **Table 1**. The effluent design criteria shall be as listed in **Table 2**. **Table 3** lists the process design assumptions to be used in the Manufacturer's calculations.

**Table 1 – Influent Design Criteria**

Influent Parameters	Design Condition
Flow	
Design Average Daily	0.050 mgd
Peak Daily	0.125 mgd
Peak Hourly Flow	0.210 mgd
Biochemical Oxygen Demand (BOD <sub>5</sub> )	294 mg/l 122.6 lbs/day
Total Suspended Solids (TSS)	257 mg/l 107.2 lbs/day
Total Nitrogen (TN)	38 mg/l 15.9 lbs/day
Total Phosphorus (TP)	5.4 mg/l 2.25 lbs/day
Lowest Average Monthly Average Influent Temperature	5.2 Degrees C

**Table 2 – Effluent Design Criteria**

Effluent Characteristics	Discharge Limitations				
	Annual Average	Monthly Average	Weekly Average	Maximum Day	Instantaneous Maximum
Flow	0.050 MGD				
Biochemical Oxygen Demand (BOD <sub>5</sub> )		12.5 lbs/d, 30 mg/l	18.5 lbs/d, 45 mg/l	50 mg/l	
Total Suspended Solids (TSS)		12.5 lbs/d, 30 mg/l	18.5 lbs/d, 45 mg/l	50 mg/l	
Total Phosphorus (TP) Total Annual Pounds				Monitor only	
Total Nitrogen (TN)	5.0 lbs/day			Monitor only	
Total Kjeldahl Nitrogen (TKN)				Monitor only	
Nitrate/Nitrite Nitrogen (NO <sub>x</sub> )				Monitor only	
pH		Between 6.5-8.5 standard units			



**Table 3 - Process Design Assumptions**

Description	Value	Unit
Alpha	0.85	
Beta	0.95	
MLSS at LWL	4500	mg/l
Oxygen Requirements		
	1.25	lbs O <sub>2</sub> /lb BOD <sub>5</sub> applied
	4.6	lbs O <sub>2</sub> /lb TKN applied
Minimum Hourly AOR	7.7	lbs O <sub>2</sub> /hr
Field Oxygen Transfer Rate (Design Conditions)	1.3	lbs O <sub>2</sub> /BHP-hour

**Process Design Analysis Submittal Requirements**

The SBR process design shall address and provide written documentation for each of the following aspects:

- Process tank volume sizing: A complete process design shall be provided including all calculations, including SBR tank length, width, maximum and minimum side water depths, and height of freeboard.
- Pre-Equalization: Achieving laminar flow or maintaining a stable sludge blanket with one SBR basin off-line during the settling and decant phases may require limiting the influent flow. Due to the need to limit influent flow, pre-equalization storage of influent may be required. The volume of pre-equalization needed and recommendation for providing pre-equalization shall be provided.
- Continuous Addition of Wastewater: SBR systems that allow influent wastewater to be continuously added to the SBR basins during normal operation should be designed so that influent is added to the basin under the sludge blanket and in a manner that achieves laminar flow during the settling and decant phases.
- Design food-to-mass ratio (F/M): Selection of design food to mass ratio and acceptable F/M range along with empirical and experimental data to justify the selected values.
- Actual Oxygen Requirement (AOR), Alpha and Beta values: The design actual oxygen required, and standard oxygen (SOR) required, along with the values used for alpha and beta. List specific requirements. The design process shall not take nutrient or oxygen credits.
- Certified Design Standard Oxygen Transfer Efficiency (SOTE): The design standard oxygen transfer efficiency along with empirical and experimental data to justify the selected value.
- Biological Treatment Redundancy: While expected to be an infrequent operating scenario, the design must provide a minimum of 75 percent of design average daily flow/loading capacity with one basin off-line, as required by the State of Vermont.
- Decanter sizing calculations, velocity pattern, flow rate, etc.: The design decanter sizing and velocity pattern within the SBR tank, along with the decant volumetric flow rate as a function of liquid level in the SBRs assuming free discharge.
- Identify potential decanter flow attenuation concepts (and associated costs) that may provide for a reduction in downstream disinfection sizing, while still enabling the SBR process to achieve required effluent water quality under all flow conditions.
- Mixer sizing, complete mix without air: Provide mixer sizing along with empirical and experimental data to justify selection and provide complete mix without the introduction of air.

- Design calculations stamped by a registered Professional Engineer: Design calculations must be stamped by a Professional Engineer in the state where the calculations were completed.
- Design Sludge Volume Production: The design sludge volume production and an acceptable operating range along with empirical and experimental data to justify the selected value.
- System Reaction Rates (Nitrification, Denitrification, Oxygen Demand, Phosphorus): Provide reference material and complete design calculations on reaction rates for nitrification and denitrification, along with oxygen demand, including kinetic values for metabolic respiration and endogenous respiration. This information is required to show justification for cycle times and motor operation requirements.
- Blower Redundancy: Blowers incorporated into the design must be capable of providing 100% of the total air requirements with one unit out of service. Provide design blower criteria including design capacity, blower motor size, and blower curve with operating point and turn-down curves.
- Complete Mix at High Water Level (HWL): In order to provide complete mixing during anoxic conditions to facilitate denitrification, the design shall be capable of complete mix at a 4,500 mg/L minimum MLSS concentration at the high water level with no introduction of air.

### **Warranty**

For a period of one (1) year from the date of Substantial Completion, the SBR system Manufacturer shall repair or replace any equipment which has been found defective in materials or workmanship under normal conditions of use and maintenance. Repairs made during this guarantee period shall not utilize spare parts furnished as part of this contract but shall be provided new by the Manufacturer. In the event repairs of the equipment require installation of spare parts provided under this contract, the Manufacturer shall replace those spare parts in a timely manner.

### **Performance Guarantee**

The single source supplier of the SBR System equipment shall provide a written Process Performance Guarantee to guarantee the SBR will meet the effluent criteria as specified in this document. The guarantee period shall commence at time of plant start-up, once the system has reach equilibrium, and shall be in force for a period of one year. The Process Performance Guarantee shall be submitted as part of the Engineer's submittal data.

### **Service**

The equipment Manufacturer shall furnish the services of a factory trained representative for a maximum of three (3) trip(s) and twelve (12) eight-hour days at the jobsite to inspect the installing contractor's equipment installation, supervise the initial operation of the equipment, instruct the plant operating personnel in proper operation and maintenance, and provide process assistance.

If additional service is required due to the mechanisms not being fully operational, at the time of service requested by the contractor, the additional service days will be at the contractor's expense. Provide rate for trip and 8 hour day as part of submittal.

### **III. ERRORS/OMISSIONS**

Fixtures or components considered incidental but essential for the full and complete function of the piece of work, which are not mentioned in this document, but are commonly included for a complete installation, shall be provided by the Manufacturer with no claim granted for additional compensation.

#### IV. TENTATIVE SCHEDULE

The intent of this pre-selection is to retain the sequencing batch reactor (SBR) equipment on a competitive basis at a guaranteed purchase price from the Manufacturer. The Manufacturer shall provide the specified and approved SBR equipment to the Contractor at the guaranteed purchase price for installation by the Contractor under the South Woodstock Wastewater Treatment Facility Upgrade, Contract No. 1. The final SBR equipment system delivery and installation schedule will be dependent upon the construction schedule as developed by the General Contractor.

The tentative schedule for the South Woodstock Wastewater Treatment Facility Upgrade is shown in **Table 4** below. The Manufacturer shall meet the milestones shown for manufacturing, delivery, and installation, which will ultimately be defined by the General Contractor. The Manufacturer shall base pricing on delivery of equipment in 2021.

**Table 4 - Tentative Schedule**

Date		Milestone
2020	September 30	SBR System Bids Due
	October 7	Initial System Selection
	October 14	SBR System Final Award
2021	<i>March 1 (tentative)</i>	<i>Bid Advertisement</i>
	<i>April 21 (tentative)</i>	<i>Contractor Award</i>
	<i>May 5 (tentative)</i>	<i>Begin Construction</i>
2022	<i>April 21 (tentative)</i>	<i>Construction Complete</i>

#### V. SYSTEM LAYOUT SUBMITTAL

Within two (2) weeks after Initial Selection, the Manufacturer shall confirm proposed equipment layout and submit any revised drawings to the Engineer. It is a requirement of this contract to submit these drawings within this time frame such that the Engineer can incorporate the SBR system and appurtenances into the final design of Contract No. 1, South Woodstock Wastewater Treatment Facility Upgrade, prior to that contract being advertised for bids. Provide documentation that Manufacturer can comply with this schedule as part of the submittal.

#### VI. BASIS OF SELECTION

The Owner will evaluate each responsive Bid for a number of criteria to objectively select the system best suited to their needs. The evaluation will be based on information provided by the Manufacturer and references to assess the suitability and performance of the SBR system. Criteria for evaluation include:

##### 1. Capital costs for all equipment and appurtenances

Manufacturer shall provide information regarding the installed capital costs of the SBR technology, and all peripheral components required for the SBR process to function properly (**Item A-1 on Bid Form**). At a minimum, costs should include the following, plus any other components necessary to provide a fully operational SBR system:

- General: The SBR Manufacturer equipment and appurtenances form an integrated treatment system and as such, shall be supplied by one manufacturer or system supplier who shall provide all the equipment and appurtenances regardless of various component manufacturer and who shall be responsible to the General Contractor for satisfactory operation and performance of the entire system. The following is a general listing of major components for which the SBR Manufacturer will be responsible but does not cover all details of these components or other equipment, appurtenances, and/or ancillary components necessary for a fully operational SBR treatment system. Nevertheless, the Manufacturer shall furnish the SBR system complete in all details and ready for operation.
  
- Influent valves: Valves shall be electrically operated plug valve, one for each basin, flanged end connection. Valves shall be a 125# flanged end connection, ASTM A-126 Class B cast iron body with welded in nickel seat, coated non-lubricated ductile or cast iron plug with 80% port opening, assembled and tested with an electric actuator. Valve actuator shall include motor winding protection, manual override, and limit switch feedback in the open and closed position. Actuator(s) include local controls consisting of pushbutton(s), selector switch(es), and light(s). Field wiring and junction/box disconnect shall be provided by the installing contractor.
  
- Sludge Transfer Pumps: Furnish submersible non-clog pump(s) for each basin as specified herein. Each pump shall be equipped with a submersible electrical motor connected for three phase operation. Pump housing shall be painted cast iron. Pump shall include an adequate length of multi-conductor chloroprene jacketed type SPC cable suitable for submersible pump applications. The power cable shall also be sized according to NEC and ICEA standards. The pump shall be supplied with a mating cast iron discharge elbow. Each unit shall be fitted with an adequate length of steel lifting chain of adequate strength to permit raising and lowering the pump.
  - Pump Quantity: 1 Per basin
  - Materials of Construction:
    - Lifting chain: 304 SS
    - Upper guide bars and bracket: 304 SS
    - Tank Connection: 304 SS adhesive anchors
    - System Manufacturer termination point: Pump discharge connection elbow

The pumps shall be capable of handling raw, unscreened sewage. The discharge connection elbow shall be permanently installed with the discharge piping. The pump shall be automatically connected to the discharge connection elbow when lowered into place and shall be easily removed for inspection or service. There shall be no need for personnel to enter the basin or pump well. Sealing of the pumping unit to the discharge connection elbow shall be accomplished by a simple linear downward motion of the pump.

An upper guide bar bracket shall be provided with each pump. The entire weight of the pumping unit shall follow guide bars into the operating position and pressed tightly against the discharge connection elbow with metal-to-metal contact. No sealing of the discharge interface

by means of a diaphragm, O-ring, or other devices shall be acceptable. The pump, with its appurtenances and cable, shall be capable of continuous submergence underwater without loss of watertight integrity to a depth of 65 ft. Each pump shall include a "Seal Failure" and "Over Temperature" warning system. Each pump shall include a discharge valve to control the design transfer flow rate.

Supply of all discharge piping, supports, gaskets, and hardware beyond the flanged connection specified above shall be the responsibility of the installing contractor.

Valve shall have a 125# flanged end connection, ASTM A-126 Class B cast iron body with welded in nickel seat, EPDM or neoprene coated ductile iron plug. The valve shall be a non-lubricated type with a port area of at least 80% of full pipe size.

Each pump shall include a Nibco F-918-B check valve with cast iron body and bronze disk to prevent backflow.

Valve(s) shall be provided loose for installation within the discharge piping by the installing contractor. Valve gaskets and hardware shall be supplied by the installing contractor. Field attachment of the pump to the basin shall be the responsibility of the installing contractor.

Manufacturer shall provide cost for one (1) additional sludge pump on shelf for redundancy.

- Decanters: As per Manufacturer.
- Internal basin piping: All process piping within SBR tanks, including chemical feed piping.
- Aeration system: Aeration system may include instrumentation for dissolved oxygen feed-back monitoring for ramping system up or down. Preference shall be given to energy efficient aeration systems and non-fixed in tank aeration system.
- Blowers (if used): The blower design shall be capable of providing 100% of the total air requirements with one unit out of service. Furnish blowers, at a minimum, with variable frequency drives for control by the dissolved oxygen feed-back monitoring system, isolation pads, inlet filters, inlet silencers, discharge silencers, flexible connections, discharge check valve, pressure relief valve, discharge isolation valve, discharge thermometer, discharge pressure gauge, spare parts (including one spare motor, complete). Preference will be given to right sized, energy efficient blowers.
- Mixers: As per Manufacturer.
- Pressure Transducers: Furnish submersible pressure transducer unit(s) constructed of stainless steel as specified herein. Transducer shall utilize a diffused silicone semiconductor sensor protected by an integral stainless steel diaphragm with seal fluid. Transducer output shall be a

4-20 mA signal. Electrical connection shall be 2-wire, loop powered through a shielded integral cable comprised of 22 AWG conductors and separate drain wire.

- Quantity: 1 per basin
- Mounting materials of construction
  - Support pipe: 304 SS
  - Supports: 304 SS
  - Anchors: 304 SS
  - Tank Connection: 304 SS adhesive anchors

Transducers shall be suspended on a removable mounting pipe assembly. Pipe, supports and anchors shall be provided. Field attachment of the pipe and supports to the basin shall be the responsibility of the installing Contractor. A moisture excluding aneroid bellows shall be supplied loose for installation in the junction box/disconnect. Attachment and supply of the junction box/disconnect at the basin wall shall be the responsibility of the installing contractor. Field attachment of the pressure transducer mounting brackets to the tank shall be the responsibility of the installing Contractor.

- Level Sensors: Furnish one (1) level sensor assembly per basin consisting of a float switch with a smooth, chemical resistant polypropylene casing, and 316 stainless steel mounting bracket for each basin. Each float switch shall be provided with a three conductor electrical cable. Electrical cable shall terminate at a junction box/disconnect located at the basin wall. Field wiring and junction box/disconnect shall be provided by the installing Contractor. Field attachment of the level sensor assembly to the tank shall be the responsibility of the installing Contractor.
- SBR Control System/PLC: Provide a control system designed to optimize the SBR process while minimizing operator attention, to accommodate the continuous maximum daily flow without adjusting cycle structures, and to provide control, sequence, monitoring, and alarm annunciation capabilities. Motor starters and elapsed time meters shall be provided for all SBR-related systems [including at a minimum, the following: mixers, sludge transfer pumps, blowers. Controls shall be provided for all SBR-related systems (including at a minimum, influent valves, decanter actuators, decanter valves, pressure transducers, level sensors, air control valves, common alarm, chemical feed systems). The SBR control panel will send a signal to the UV system to control the UV based on decant time. Provide programmable logic controller (PLC), operator interface display, software, NEMA 12 panel enclosure located in new Control Building. All control enclosures shall be custom assembled and wired in an Underwriters Laboratories (UL) certified cabinet shop using quality materials and labor. It will be the SBR Manufacturer's responsibility to interface its equipment with the new SCADA system to indicate alarm conditions, inhibit operations, and report SBR analog data. Digital inputs/outputs (I/O) shall be in the form of dry contacts, and analog I/O shall be isolated 4 - 20 mA. All SBR control components shall be finalized prior to construction to be compatible with proposed new SCADA system.

- Spare Parts and Tools: Provide all spare parts typically provided by the Manufacturer and including the following: one submersible sludge transfer pump, complete; one actuator mechanism for decanter; one spare motor for mixer; fifty replacement diffuser/membrane units (if used); one replacement part for tank level monitoring system (floats and/or transducer assemblies); spare part for blowers (if used); one box of light bulbs for each type of indicator or pilot light installation; set of tools and accessories required for proper operation and maintenance of the SBR equipment.
- Process Guarantee: For a period of one year from the date of Substantial Completion where process has reached equilibrium, the SBR equipment Manufacturer shall guarantee that the SBR system shall produce an effluent quality meeting the effluent parameters specified herein. If the system fails to meet the supplied effluent quality, the Manufacturer shall modify, supplement, or replace equipment by delivery of same to jobsite and supervising installation at no charge to Owner.
- Manufacturer's Representative: The equipment Manufacturer shall furnish the services of a factory trained representative for a maximum of three (3) trip(s) and twelve (12) eight-hour days at the jobsite to inspect the installing contractor's equipment installation, supervise the initial operation of the equipment, instruct the plant operating personnel in proper operation and maintenance, and provide process assistance. If additional service is required due to the mechanisms not being fully operational, at the time of service requested by the contractor, the additional service days will be at the contractor's expense. Provide rate for trip and 8 hour day as part of submittal.
- Warranty Period: For a period of one year from the date of Substantial Completion, supplier shall repair or replace any component which has been found defective in materials or workmanship under normal conditions of use and maintenance. Warranty need not cover alteration by Owner, damage from accidents, abuse, and vandalism, nor Acts of God.
- Overall Footprint: The Manufacturer shall provide the overall footprint of the required tankage necessary to provide optimal SBR performance. A smaller footprint is beneficial. See notes on **Figure 1 – Suggested Site Plan** defining available space and evidence of ledge. SBR systems that cannot fit within the available space will not be considered.

Based on the tankage volume required, including pre-equalization and SBR tanks, the Engineer will develop an opinion of probable cost for tankage construction and building space requirements for equipment.

VERMONT SALES TAX EXEMPTION: Owner is exempt from sales tax on products permanently incorporated in work. The Manufacturer shall:

- Obtain sales tax exemption certificate number from Owner.
- Place exemption certificate number on invoices for materials incorporated in work.
- Furnish copies of invoices to Owner.
- Upon completion of work, file with Owner notarized statement that all purchases made under exemption certificate were entitled to be exempt.

- Pay all legal costs and assessed penalties for improper use of exemption certificate number.

## **2. Guaranteed performance standards by Manufacturer**

Manufacturer shall provide information regarding specific warranty information on major pieces of equipment, such as blowers, pumps, decanters, etc. In addition, Manufacturer shall provide information regarding guarantees relating to the performance of the process and effluent quality in relation to the design parameters. The Engineer will identify any differences in the guarantees provided by the manufacturers.

## **3. Estimated 20-year life cycle cost for normal operation (energy consumption, chemical use, etc.)**

Total Energy Use for SBR Equipment and Appurtenances, given design average daily flows, over a 20-year period (**Item B-1 on Bid Form**).

Manufacturer shall provide information regarding the standard maintenance requirements, as well as the relative ease to complete any required standard and non-standard maintenance.

Consideration should be given to the ability to remove one SBR tank from service and/or access to equipment and process components while a tank is online. Preference will be given to retrievable, non-fixed in-tank equipment. Preference will be given to use of materials of construction that increase useful life of components. In addition, please provide the following information:

- Anticipated maintenance schedule over 20-year period
- Anticipated replacement schedule over 20-year period
- Estimated equipment costs (not including labor) for the 20-year maintenance and replacement schedules above (**Item B-2 on Bid Form**)
- Estimated level of effort (man-hours) to complete all anticipated maintenance and replacement activities over 20-year period (**Item B-3 on Bid Form**)
- Anticipated chemical usage (gallons) over 20-year period, on a per-chemical basis (**Item B-4 on Bid Form**)

The Engineer will use the information provided to develop a 20-year life cycle cost.

## **4. Available after-market support from SBR Manufacturer**

Manufacturer shall provide a description of after-market support and associated costs for use of these services. The Engineer will identify any differences in the level of service provided and costs.

## **5. References from prior installations**

Manufacturer shall provide a minimum of 12 references to facilities as represented by operators, engineers, and regulators, to illustrate successful process operations, favorable operations and maintenance requirements, favorable service provided by the Manufacturer, and any other information pertinent to the process or the facility. References shall include facilities with nitrogen removal as a process requirement. The Engineer will develop a set of questions to review with the references. The Engineer will identify any differences in the responses.



## **6. Reported performance from other installations**

The Manufacturer shall certify that their experience includes a minimum of ten installations where identical equipment has been in operation successfully in a similar process for a minimum of five years in the United States and/or Canada in a cold climate. Representative installations shall also include nitrogen removal as a process requirement. Manufacturers who are able to certify as described shall receive maximum points available for this criterion.

### **Criteria Weighting**

Each of the above criteria will be scored (on a 1-10 scale) and ranked with the following weighted percentages:

1. Capital cost for all equipment and appurtenances: 35%
2. Guaranteed performance standards by Manufacturer: 15%
3. Estimated 20-year life cycle cost for normal operation: 25%
5. Available after market support from SBR Manufacturer: 10%
6. Recommendations from prior installations: 5%
7. Reported performance from recommendations from other installations: 10%

The Engineer will perform an initial scoring for review and approval by the Owner. The Engineer may request (and require) individual Bidders to provide supplemental information to make an informed evaluation and ranking of the Bids.

The Owner will make a final selection based on the Engineer's recommendation and their final evaluation of each Bid.

1. THIS SITE PLAN SHOWS A SUGGESTED SBR SYSTEM LAYOUT WITH AN IDENTIFIED AREA AVAILABLE FOR PROCESS TANKS. THE SBR MANUFACTURER CAN PROPOSE AN ALTERNATE LAYOUT WITHIN THE SPACE CONSTRAINTS OF THE EXISTING SITE.
2. PROPOSED LAYOUTS MUST ALLOW THE MAINTENANCE OF FLOW AND TREATMENT THROUGH THE EXISTING WWTF THROUGHOUT CONSTRUCTION.
3. NO CONSTRUCTION OR SITE ALTERATIONS MAY TAKE PLACE WITHIN THE FLOODWAY BOUNDARY.
4. A GEOTECHNICAL INVESTIGATION CONDUCTED ON 6/26/20 INDICATED THE PRESENCE OF BEDROCK APPROXIMATELY 8-10 FEET BELOW GROUND SURFACE.
5. NO STRUCTURES SHALL BE LOCATED WITHIN THE 25 FOOT SETBACK FROM CENTERLINE OF ROAD.

	EXISTING CONTOUR		FENCE LINE
	APPROXIMATE EXISTING RIGHT-OF-WAY		CONTROL POINT
	APPROXIMATE EXISTING PROPERTY LINE		SIGN
	STORM DRAIN LINE		GUIDE POST
	DIRECTION OF FLOW		GUARDRAIL
	DRAINAGE MANHOLE		WOODS/BRUSH LINE
	DRAINAGE INLET/CATCH BASIN		STUMP
	SANITARY LINE		FLOODWAY BOUNDARY
	SANITARY MANHOLE		
	UG ELECTRICAL LINE		
	UTILITY POLE		
	OVERHEAD ELECTRIC		
	OVERHEAD TELEPHONE		
	HYDRANT		
	GATE VALVE		
	WATER SHUT-OFF		
	TEST PIT/BORING		
	BUILDING OUTLINE		

PARCEL 33.01.19  
4632 SOUTH RD  
PICKETT, CAROLE L. TRUST  
PO BOX 54,  
SOUTH WOODSTOCK, VT 05071

PARCEL 33.01.22  
4548 SOUTH RD  
TOWN OF WOODSTOCK

PROPOSED OUTFALL

### — EFFLUENT Q MEASUREMENT

8" AC EFFLUENT SEWER  
(CONCRETE ENCASED)

~~87Cl OUTFALL~~

~~8" CI EFFLUENT SEWER  
(CONCRETE ENCASED)~~

FLOODWAY  
BOUNDARY

25' SETBACK BOUNDARY

— FLOODWAY BOUNDARY

— PROPOSED NEW FENCE

— PROPOSED NEW PAVEMENT

— AREA AVAILABLE FOR SBR SYSTEM TANKAGE

— OPS BLDG/ SBR/UV/CHEM BLDG

VERMONT ROUTE 106  
SOUTH WOODSTOCK ROAD

## SLUDGE DIGESTER

— HEADWORKS BLDG

RAW WW PS

— PROPOSED NEW PAVEMENT

## SITE PLAN

SCALE: 1' = 15'



SCALE: 1" = 15'

**DRAFT**

HOYLE, TANNER  
PROJECT NO.  
129900.02

FILE NAME

129900.02 FIG1

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PROJECT, WITHOUT THE WRITTEN PERMISSION OF HOYLE, TANNER.

BY	DRAWN BY	CHECKED BY

**Hoyle, Tanner & Associates, Inc.**  
125 College Street—4th Floor, Burlington, VT 05401  
Tel: (802) 860-1331 Fax: (802) 860-6439 Web: [www.hoyletanner.com](http://www.hoyletanner.com)

Tel (802) 860-1331 Fax (802) 860-6499 Web: [www.hoyetanner.com](http://www.hoyetanner.com)

SCALE: AS SHOWN	DATE: AUGUST 2020	DESIGNED
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TOWN OF WOODSTOCK, VERMONT  
SOUTH WOODSTOCK WASTEWATER TREATMENT FACILITY UPGRADE

SBR SYSTEM DIRECT PURCHASE

## SUGGESTED SITE PLAN

FIGURE NO.

1

SHEET 1 OF 1