

# PROCUREMENT CONTRACT DOCUMENTS

## FLOW METERS

### LOWER POPLAR WATER RECLAMATION FACILITY INFLUENT PUMP STATION



**JULY 2024**

# AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

Prepared By



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# AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

## TABLE OF CONTENTS

	Page
Article 1— Procurement Contract .....	1
1.01 <i>Goods and Special Services</i> .....	1
1.02 <i>The Project</i> .....	1
1.03 <i>Engineer</i> .....	1
1.04 <i>Point of Destination</i> .....	1
Article 2— Procurement Contract Times .....	1
2.01 <i>Time of the Essence</i> .....	1
2.02 <i>Schedule of Procurement Contract Times</i> .....	2
2.03 <i>Shop Drawings and Samples</i> .....	2
2.04 <i>Liquidated Damages</i> .....	2
Article 3— Procurement Contract Price .....	3
3.01 <i>Line Item Prices</i> .....	3
3.02 <i>Additional Costs</i> .....	3
3.03 <i>Conditions</i> .....	3
Article 4— Payment Procedures .....	3
4.01 <i>Submittal and Processing of Applications for Payment</i> .....	3
4.02 <i>Progress Payments; Final Payment</i> .....	4
4.03 <i>Interest</i> .....	4
Article 5— Assignment of Procurement Contract .....	4
5.01 <i>Assignment of Contract</i> .....	4
Article 6— Procurement Contract Documents .....	7
6.01 <i>List of Procurement Contract Documents</i> .....	7
Article 7— Seller’s Representations and Certifications .....	8
7.01 <i>Seller’s Representations</i> .....	8
7.02 <i>Seller’s Certifications</i> .....	8
Article 8— Confidentiality .....	9
8.01 <i>Confidential Information</i> .....	9

8.02	<i>Disclosure of Confidential Information</i> .....	9
8.03	<i>Waiver of Immunity</i> .....	10
Article 9— Mutual Waiver .....		10
9.01	<i>Mutual Waiver of Consequential Damages</i> .....	10
Exhibit A— Assignment of Procurement Contract, Consent to Assignment, and Acceptance of Assignment.....		1

# **AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT**

This Procurement Agreement is by and between **Macon Water Authority** ("Buyer") and **Kazmier & Associates** ("Seller").

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

## **ARTICLE 1—PROCUREMENT CONTRACT**

### **1.01 *Goods and Special Services***

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows:

Three (3) magnetic flow meters

### **1.02 *The Project***

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows:

Conversion of the existing dry-pit pump station into a submersible pump station with six new submersible wastewater pumps and appurtenances.

### **1.03 *Engineer***

- A. Buyer has retained Barge Design Solutions, Inc. ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.

### **1.04 *Point of Destination***

- A. The Point of Destination is designated as:

Lower Poplar Water Reclamation Facility

1101 Lower Poplar St

Macon, GA 31201

## **ARTICLE 2—PROCUREMENT CONTRACT TIMES**

### **2.01 *Time of the Essence***

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

## 2.02 *Schedule of Procurement Contract Times*

- A. Days for Submittal of Shop Drawings and Samples: Seller shall submit all Shop Drawings and Samples required by the Contract Documents to Buyer for Engineer's review and approval within 14 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions. It is the intent of the parties that (1) Buyer review, approve, and forward Shop Drawings and Samples to Engineer conduct such review and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within twenty one days of Seller's submittal of such Shop Drawings and Samples; (2) Buyer shall return Shop Drawings to the Seller within 7 days of receipt of reviewed Shop Drawings from the Engineer and (3) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraphs 11.08 and 11.09 of the General Conditions.
- B. Days to Achieve Delivery of Goods: The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery within a period of no more than 60 consecutive calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.
- C. Days for Furnishing Special Services: The furnishing of Special Services to Buyer will commence within 14 consecutive calendar days after Buyer's acknowledgement of receipt of delivery of the Goods, and shall be completed within 40 days thereafter.

## 2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples*: Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer's Review*: It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **30** days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

## 2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$1,000.00 for each day that expires after the time specified in Paragraph 1.06 for delivery of acceptable Goods. No liquidated damages can be assessed unless the cumulative time has been

exceeded by the Seller. Such liquidated damages shall be the sole remedy in damages available to Buyer for any delay by Seller. The total amount of liquidated damages that can be assessed shall not exceed ten percent of the total Contract Price.

**ARTICLE 3—PROCUREMENT CONTRACT PRICE**

3.01 *Line Item Prices*

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

• Shop Drawing Preparation	LS	\$100.00
• Manufacturing of Goods		
○ FE-9100	16" Magnetic Flow Meter LS	\$10,350.00
○ FE-9200	16" Magnetic Flow Meter LS	\$10,350.00
○ FE-9003	30" Magnetic Flow Meter LS	\$22,050.00
○ FE-9004	30" Magnetic Flow Meter LS	Furnished by Owner
• Special Services	LS	<u>\$3,000.00</u>
<b>TOTAL PRICE</b>		<b>\$45,850.00</b>
• Additional Proposed Costs (Not included in Total Price above))		
○ Monthly Storage Fee	\$2,500.00 x 6 Months	\$15,000.00
○ Monthly Delay Fee	\$0.00 x 6 Months	No Charge

3.02 *Additional Costs*

- The Seller’s monthly fee for storage of Goods at Seller’s facilities in the event that Buyer desires to delay shipment beyond the shipment date stated below in Article 3.03. Such fee shall include interest on money due Seller.
- The Seller’s monthly fee for Buyer delaying the initiation of manufacturing of Goods or for not executing the Procurement Agreement within the time specified in 3.03 below.

3.03 *Conditions*

- A. Seller agrees that the prices in Article 3.01, above, are based on the conditions that initiation of manufacturing of Goods may be delayed by the Buyer until no more than 45 days after the Procurement Agreement is executed.
- B. Seller agrees that the prices in this Article 3 are based on the condition that shipment of goods may be delayed by the Buyer until August 1, 2025.

**ARTICLE 4—PAYMENT PROCEDURES**

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.



#### 4.02 *Progress Payments; Final Payment*

- A. Progress Payments: Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
  - 1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 13.01 of the General Conditions an amount equal to the cost of Shop Drawing Preparation, with such amount being as indicated in Article 3 above, less any amounts retained by the Owner from the Buyer.
  - 2. Upon receipt of the second and subsequent such Applications for Payment in accordance with Paragraph 13.03 of the General Conditions, an amount sufficient to increase payments to Seller by the amount of the costs for Manufacturing of Goods and costs for Special Services provided or performed to date, with such amount being as indicated in Article 3 above, less any amounts retained by the Owner from the Buyer and less such amounts as Engineer may determine to be associated with non-conforming Goods or performance of Special Services which are not acceptable.
  - 3. No payment for Manufacturing of Goods or Special Services shall be made until Goods are delivered to the Project Site. Payment for Shop Drawings is not affected by this provision.
- B. The contract between the Owner and the General Contractor will contain a provision for retainage in the amount of five percent.
- C. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after presentation to Buyer of the Application for Payment. Payment shall be made with an Application for Payment and acceptance of the work as "satisfactory" as determined by MWA.

#### 4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of six percent per annum.

### **ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT**

#### 5.01 *Assignment of Contract*

- A. Buyer has the right to assign this Procurement Contract for furnishing Goods and Special Services, but only to a person or entity with sufficient apparent ability to satisfy all of Buyer's obligations under this Procurement Contract, and Seller hereby consents to such assignment. Forms documenting the assignment of the Procurement Contract, and consent of Seller's surety to the assignment, have been executed by Buyer, Seller, and Seller's surety, and are attached as exhibits to this Procurement Agreement. If so, assigned the following provisions apply:
  - 1. The Procurement Contract is initially executed in the name of the entity identified herein as Buyer, and will be assigned by such Buyer (as assignor) to a construction contractor (Contractor/Assignee) designated by such Buyer. The assignment will occur on the effective date of the construction contract between such Buyer (Project Owner) and the Contractor/Assignee, which is expected to occur on or about **October 30, 2024**. Commencing on the date of acceptance of assignment by the Contractor/Assignee, all

references in the Procurement Contract to “Buyer” shall mean the designated Contractor/Assignee.

2. The assignment of this Procurement Contract relieves the assignor from all further obligations and liabilities under this Procurement Contract. After assignment, Seller shall become a subcontractor or supplier to the Contractor/Assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Procurement Contract become the rights, duties, and obligations of the Contractor/Assignee.
3. After assignment:
  - a. The Procurement Drawings and Procurement Specifications, and any modifying Addenda will become “Contract Documents” under the construction contract.
  - b. If the Procurement Drawings or Procurement Specifications, as “Contract Documents” under the construction contract, are duly modified under such construction contract, then Seller and Contractor/Assignee shall enter into a corresponding Change Order under the applicable provisions of this Procurement Contract.
  - c. The Procurement Drawings and Procurement Specifications may not be modified by Seller or Contractor/Assignee, singly or in tandem, except as such Procurement Drawings or Procurement Specifications, as “Contract Documents” under the construction contract, have been duly modified under such construction contract.
  - d. All performance warranties, guarantees, and indemnifications required by the Procurement Contract will continue to run for the benefit of assignor (Project Owner) and, in addition, for the benefit of the Contractor/Assignee. However, if assignor (Project Owner) and Contractor/Assignee make the same warranty or guarantee claim, then Seller shall only be liable once for such claim. Other than its remedies under such warranties, guarantees, and indemnifications, assignor will not retain direct rights under this Procurement Contract, but will have rights and remedies as a party to the construction contract, whose scope of work will encompass the Procurement Drawings, Procurement Specifications, and modifying Addenda; provided, however, that any limitations on Seller’s liability in this Procurement Contract will continue to bind the original Buyer (assignor) after assignment.
  - e. The Contractor/Assignee shall have all the rights of the Buyer under the Performance Bond and Payment Bond.
  - f. Seller shall submit all Applications for Payment directly to Contractor/Assignee.
    - 1) Contractor/Assignee shall review each Application for Payment promptly, determine the amount that Contractor/Assignee approves for payment, and then include the amount approved in the next application for payment submitted to Project Owner (or Engineer) under the construction contract.
    - 2) Contractor/Assignee shall pay Seller within ten days of receipt of payment from the Project Owner under the construction contract.
    - 3) After assignment Engineer will review, approve, or deny the content of Applications for Payment under the Procurement Contract only to the extent that Contractor/Assignee, as construction contractor, has incorporated such

content into payment applications that Engineer reviews under the construction contract.

- g. The Contractor/Assignee shall have all the rights of the Buyer under any pending Claim by Buyer.
- h. All Claims and supporting documentation will be submitted directly by the claimant party (either Buyer, Contractor/Assignee, or Seller), to the other party, without submittal to Engineer.
  - 1) The other party will render a response in writing within 30 days of receipt of the last submittal of claimant.
  - 2) If the other party does not render a written response to a Claim within 30 days after receipt of the last submittal of the claimant, the other party shall be deemed to have approved the Claim in its entirety.
  - 3) The other party's written response to a Claim, or the approval of the Claim in its entirety as a function of failure to respond within 30 days, will be final and binding upon Buyer and Seller 30 days after it is issued, unless within such 30 days of issuance either Buyer or Seller appeals the result by initiating the mediation of the Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02 of the General Conditions.
  - 4) Any Claim by Seller that Contractor/Assignee may choose to submit, present, or forward to Project Owner must be submitted to Buyer within sufficient time for Contractor/Assignee to preserve its rights under the construction contract, notwithstanding any procedures or time limits in this Procurement Contract.
- i. Seller's recovery of additional cost, time, or both cost and time for any Claim attributable to the Project Owner will be limited to the proportionate recovery by Contractor/Assignee against Project Owner for such Claim. Seller will cooperate and assist Contractor/Assignee in pursuing any Claim by Contractor/Assignee against Project Owner on behalf of Seller, including the timely preparation and delivery of supporting documentation.
- j. If the pursuit of any claim by Contractor/Assignee against Project Owner on Seller's behalf requires the expenditure by Contractor/Assignee of legal or consulting fees, or results in litigation, arbitration, or any dispute resolution procedures, Seller agrees to pay for a proportionate share of attorneys' fees, consultant fees, and litigation, arbitration, and other resolution costs incurred by Contractor/Assignee in pursuing the claim on behalf of Seller, based upon the amount claimed by Seller as compared to the total value of the claim pursued by the Contractor/Assignee.
- k. All rights, duties, and obligations of Engineer to Contractor/Assignee and Seller under this Procurement Contract will cease.
- l. Subject to the foregoing provisions, all references in the Procurement Contract to submitting items to Engineer, or to Engineer having tasks or obligations, will be read after such an assignment as requiring submittal to Contractor/Assignee, or as Contractor/Assignee having such tasks or obligations (which Contractor/Assignee may delegate when appropriate).

- m. If the Procurement Contract includes a Buyer's Contingency Allowance, upon assignment such allowance will be automatically reduced to the amount previously authorized by Buyer (Project Owner), and cease to be operational.
- B. No other assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

## **ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS**

### **6.01 *List of Procurement Contract Documents***

- A. The Procurement Contract Documents consist of the following:
  - 1. This Procurement Agreement.
  - 2. General Conditions of the Procurement Contract.
  - 3. Procurement Specifications as listed in the Procurement Specifications table of contents
  - 4. Procurement Drawings (not attached but incorporated by reference):
    - a. consisting of sheets numbered 02-D104, 02-D303, and 99-D501, inclusive, with each sheet bearing the following general title:  

**Lower Poplar Water Reclamation Facility, Influent Pump Station Improvements**
  - 5. Addenda Numbers
  - 6. Exhibits to this Procurement Agreement (enumerated as follows):
    - a. Exhibit A, Assignment of Contract, Consent to Assignment, and Acceptance of Assignment.
    - b. Seller's Final Proposal, dated April 12th, 2024 as included on attached electronic media and entitled Preselected Equipment Allowance )
  - 7. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
    - a. Change Orders;
    - b. Change Directives;
    - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.

- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

## **ARTICLE 7—SELLER’S REPRESENTATIONS AND CERTIFICATIONS**

### *7.01 Seller’s Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
1. Seller has examined and carefully studied the Procurement Contract Documents.
  2. If required, or if, in Seller’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller 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. Seller 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 the Procurement Contract.
  4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
  5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
  6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
  7. Seller’s entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

### *7.02 Seller’s Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
1. “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 or in the Procurement Contract execution;
  2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;

3. “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
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

## **ARTICLE 8—CONFIDENTIALITY**

### **8.01 Confidential Information**

- A. Confidential information is information in documents submitted by Seller that Seller clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Such 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.
- B. Seller 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.

### **8.02 Disclosure of Confidential Information**

- A. If Buyer is requested to disclose confidential information, or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, or other requests under Laws and Regulations) 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 the Procurement Contract, Buyer will provide Seller with prompt notice so Seller may seek an appropriate protective order or other remedy. Seller 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.
- B. Buyer’s obligations with respect to confidential information are nullified by the following exceptions:
  1. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
  2. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer’s possession, and not previously marked as confidential, or was otherwise publicly available prior to the Effective Date of the Procurement Contract;
  3. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
  4. Buyer has a good faith belief that disclosure is required or justified; or
  5. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.

8.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Procurement Contract, it is stipulated and agreed that by accepting confidential information, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

**ARTICLE 9—MUTUAL WAIVER**

9.01 *Mutual Waiver of Consequential Damages*

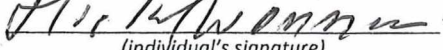
- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is August 19, 2024.

Buyer

Macon Water Authority  
(typed or printed name of organization)

By:   
(individual's signature)

Date: 8/19/2024  
(date signed)

Name: Michel Wanna  
(typed or printed)

Title: Assistant Executive Director  
(typed or printed)

Attest:   
(individual's signature)

Title: Executive Administrator's Asst  
(typed or printed)

Address for giving notices:

537 Hemlock Street  
Macon, GA 31202

Designated Representative:

Name: Gene Inman  
(typed or printed)

Title: Project Manager  
(typed or printed)

Address:

537 Hemlock Street  
Macon, GA 31202

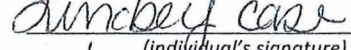
Phone: (478) 738-6518

Email: ginman@maconwater.org

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

Seller

Kazmier and Associates  
(typed or printed name of organization)

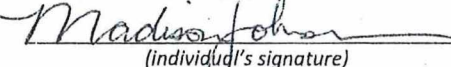
By:   
(individual's signature)

Date: 7/23/24  
(date signed)

Name: Lindsey Case  
(typed or printed)

Title: President  
(typed or printed)

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

Attest:   
(individual's signature)

Title: Corporate Secretary  
(typed or printed)

Address for giving notices:

210 S. Cherry Street  
Lenoir City, TN 37771

Designated Representative:

Name: Jason Bott  
(typed or printed)

Title: Territory Manager  
(typed or printed)

Address:

525 Tribble Gap Road #112  
Cumming, GA 30028

Phone: (770) 475-2242

Email: jason@kazmierinc.com



**EXHIBIT A—ASSIGNMENT OF PROCUREMENT CONTRACT, CONSENT TO ASSIGNMENT, AND ACCEPTANCE OF ASSIGNMENT**

This assignment will be effective on the effective date of the construction contract between Buyer (as "Owner") and Contractor/Assignee (as "Contractor").

The Procurement Contract between Macon Water Authority ("Buyer") and Kazmier & Associates ("Seller") for furnishing Goods and Special Services is hereby assigned, transferred, and set over to Contractor/Assignee, as assignee, by Buyer, as assignor. Upon assignment the Contractor/Assignee shall have the duties, rights, and obligations of Buyer under the terms of the Procurement Contract, and will be responsible to Owner under the construction contract for the performance of obligations by Seller, which will become a Subcontractor or Supplier to Contractor/Assignee. Buyer, Seller, and Contractor/Assignee hereby acknowledge and agree to be bound by the terms and conditions of assignment set forth in Article 5 of the Agreement Between Buyer and Seller for Procurement Contract.

**Assignment Made by Buyer**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*(individual's signature) (date signed)*

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
*(typed or printed) (typed or printed)*

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

**Assignment Acknowledged and Accepted by Seller**

Kazmier & Associates  
*(typed or printed name of organization)*

By: Lindsey Case Date: 7/23/24  
*(individual's signature) (date signed)*

Name: Lindsey Case Title: President  
*(typed or printed) (typed or printed)*

*If Seller is a corporation, attach evidence of authority to sign.*

**Assignment Accepted by Contractor/Assignee**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*(individual's signature) (date signed)*

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
*(typed or printed) (typed or printed)*

*If Contractor/Assignee is a corporation, attach evidence of authority to sign.*

# STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

Prepared By



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# STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

## TABLE OF CONTENTS

	Page
Article 1— Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	4
Article 2— Preliminary Matters .....	5
2.01 Delivery of Bonds and Evidence of Insurance.....	5
2.02 Copies of Documents .....	5
2.03 Electronic Transmittals .....	6
2.04 Preliminary Schedules.....	6
2.05 Preliminary Conference .....	6
2.06 Safety .....	7
Article 3— Procurement Contract Documents.....	7
3.01 Intent.....	7
3.02 Reference Standards.....	8
3.03 Reporting and Resolving Discrepancies .....	8
3.04 Requirements of the Procurement Drawings and Procurement Specifications.....	9
3.05 Reuse of Documents .....	9
Article 4— Commencement and Schedule .....	10
4.01 Commencement of Procurement Contract Times.....	10
4.02 Continuing Performance .....	10
4.03 Adjustments to Progress Schedule .....	10
4.04 Delays.....	10
Article 5— Bonds and Insurance.....	11
5.01 Insurance.....	11
5.02 Surety or Insurance Companies .....	16
Article 6— Licenses and Fees.....	16
6.01 Intellectual Property and License Fees .....	16
6.02 Seller’s Infringement.....	17
6.03 Buyer’s Infringement .....	17

Article 7— Seller’s Responsibilities .....	18
7.01 Performance of Obligations .....	18
7.02 Labor, Materials and Equipment .....	18
7.03 Laws and Regulations.....	18
7.04 Taxes .....	19
7.05 Submittals .....	19
7.06 Indemnification .....	21
7.07 Concerning Subcontractors and Suppliers.....	22
Article 8— Shipping and Delivery .....	22
8.01 Shipping.....	22
8.02 Delivery .....	22
8.03 Risk of Loss .....	23
Article 9— Buyer’s Rights.....	23
9.01 Seller’s Warranties and Guarantees .....	23
9.02 Inspections and Testing .....	24
9.03 Non-Conforming Goods and Special Services.....	25
9.04 Correction Period.....	26
Article 10— Engineer’s Status.....	27
10.01 Engineer’s Role Defined .....	27
10.02 Duties and Responsibilities; Authority; Limitations .....	27
Article 11— Changes.....	28
11.01 Amending and Supplementing the Procurement Contract .....	28
11.02 Change Orders .....	28
11.03 Change Directives .....	28
11.04 Field Orders.....	29
11.05 Buyer-Authorized Changes in the Goods and Special Services.....	29
11.06 Buyer’s Contingency Allowance.....	29
11.07 Unauthorized Changes in the Goods and Special Services .....	29
11.08 Change of Procurement Contract Price .....	30
11.09 Change of Procurement Contract Times.....	30
11.10 Notification to Surety.....	30
Article 12— Claims, Disputes, and Dispute Resolution .....	30
12.01 Claims.....	30

12.02	Dispute Resolution Method .....	31
Article 13—	Payment .....	32
13.01	Applications for Progress Payments .....	32
13.02	Basis and Amount of Progress Payments .....	32
13.03	Suspension of or Reduction in Payment .....	32
13.04	Final Payment.....	33
13.05	Waiver of Claims .....	34
Article 14—	Cancellation, Suspension, and Termination .....	34
14.01	Cancellation.....	34
14.02	Suspension of Performance by Buyer .....	34
14.03	Suspension of Performance by Seller .....	34
14.04	Breach and Termination.....	35
Article 15—	Miscellaneous .....	35
15.01	Giving Notice .....	35
15.02	Controlling Law .....	35
15.03	Computation of Time .....	36
15.04	Cumulative Remedies .....	36
15.05	Survival of Obligations .....	36
15.06	Entire Agreement.....	36
15.07	No Waiver .....	36
15.08	Headings.....	36
15.09	Successors and Assigns .....	36





## 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. The terms Contract and Procurement Agreement shall be considered synonymous.
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 may be 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. *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 one printed copy 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 and it allows for adequate review times for submittals (including resubmittals).
    - 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. In resolving inconsistencies among two or more components of the Procurement Contract Documents, precedence shall be given in the following order:
  - 1. Written Amendments
  - 2. Change Orders
  - 3. Work Change Directives
  - 4. Engineer's written interpretations and clarifications
  - 5. Addenda
  - 6. Procurement Agreement
  - 7. General Conditions
  - 8. Specifications Division 01
  - 9. Specifications Division 02 – 49
  - 10. Drawings: Figure dimensions on Drawings will take precedence over scale dimensions. Detailed Drawings will take precedence over general Drawings.
  - 11. Proposal
- 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 Insurance**

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated below.
- 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.
- F. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and Special Services and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Contract Documents, whether the furnishing of Goods or Special Service, or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods or Special Services, or by anyone for whose acts any of them may be liable:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (ii) by any other person for any other reason;
  - 5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- G. The policies of insurance so required by this Paragraph 5.02 to be purchased and maintained shall with respect to insurance required by Paragraphs 5.02.F.3 through 5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Owner, Engineer, their consultants all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  - 1. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;
  - 2. include completed operations insurance;

3. include contractual liability insurance covering Seller’s indemnity obligations under Paragraphs 7.07 and 6.02.
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Buyer and Seller but for non-payment of premium, which is ten days per GA law, and to each other additional insured identified in General Conditions Paragraph 5.02.G to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Seller pursuant to Paragraph 5.02.I will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.04; and
  6. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in General Conditions Paragraph 5.02.G, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. Proof of insurance coverage and furnishing of insurance policies acceptable to the Owner shall be as set forth in this Article.
1. *Policies, Certificates, Limits and Disposition of Documents* —The Contractor shall obtain at his expense insurance with limits as shown hereinbelow, unless the Contractor desires to broaden the limits and obtain more protection. The Contractor shall provide the Owner with all insurance documentation and evidence of insurance as required herein, and updated certificates of all insurance required herein must be provided to the Owner at least quarterly until Final Payment.
    - a. **WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY INSURANCE**—The Contractor shall procure and maintain Worker's Compensation and Employers Liability Insurance for all of his employees to be engaged in Work on the project under this contract, and in case any such Work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer’s Liability Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor’s insurance. Worker's Compensation insurance policies shall include GEORGIA under Section 3A and shall include Other States coverage and Voluntary Compensation.

Worker’s Compensation Limits:	Statutory
Employers Liability Limits:	
Each Accident	\$1,000,000
Disease - Policy Limit	\$1,000,000
Disease - Each Employee	\$1,000,000

Contractor waives all rights against Owner and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the worker’s compensation and employer’s liability or commercial umbrella liability insurance obtained by Contractor pursuant to Article 4 of this agreement.

The Waiver of Our right To Recover From Others Endorsement, ISO Form SC 00 03 13 shall be attached to the policy showing the Owner listed in the Schedule.

*Disposition:* Certificate(s) of insurance showing the required coverage and copy of declaration page must be returned to the Owner with properly executed Contract Documents. If requested by the Owner, Contractor shall also provide a certified copy of the policy(ies) required by Article 4(a)(1).

- b. **COMMERCIAL GENERAL AND UMBRELLA LIABILITY INSURANCE.**—The Contractor shall procure and shall maintain commercial general liability (CGL) and if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, as shall protect him and any Subcontractor performing Work covered by this Contract from claims for damages for bodily injury, including accidental death, as well as from claims for property damages, which may arise from operations under the Contract Agreement, whether such operations are by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them.

CGL insurance shall be written on ISO occurrence form CG 00 01 10 93 (or substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If such CGL insurance contains a general aggregate limit, it shall apply separately to this project. Each policy shall be indorsed with ISO Form CG 25 03 11 85 or equivalent form with wording satisfactory to Owner.

The Owner shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 33 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Owner.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Contractor waives all rights against the Owner and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by commercial general liability or commercial umbrella liability insurance maintained pursuant to Article 4 of this agreement.

*Disposition:* Certificate(s) of insurance showing the required coverage and copy of declaration page must be returned to the Owner with properly executed Contract Documents. If requested by the Owner, Contractor shall also provide a certified copy of the policy(ies) required by Article 4(a)(2).

- c. **BUSINESS AUTO AND UMBRELLA LIABILITY INSURANCE**—The Contractor shall procure and shall maintain business automobile liability, and if necessary,

commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence.

Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of ISO form CA 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Owner.

Contractor waives all rights against the Owner and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to Article 4 of this agreement or under any applicable auto coverage.

*Disposition:* Certificate(s) of insurance showing the required coverage and copy of declaration page must be returned to the Owner with properly executed Contract Documents. If requested by the Owner, Contractor shall also provide a certified copy of the policy(ies) required by Article 4(a)(2).

*Cross-Liability Coverage*—If Contractor’s liability policies do not provide the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

- 1) By proper endorsement, the policy must name

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790 Second Street  
P. O. Box 108  
Macon, GA 31202

as an additional insured and shall provide for not less than thirty (30) days prior written notice before cancellation or any material change in the policy, except for non-payment of premium which shall require ten (10) days prior written notice of cancellation, to the Owner.

- d. Commercial Umbrella/Excess Policy:

Contractor shall procure a commercial umbrella or excess policy with a limit of not less than \$5,000,000. Coverage must follow form over underlying policies including GL, Auto and Employer’s Liability insurance.

- e. ~~MATERIALS AND EQUIPMENT FLOATER.~~ The Contractor shall procure, and shall maintain during the performance of the Contract Agreement, Materials and Equipment Floater (May be labeled as *Equipment Floater* or *Installation Floater* or *Builders Risk*) Insurance to protect the interests of the Owner, the Contractor and Subcontractors against loss by vandalism, malicious mischief, and all hazards included in a standard All Risk Endorsement. The amount of insurance shall at all times equal or exceed the amount of the materials in the Contract + \$30k for Owner

~~furnished materials. The policies shall be in the names of the Owner and the Contractor.~~

~~Disposition: Original policy must be returned to the Owner with properly executed Contract Documents. Owner may accept with returned, executed Contract Documents in lieu of an original policy, an insurance binder evidencing the policy coverage, but Contractor shall not be relieved of the obligation to furnish the actual policy.~~

~~Endorsement on Materials and Equipment Floater Policy—There shall be attached to and made a part of the insurance policy for MATERIALS AND EQUIPMENT FLOATER an endorsement of the insurance company in accordance with the specimen shown in preceding Paragraph (a)(3).~~

- I. Seller shall deliver to Buyer, with copies to each additional insured identified in General Conditions Paragraph 5.02.G, certificates of insurance (and other evidence of insurance requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.
- J. If Buyer has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained on the basis of non-conformance with the Contract Documents, Buyer shall notify Seller in writing within 10 days after receipt of the certificates or other evidence required by Paragraph 5.02.I. Seller shall provide such additional insurance.

#### 5.02 *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 and carry a rating from A.M. Best of no less than (A- Excellent).

### **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 Engineer's design, Engineer 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, and except to the extent related to Paragraph 6.03, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Project Owner, 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) that a court of competent jurisdiction has determined was arising out of or relating to any infringement or alleged infringement of any third party's valid patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will notify Seller in writing of any claim, suit, or threat of suit by a third party within twenty-one calendar days after receiving notice 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 by a court of competent jurisdiction that Seller has infringed upon the intellectual property rights of another, Seller, at its option, 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 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 which are not in effect and which are 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 *Taxes*

- A. Buyer shall pay all sales and use taxes , if any, arising out of the sale of the Goods and the performance of Special Services..

7.05 *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 Buyer and 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 Buyer and Engineer the services, materials, and equipment Seller proposes

to provide, and to enable Buyer and 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 Buyer's and 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 or disapproval 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 or disapproval 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 or disapproval 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 Buyer or 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.

7.06 *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 third party 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.
- C. Notwithstanding anything to the contrary in these Procurement Contract Documents, Seller shall not be liable to the Buyer for incidental, special, consequential or punitive damages or any economic consequential damages, including but not limited to loss of profits, lost production, or lost business opportunity. Without limiting the generality of the foregoing, in no event will Seller be liable for any losses or damages in excess of the Contract Price paid to Seller with respect to the Goods and Special Services sold hereunder.

#### 7.07 *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 Buyer and Engineer. Buyer and Engineer shall be entitled to rely on Seller's written 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 and Engineer 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 or Engineer 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 final acceptance of the construction of the Project or 24 months after delivery of the Goods, whichever is sooner.
- 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 30 days after such occurrence unless Engineer allows an additional period of time. Any opposing data shall be submitted by the other party to Engineer within 30 days after receipt of the claimant's written notice unless Engineer allows an additional period of time.
- 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 request for mediation must be submitted in writing to 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. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
  - 2. delivers to the other party written notice of the intent to submit the Claim 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 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 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 *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.

### **13.03 *Suspension of or Reduction in Payment***

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, 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. 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, Buyer will provide Seller immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

#### 13.04 *Final Payment*

- A. After Seller has corrected all non-conformities, if any, 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 and Buyer are 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, Seller may submit final Application for Payment.

- D. 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 due, less any sum Buyer is entitled to set off, pursuant to the provisions of Paragraph 13.04.
- E. 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.

#### 13.05 *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 180 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 and Engineer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 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 and Engineer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 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.

### **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.

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Procurement Specifications and DrawingsSectionTitle

## Division 01 - General Requirements

01 33 00	Submittal Procedures
01 65 00	Product Delivery Requirements
01 66 00	Product Storage and Handling Requirements
01 75 16	Startup Procedures
01 78 23	Operation and Maintenance Data
01 78 36	Warranties
01 78 43	Spare Parts and Special Tools

## Division 09 – Finishes

09 90 15	Paint
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## Division 40 – Process Integration

40 71 00	Flow Measurement
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Drawings

02-D104	Yard Piping Meter Vault - Plan
02-D303	Meter Vault - Section
00-D501	Process Details

PROPOSAL FORM  
PRESELECTED EQUIPMENT ALLOWANCE

*Flow Meters*  
*Lower Poplar Water Reclamation Facility Influent Pump Station*

*for*  
Macon Water Authority

ARTICLE 1 - PROPOSAL RECIPIENT

- 1.01 This Proposal is submitted to Barge Design Solutions, Inc.
- 1.02 The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into an Agreement with the Buyer in the form included in the Request for Proposal Documents to furnish the Goods and Special Services as specified or indicated in the Proposal Documents for the prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Proposal Documents.
- 1.03 The Buyer of the Goods and Special Services will be the successful Bidder (Contractor) for the referenced Project.

ARTICLE 2 - PROPOSER'S ACKNOWLEDGMENTS

- 2.01 Proposer accepts all of the terms and conditions of the Request for Proposal. It is anticipated that the successful bidder of the general construction project (Contractor/Buyer) will be given a Notice to Proceed by the Owner on or before December 1, 2024. The Proposal will remain subject to acceptance for 90 days after the date of the anticipated Notice Proceed specified in the Request for Proposal, or for such longer period of time that Proposer may agree to in writing upon request of Engineer or Buyer.
- 2.02 Proposer accepts the provisions of the Agreement as to liquidated damages in the event of its failure to furnish the Goods and Special Services in accordance with the schedule set forth in the Agreement.

ARTICLE 3 - PROPOSER'S REPRESENTATIONS

- 3.01 In submitting this Proposal, Proposer represents, as set forth in the Agreement, that:
  - A. Proposer has examined and carefully studied the Proposal Documents included with the Request for Proposal, other related data identified, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.

Addendum Date

n/a  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Proposer has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, delivery, or the furnishing of Goods and Special Services, if required to do so by the Bidding Documents, or if, in Bidder's judgment, any local condition may affect cost, progress, or the furnishing of Goods and Special Services.
- C. Proposer is familiar with and is satisfied as to all Laws and Regulations in effect as of the date of the Bid that may affect cost, progress, and the furnishing of Goods and Special Services.
- D. Proposer has carefully studied, considered, and correlated the information known to Proposer, information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Proposer's visits, if any, to the Point of Destination and the site where the Goods will be installed or Special Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Request for Proposal.
- E. Proposer has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Proposer has discovered in the Proposal Documents, and the written resolution (if any) thereof by Engineer is acceptable to Proposer.
- F. The Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing the Goods and Special Services for which this Proposal is submitted.
- G. Proposer further represents that this Proposal 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.
- H. As a condition of the Macon Water Authority requiring your flow meters to be provided for this Project, Seller shall be required to commence shop drawing preparation prior to execution of the Agreement between Buyer and Seller. Subsequent manufacturing of the system, based upon approved shop drawings, will occur only after execution the Agreement between Buyer and Seller.
- I. Should the Agreement between Buyer and Seller fail to be executed, the Macon Water Authority will be obligated to the Seller to the extent indicated in the General Conditions included in this Request for Proposal, Article 8, Termination for Convenience of the Owner. The total maximum liability of the Owner to the Manufacturer will be the amount agreed to payable for shop drawing preparation.

ARTICLE 4 - BASIS OF PROPOSAL

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

- Shop Drawing Preparation LS \$ 100.00
  - Manufacturing of Goods
    - FE-9100 16" Magnetic Flow Meter LS \$ 10,350.00
    - FE-9200 16" Magnetic Flow Meter LS \$ 10,350.00
    - FE-9003 30" Magnetic Flow Meter LS \$ 22,050.00
    - FE-9004 30" Magnetic Flow Meter LS \$ 22,050.00
  - (with DAI/DA2-Diagnostics)
  - Special Services (Startup) LS \$ 3,000
  - Additional Proposed Costs (see 4.02 below)
    - Monthly Storage Fee \$ 2,500. x 6 Months \$ 15,000.00
    - Monthly Delay Fee \$ \_\_\_\_\_ x 6 Months \$ \_\_\_\_\_
- TOTAL PRICE \$ 82,900.00

4.02 Additional Proposed Costs:

- The Seller's monthly fee for storage of Goods at Seller's facilities in the event that Buyer desires to delay shipment beyond the shipment date stated below in Article 5.02. Such fee shall include interest on money due Seller.
- The Seller's monthly fee for Buyer delaying the initiation of manufacturing of Goods or for not executing the Procurement Agreement within the time specified in 4.03 below

4.03 Seller and Buyer shall execute the Procurement Agreement within 45 days after the Contractor's/Buyer's Notice to Proceed from the Owner. Should the Procurement Agreement not be executed within said 45 days due to the fault of the Buyer, the Buyer shall be subject to the prorated additional costs identified in Paragraph 4.02 above. Should the Procurement Agreement not be executed within the said 45 days due to the fault of the Seller, Seller shall be subject to the liquidated damages provisions in the Procurement Agreement. The issue of fault will be determined by the Engineer.

ARTICLE 5 - TIME OF COMPLETION

5.01 Proposer agrees that the furnishing of Goods and Special Services will conform to the schedules set forth below, which will be incorporated into Article 5 of the Agreement.

- A. Time required by Seller to prepare approvable Shop Drawings: 14 consecutive calendar days after execution of the Agreement between the Buyer and Seller



B. Time required by Seller after receipt of approved Shop Drawings to deliver all goods:  
60 consecutive calendar days.

C. Time required to complete all Special Services: within 14 consecutive calendar days  
after notification from Buyer to Seller to commence such Special Services.

5.02 Proposer agrees that the prices in Article 4 above are based on the condition that  
shipment of goods may be delayed by the Buyer until August 1, 2025.

#### ARTICLE 6 - PROPOSAL DOCUMENTS

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

A. Proposer's supporting data

#### ARTICLE 7 - DEFINED TERMS

7.01 The terms used in this Proposal with initial capital letters have the meanings stated in the  
General Conditions.

ARTICLE 8 - PROPOSAL SUBMITTAL

8.01 This Proposal submitted by:

A Partnership

Partnership Name: n/a (SEAL)

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Attest: \_\_\_\_\_  
(Signature of another Partner)

Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: Kazmier + Associates (SEAL)

State of Incorporation: Georgia

Type (General Business, Professional, Service, Limited Liability): General Business

By: Lindsey case  
(Signature)

Name (typed or printed): Lindsey case

Title: President

Attest: Sharon Crockett  
(Signature of Corporate Secretary)

Name (typed or printed): Sharon Crockett

