

CONTRACT DOCUMENTS

FOR

HEMLOCK LOOP
TRAIL & BOARDWALK DEVELOPMENT

BOARDWALK MANUFACTURE AND DELIVERY

PENINSULA TOWNSHIP

Project Address:
6852 Center Rd., Traverse City, MI 49686
Grand Traverse County, MI

PREPARED BY:
GOSLING CZUBAK ENGINEERING SCIENCES, INC.
1280 BUSINESS PARK DRIVE
TRAVERSE CITY, MI 49686
231-946-9191
JOB #250089
AUGUST, 2025

ADVERTISEMENT FOR BIDS

**Peninsula Township
13235 Center Rd., Traverse City, MI 49686
Hemlock Loop Trail & Boardwalk Development – Boardwalk Manufacture and Delivery**

General Notice

Peninsula Township (Owner) landowner of the **Pelizzari** project area is requesting Bids for the construction of the following Project:

**Hemlock Loop Trail & Boardwalk Development – Boardwalk Manufacture and Delivery
GCES Proj.#: 250089**

Bids for the construction of the Project will be received by hand delivery at the **Peninsula Township Government Building** located at **13235 Center Rd., Traverse City, MI 49686**, or by mail to **Peninsula Township, 13235 Center Rd., Traverse City, MI 49686** until **Thursday, September 4th** at **3:30 pm** local time. At that time the Bids received will be **publicly** opened and read.

The Project includes the following Work:

Fabrication and delivery of prefabricated boardwalk system, including sealed shop drawing project submittals to be approved by Engineer

Bids are requested for the following Contract: **Boardwalk Manufacture and Delivery**

The Contractor chosen by Peninsula Township shall not discriminate against any worker, employee, or applicant for employment because of race, color, religion, height, weight, marital status, national origin, ancestry, sex, age, (except where requirements as to age is based upon a bona fide occupational qualification), or disability (that is unrelated to the individual's ability to perform duties of a particular job or position) pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq. (Elliot-Larsen Civil Rights Act).

The Township of Peninsula reserves the right to accept and/or reject any and all bids, to waive any irregularity in a bid, and to accept that bid which, in the opinion of the Township Board, is in the best interest of the Township. It is the intention of the Board to award all work to a single contractor. However, the Board also reserves the right to award only a portion of the work.

Obtaining the Bidding Documents

Information and Bidding Documents for the Project can be found at the following designated website:

Builder's Exchange of NW Michigan – www.bxtvc.com

Bidding Documents may be downloaded from the designated website. Prospective Bidders are urged to register with the designated website as a plan holder, even if Bidding Documents are obtained from a plan room or source other than the designated website in either electronic or paper format. The designated website will be updated periodically with addenda, lists of registered plan holders, reports, and other information relevant to submitting a Bid for the Project. All official notifications, addenda, and other Bidding Documents will be offered only through the designated website. Neither Owner nor Engineer will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

The Issuing Office for the Bidding Documents is:

Gosling Czubak Engineering Sciences, Inc.
1280 Business Park Dr., Traverse City, MI 49686

Prospective Bidders may obtain or examine the Bidding Documents at the Issuing Office on Monday through Friday between the hours of **8:00 am and 5:00 pm.** and may obtain copies of the Bidding Documents from the Issuing Office as described below. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the Issuing Office.

Printed copies of the Bidding Documents may be obtained from the Issuing Office by paying a fee of **\$80** for each set. Make deposit checks for Bidding Documents payable to **Gosling Czubak Engineering Sciences, Inc.**

Bidding Documents may be purchased from the Issuing Office during the hours indicated above. Cost does not include shipping charges. Upon the Issuing Office's receipt of payment, printed Bidding Documents or electronic documents on compact disk will be sent via the prospective Bidder's delivery service. The shipping charge amount will depend on the shipping method chosen.

Pre-bid Conference

There will not be a scheduled pre-bid conference for this project. The project site is open from 8:00 am to 10:00 pm everyday, and available for viewing at your convenience. Prospective bidders can request an on-site project review with the Owner or Engineer.

Instructions to Bidders

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

This Advertisement is issued by:

Owner: **Peninsula Township**
By: **Maura Sanders**
Title: **Township Supervisor**
Date: **August 19th, 2025**

INSTRUCTIONS TO BIDDERS FOR PROCUREMENT CONTRACTS

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INSTRUCTIONS TO BIDDERS FOR PROCUREMENT CONTRACT

ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below.
- A. *Issuing Office*—The office from which the Procurement Bidding Documents are to be issued and where the bidding procedures are to be administered.

ARTICLE 2—PROCUREMENT BIDDING DOCUMENTS

- 2.01 Bidder may obtain complete sets of the Procurement Bidding Documents, in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid, from the Issuing Office. The deposit will be refunded to each document holder of record who returns a complete set of Procurement Bidding Documents in good condition within 30 days after opening of Bids. Bidders must obtain a complete set of the Procurement Contract Documents as listed in the Procurement Agreement.
- 2.02 Bidder must use a complete set of the Procurement Bidding Documents in preparing the Bid; neither Buyer nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Procurement Bidding Documents.
- 2.03 Buyer and Engineer make copies of Procurement Bidding Documents available on the above terms only for obtaining Bids for furnishing Goods and Special Services, and do not authorize or confer a license for any other use.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

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

ARTICLE 4—SITE VISIT; PRE-BID CONFERENCE

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

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

- 4.02 A pre-bid conference will not be held for this procurement.

ARTICLE 5—INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Procurement Bidding Documents are to be submitted to Engineer in writing at:
- A. **Submit questions to Dallas Wirtz, PLA Gosling Czubak Engineering, via email at dawirtz@goslingczubak.com**
- 5.02 Interpretations or clarifications considered necessary by Engineer in response to such written questions will be issued by Addenda mailed or delivered to all parties recorded as having received the Procurement Bidding Documents. Questions received less than 5 days prior to the date for opening of Bids will not be answered. Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid, and will not be binding or legally effective.
- 5.03 Addenda may be issued to clarify, correct, or change the Procurement Bidding Documents as deemed advisable by Buyer or Engineer.

ARTICLE 6—BID SECURITY

- 6.01 A Bid must be accompanied by Bid security made payable to Buyer in an amount of **5%** percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a cashier's check or Bid bond issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions. Such Bid bond will be issued in the form included in the Procurement Bidding Documents.
- 6.02 The Bid security of the apparent Successful Bidder will be retained until Buyer (Project Owner) awards the Procurement Contract to such Bidder, and such Bidder has executed the Procurement Contract, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Procurement Contract and furnish the required contract security within 15 days after the Notice of Award, Buyer (Project Owner) may consider Bidder to be in default and annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Buyer's damages in the case of a damages-form bond. Such forfeiture will be Buyer's exclusive remedy if Bidder defaults.
- 6.03 The Bid security of other Bidders that Buyer believes to have a reasonable chance of receiving the award may be retained by Buyer until the earlier of 7 days after the Effective Date of the

Procurement Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

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

ARTICLE 7—PROCUREMENT CONTRACT TIMES

- 7.01 See applicable provisions in the Procurement Agreement.

ARTICLE 8—LIQUIDATED DAMAGES

- 8.01 Any provisions for liquidated damages, such as those for Seller's failure to attain a specified Milestone such as the delivery of the Goods, are set forth in the Procurement Agreement.

ARTICLE 9—CONFIDENTIALITY OF BID INFORMATION

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

- D. Buyer concludes in good faith that the information is not confidential, or that disclosure is required or justified; or
 - E. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.
- 9.05 Notwithstanding any other provision of the Procurement Bidding Documents, it is stipulated and agreed that by accepting a Bid, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 10—"OR-EQUAL" ITEMS

- 10.01 The Procurement Contract, if awarded, will be based on materials and equipment specified or described in the Procurement Bidding Documents. Bidders may propose "or equal" materials and equipment, which if approved by Engineer will be identified by Addendum. The materials and equipment described in the Procurement Bidding Documents establish a standard of required type, function, and quality to be met by any proposed "or-equal" item. No item of material or equipment will be considered by Engineer as an "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer no later than 15 days after the advertisement or invitation to bid is first issued. Each such request shall conform to the requirements of Paragraph 7.04 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item as an equal will be final. Bidders shall not rely upon approvals unless set forth in an Addendum. Send requests to: **Dallas Wirtz, PLA Gosling Czubak Engineering, via email at dawirtz@goslingczubak.com**

ARTICLE 11—PREPARATION OF BID

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

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

ARTICLE 12—BASIS OF BID; COMPARISON OF BIDS

12.01 *Lump Sum and Unit Prices*

- A. The Bid Form contains both a Lump Sum Bid Price and a total of the products of unit price and estimated quantity for each unit price line item.
- B. The apparent low Bid will be determined on the basis of the sum of the Lump Sum Bid Price plus the total of the products of unit price and estimated quantity for each unit price line item.

12.02 *Buyer's Contingency Allowance*

- A. If Buyer has stipulated a Buyer's Contingency Allowance in the Bid Form, such Buyer's Contingency Allowance is the same for all Bidders and is not a factor in determining the apparent low Bid.

ARTICLE 13—SUBMITTAL OF BID

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

ARTICLE 14—MODIFICATION OR WITHDRAWAL OF BID

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

ARTICLE 15—OPENING OF BIDS

- 15.01 Bids will be publicly opened at the time and place indicated in the advertisement or invitation to bid and read aloud, unless obviously non-responsive. An abstract of the amounts of the Base Bids

and Alternate Bids, if any, will be made available to Bidders after Bids have been opened and reviewed by the Buyer.

ARTICLE 16—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 17—EVALUATION OF BIDS AND AWARD OF PROCUREMENT CONTRACT

- 17.01 Buyer reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Buyer also reserves the right to waive all informalities not involving price, time, or changes in the Goods and Special Services.
- 17.02 Buyer will reject the Bid of any Bidder that Buyer finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 In evaluating Bids, Buyer will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data as may be requested in the Bid Form or may be requested from Bidders prior to a Notice of Award.
- 17.04 If Buyer awards the Procurement Contract, such award will be to the responsible Bidder submitting the lowest responsive Bid.

ARTICLE 18—BONDS AND INSURANCE

- 18.01 Article 5 of the General Conditions and Article 5 of the Supplementary Conditions set forth Buyer's requirements as to ~~supply, performance and payment bonds~~ and insurance. When the Successful Bidder delivers the signed Procurement Agreement to Buyer, it must be accompanied by such bonds and acceptable evidence of insurance.

ARTICLE 19—SIGNING OF PROCUREMENT AGREEMENT

- 19.01 When Buyer issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Procurement Agreement along with the other Procurement Contract Documents identified in the Procurement Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Procurement Agreement and any bonds and insurance documentation required to be delivered by the Procurement Contract Documents to Buyer. Within 10 days thereafter, Buyer will deliver one fully executed counterpart of the Procurement Agreement to Successful Bidder, together with printed and electronic copies of the Procurement Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 20—SALES AND USE TAXES

- 20.01 Buyer is exempt from **State of Michigan** state sales and use taxes on materials and equipment to be incorporated in the Project (Exemption No. **38-6374633**). Exempt taxes must not be included in the Bid. Refer to P-800, Paragraph SC-7.05 for additional information.

BID FORM FOR PROCUREMENT CONTRACT

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BID FORM FOR PROCUREMENT CONTRACT

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

ARTICLE 1—BUYER AND BIDDER

1.01 This Bid is submitted to:

Peninsula Township – 13235 Center Rd., Traverse City, MI 49686 (physical) or (by mail) The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Procurement Contract with Buyer in the form included in the Procurement Bidding Documents, and to furnish the Goods and Special Services as specified or indicated in the Procurement Bidding Documents, for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Procurement Bidding Documents.

ARTICLE 2—BASIS OF BID

2.01 *Unit Price Bids*

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

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
1.01	General Conditions (Bonding, Engineering, and Delivery)	Ls	1	\$	\$
1.02	6' Boardwalk, Pan-Foot Support	Lf	358	\$	\$
1.03	10'x12' Pan-Foot Supported Boardwalk Overlook w/Railing	Ea	1	\$	\$
Total of all extended prices for Estimated Quantities of Work					\$

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Procurement Contract Documents. Bidder also acknowledges that each unit price includes an amount considered by Bidder to be adequate to cover Bidder's overhead and profit for each separately identified item.

ARTICLE 3—TIME OF COMPLETION

3.01 Bidder agrees that the furnishing of Goods and Special Services will conform to the schedule of Procurement Contract Times set forth in Article 2 of the Procurement Agreement.

3.02 Bidder accepts the provisions of the Procurement Agreement as to liquidated damages.

ARTICLE 4—ATTACHMENTS TO THIS BID

- 4.01 The following documents are attached to and made a condition of this Bid:
- A. Required Bid security in the form prescribed in the Instructions to Bidders.

ARTICLE 5—BIDDER'S ACKNOWLEDGMENTS

- 5.01 Bidder accepts all terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Buyer.
- 5.02 Bidder has examined and carefully studied the Procurement Bidding Documents, the related data identified in the Procurement Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

- 6.01 *Bidder's Representations*
- A. In submitting this Bid, Bidder represents that:
1. Bidder has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Bidder's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Bidder has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
 3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 4. Bidder has carefully studied, considered, and correlated the information known to Bidder with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 5. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Bidder.
 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. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Requirements, that without exception the Bid (including all Bid prices) is premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

6.02 *Bidder's Certifications*

A. Bidder certifies that:

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

This Bid is offered by:

Bidder:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

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

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

Classification:

Limitation:

BID BOND (DAMAGES FORM)

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: Peninsula Township Address <i>(principal place of business)</i> : 13235 Center Rd., Traverse City, MI 49686	Bid Project <i>(name and location)</i> : Hemlock Look Boardwalk Trail Connector – Boardwalk Manufacture and Delivery 6500 Alden Hwy., Bellaire, MI 49615 Bid Due Date:
Bond Bond Amount: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
<i>(Full formal name of Bidder)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature) (Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

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

NOTICE OF AWARD

Date of Issuance:

Owner: Peninsula Township **Owner's Project No.:** N/A
Engineer: Gosling Czubak Engineering **Engineer's Project No.:** 250089
Project: Hemlock Loop Boardwalk Trail Connector
Contract Name: Boardwalk Manufacture and Delivery
Bidder: **Bidder's Address:**

You are notified that Owner has accepted your Bid dated _____ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Fabrication and delivery of prefabricated boardwalk system, including sealed shop drawing project submittals to be approved by Engineer

The Contract Price of the awarded Contract is \$ _____. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

One unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **One** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required supply or performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the Contract for Construction of a Small Project.
3. Other conditions precedent (if any): **None**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: Peninsula Township

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between **Peninsula Township** ("Buyer") and **[formal name of entity]** ("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: **Fabrication and delivery of prefabricated boardwalk system, including sealed shop drawing project submittals to be approved by Engineer**

1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: **Hemlock Loop Trail & Boardwalk Development – Boardwalk Manufacture and Delivery**

1.03 *Engineer*

- A. Buyer has retained **Gosling Czubak Engineering, 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: **6852 Center Rd., Traverse City, MI 49686**

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. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Layout Drawings	10/01/25	Dependent on Executed Contract Date
Submit Final Shop Drawings	11/1/25	Dependent on Engineer Review(s)

Delivery for Boardwalk (critical delivery)	1/1/26	Delivery may be made in the 15-day period before delivery date
---	--------	--

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 **14** 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 **\$350** for each day that expires after the time specified in Paragraph 2.02 for each critical delivery milestone for delivery of acceptable Goods. Liquidated damages for failing to timely attain Milestones are additive and will be imposed concurrently.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price—Based on Attached Bid*

- A. For furnishing the Goods and Special Services in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller's Bid, attached hereto as an exhibit, subject to final adjustments for Unit Price Goods and Special Services and Buyer's Contingency Allowance, if any, and subject to the following Buyer-accepted alternates: **[identify accepted alternates, if any]**.

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. For Unit Price Goods and Special Services, if any, or for payments owed to Seller as a result of authorizations by Buyer under the Buyer's Contingency Allowance (if any), Seller shall submit a separate Application for Payment, no more frequently than monthly, that states (1) the actual quantities of such Unit Price Goods and Special Services that have been furnished, and the applicable unit prices; and (2) the services or items performed or furnished under the Buyer's Contingency Allowance, and the amounts owed. If practical, and at Seller's option, Seller may apply for such unit price and Buyer's Contingency Allowance payments in a separate section of an Application for Payment submitted under Paragraph 4.02.A for lump sum items.
- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT

5.01 *Assignment of Contract*

- A. 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. Supplementary Conditions of the Procurement Contract.
 - 4. Procurement Specifications as listed in the Procurement Specifications table of contents **[copy of list attached]**.
 - 5. Procurement Drawings (not attached but incorporated by reference):
 - a. consisting of a cover sheet and sheets numbered **[number]** through **[number]**, inclusive, with each sheet bearing the following general title: **[Title]**.
 - b. **[listed on the attached sheet index.]**
 - 6. Addenda Numbers **[list those Addenda that are Procurement Contract Documents]**.
 - 7. Bonds:

- a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
- 8. 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; and
 - 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 by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in 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 **[date to be inserted at the time of execution]**.

Buyer

Seller

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

(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.)

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(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: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

NOTICE TO PROCEED

Owner: Peninsula Township Owner's Project No.: N/A
Engineer: Gosling Czubak Engineering Engineer's Project No.: 250089
Contractor: _____ Contractor's Project No.: N/A
Project: Hemlock Loop Boardwalk Trail Connector
Contract Name: Boardwalk Manufacture and Delivery
Effective Date of Contract: _____

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____ pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The date by which Substantial Completion (final deliveries) must be achieved is **12/01/2025**, and the date by which readiness for final payment must be achieved is **12/15/2025**.

Before starting any Work, Contractor must comply with the following:

None

Owner: Peninsula Township
By *(signature)*: _____
Name *(printed)*: _____
Title: _____
Date Issued: _____
Copy: Engineer

BUYER'S ACKNOWLEDGMENT OF RECEIPT OF GOODS

Buyer: Peninsula Township
Engineer: Gosling Czubak Engineering, Inc.
Seller:
Project: Hemlock Loop Boardwalk Trail Connector
Contract Name: Boardwalk Manufacture and Delivery

Buyer's Project No.:
Engineer's Project No.: 250089
Seller's Project No.:

This Buyer's Acknowledgment of Receipt of Goods (Acknowledgment) applies to:

☐ All Goods ☐ The following specified portions of the Goods: **[Specify]**

Date of delivery of the Goods to the Point of Destination: **[Date]**

Date of Buyer's visual inspection of the Goods: **[Date]**

Date of this Acknowledgment: **[Date]**

Buyer acknowledges:

1. The Goods to which this notice applies have been delivered to the Point of Destination.
2. Buyer has visually inspected such Goods pursuant to Paragraph 9.02.B.1 of the General Conditions of the Procurement Contract.
3. Based on the visual inspection, such Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, subject to any exceptions and limitations in this Acknowledgment.
4. Such Goods are deemed received for purposes of Paragraph 9.02.B.2 of the General Conditions of the Procurement Contract.
5. Seller may submit its Application for Payment for the delivered Goods, subject to the terms of the Procurement Agreement.

Exceptions (if any) to this Acknowledgment: ☐ None ☐ As follows:

The responsibilities between Buyer and Seller for securing and storing the Goods, maintaining the Goods during storage, and for furnishing the Special Services, shall be as provided in the Procurement Contract.

The following documents are attached to and made a part of this Acknowledgement:

[List, if any, or indicate None]

This Acknowledgment does not constitute an acceptance of any Goods not in conformance with the Procurement Contract Documents, nor is it a release of Seller's obligation to furnish all Goods and Special Services in accordance with the Procurement Contract.

	Buyer	Engineer, on behalf of Buyer
By (signature):	_____	_____
Name (Printed):	_____	_____
Title:	_____	_____
Date:	_____	_____

BUYER'S NOTICE REGARDING CONFORMITY OF GOODS AND SPECIAL SERVICES

Buyer: Peninsula Township
Engineer: Gosling Czubak Engineering, Inc.
Seller:
Project: Hemlock Loop Boardwalk Trail Connector
Contract Name: Boardwalk Manufacture and Delivery
Notice Date: Effective Date of the Procurement Contract:
Buyer's Project No.:
Engineer's Project No.: 250089
Seller's Project No.:

Buyer hereby gives notice to Seller that, to the best of Buyer's knowledge, information, and belief, the Goods and Special Services:

- ☐ Are in conformance with the Procurement Contract Documents. Upon Seller's submittal of its final Application for Payment in accordance with the Procurement Contract Documents, Seller will be eligible for final payment, except as expressly indicated in the Procurement Contract.
- ☐ Are nonconforming with the Procurement Contract Documents for the following reason(s):

1. **[List reason(s) and clearly cite contractual provisions and factual circumstances of each]**

Seller's Special Services were completed on: **[fill in date]**

Buyer has consulted with and received Engineer's recommendation on conformity of the Goods and Special Services.

This Buyer's Notice Regarding Conformity of Goods and Special Services (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree: **[Edit the following to suit the specific procurement]**

1. This Notice is expressly subject to the terms and conditions set forth in the Procurement Contract.
2. This Notice is not a guarantee or warranty of Seller's performance under the Procurement Contract, an acceptance of Goods and Special Services that are not in accordance with the related Procurement Contract Documents, including but not limited to nonconforming Goods and Special Services discovered after final inspection, nor an assumption of responsibility for any failure of Seller to furnish the Goods and Special Services thereunder in accordance with the Procurement Contract, or to otherwise comply with the Procurement Contract Documents or the terms of any special guarantees specified therein.
3. This Notice does not relieve Seller of any surviving obligations under the Procurement Contract and is subject to Buyer's reservations of rights with respect to completion and final payment.

Buyer

By (signature): _____ Name (Printed): _____

Date: _____ Title: _____

STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*
 - 1. The Procurement Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 - 2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or

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

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Electronic Transmittals*

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

2.04 *Preliminary Schedules*

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

2.05 *Preliminary Conference*

- A. Within 20 days after the Procurement Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 *Safety*

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

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

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 *Intent*

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

3.02 *Reference Standards*

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

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

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Procurement Drawings and Procurement Specifications*

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

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

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

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

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

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 *Commencement of Procurement Contract Times*

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

4.02 *Continuing Performance*

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

4.03 *Adjustments to Progress Schedule*

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

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

4.04 Delays

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

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

ARTICLE 5—BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

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

5.02 *Insurance*

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

5.03 *Surety or Insurance Companies*

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

ARTICLE 6—LICENSES AND FEES

6.01 *Intellectual Property and License Fees*

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

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

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

6.02 *Seller's Infringement*

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
 - 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 *Buyer's Infringement*

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

- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER’S RESPONSIBILITIES

7.01 *Performance of Obligations*

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

7.02 *Labor, Materials and Equipment*

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

7.03 *Laws and Regulations*

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

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

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

7.04 "Or Equals"

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

7.05 *Taxes*

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

7.06 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

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

1. *Shop Drawings*

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

2. *Samples*

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

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

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

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

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review

and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

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

E. *Submittals Other than Shop Drawings and Samples*

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

7.07 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the Procurement Contract, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

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

7.08 *Concerning Subcontractors and Suppliers*

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

ARTICLE 8—SHIPPING AND DELIVERY

8.01 *Shipping*

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

8.02 *Delivery*

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

8.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of

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

ARTICLE 9—BUYER’S RIGHTS

9.01 *Seller’s Warranties and Guarantees*

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

9.02 *Inspections and Testing*

A. *General Provisions*

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

B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

9.03 *Non-Conforming Goods and Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

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

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

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

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

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

- E. *Buyer's Acceptance of Non-Conforming Goods:* Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment,

Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.

- F. *Seller Obligations:* Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.
- G. *Buyer's Rejection of Conforming Goods:* If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

9.04 *Correction Period*

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

ARTICLE 10—ENGINEER'S STATUS

10.01 *Engineer's Role Defined*

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

10.02 *Duties and Responsibilities; Authority; Limitations*

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

ARTICLE 11—CHANGES

11.01 *Amending and Supplementing the Procurement Contract*

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

11.02 *Change Orders*

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

11.03 *Change Directives*

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

11.04 *Field Orders*

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

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

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

11.06 *Buyer's Contingency Allowance*

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

11.07 *Unauthorized Changes in the Goods and Special Services*

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

11.08 *Change of Procurement Contract Price*

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

11.09 *Change of Procurement Contract Times*

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

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 *Claims*

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.
- B. Claimant shall deliver to Engineer and the other party to the Procurement Contract written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.
- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Contract Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller

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

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

12.02 *Dispute Resolution Method*

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

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

13.02 *Review of Applications for Progress Payments*

A. *Review of Applications*

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

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

13.03 *Basis and Amount of Progress Payments*

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

13.04 *Suspension of or Reduction in Payment*

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:

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

13.05 *Final Payment*

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

13.06 *Waiver of Claims*

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

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 *Cancellation*

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

14.02 *Suspension of Performance by Buyer*

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

14.03 *Suspension of Performance by Seller*

- A. Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
 - 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Contract; and
 - 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

14.04 *Breach and Termination*

A. *Buyer's Breach*

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

B. *Seller's Breach*

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

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

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

ARTICLE 15—MISCELLANEOUS

15.01 *Giving Notice*

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

15.02 *Controlling Law*

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

15.03 *Computation of Time*

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

15.04 *Cumulative Remedies*

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

15.05 *Survival of Obligations*

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

15.06 *Entire Agreement*

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

15.07 *No Waiver*

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

15.08 *Headings*

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

15.09 *Successors and Assigns*

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

SUPPLEMENTARY CONDITIONS OF THE PROCUREMENT CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE PROCUREMENT CONTRACT

These Supplementary Conditions amend or supplement EJCDC® P-700, Standard General Conditions of the Procurement Contract (2019). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

1.02 *Terminology*

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

2.02 *Copies of Documents*

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Buyer shall furnish to Seller **[number]** printed copies of the Procurement Contract Documents (including one fully signed counterpart of the Procurement Agreement), and **[one copy]** **[none]** in electronic portable document format (PDF).

2.03 *Electronic Transmittals*

2.04 *Preliminary Schedules*

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 *Intent*

3.02 *Reference Standards*

ARTICLE 4—COMMENCEMENT AND PROGRESS OF WORK

No suggested Supplementary Conditions in this Article.

ARTICLE 5—BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

SC-5.01 Add the following paragraphs immediately after Paragraph 5.01.A:

1. *Required Performance Bond Form:* The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).

2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).

5.02 Insurance

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.E:

- 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 Procurement Contract Documents, whether the furnishing of Goods and Special Services 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 and 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: (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (b) 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 must:
 1. with respect to insurance required by Paragraphs SC-5.02.F.3 through SC-5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Engineer, their consultants, and **Peninsula Township** all of whom must 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 must provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;
 3. include completed operations insurance;
 4. include contractual liability insurance covering Seller's indemnity obligations under Paragraph 7.07;

5. contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder will provide a copy of the notice to the other party, each other insured, and Engineer;
 6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.03 and 9.04; and
 7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. The limits of liability for the insurance required by Paragraph SC-5.02.F must provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under Paragraphs SC-5.02.F.1 and F.2:

Workers' Compensation and Related Policies	Policy limits of not less than
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Employer's Liability	
Each accident	\$ 500,000
Each employee	\$
Policy limit	\$

2. Seller's General Liability under Paragraphs SC-5.02.F.3 through F.6 which must include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

Commercial General Liability	Policy limits of not less than
General Aggregate	\$ 1,000,000
Products—Completed Operations Aggregate	\$ 1,000,000
Personal and Advertising Injury	\$ 1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000

3. Automobile Liability under Paragraph SC-5.02.F.6:

Automobile Liability	Policy limits of not less than
Bodily Injury	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
Property Damage	
Each Accident	\$ 1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$ 2,000,000

4. **[Here list additional types and amounts of insurance that may be required by Buyer.]**

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

ARTICLE 6—LICENSES AND FEES

No suggested Supplementary Conditions in this Article.

ARTICLE 7—SELLER’S RESPONSIBILITIES

7.03 *Laws and Regulations*

7.04 *“Or Equals”*

7.05 *Taxes*

SC-7.05 Add a new paragraph immediately after Paragraph 7.05.A:

- B. Buyer is exempt from payment of sales and compensating use taxes of the State of **Michigan** and of cities and counties thereof on all materials and equipment to be incorporated into the Project facilities.
 1. Buyer will furnish the required certificates of tax exemption to Seller with respect to materials and equipment to be incorporated into the Project facilities.
 2. Buyer's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Seller, or to supplies or materials not incorporated into the Project facilities.
 3. The Procurement Contract Price does not include the cost of sales or compensating use taxes to the extent such are exempted by this paragraph.

7.06 *Submittals*

7.07 *Indemnification*

ARTICLE 8—SHIPPING AND DELIVERY

8.02 *Delivery*

8.03 *Risk of Loss*

ARTICLE 9—BUYER’S RIGHTS

9.04 *Correction Period*

9.05 *Limitation of Seller’s Liability*

SC-9.05 Add the following new paragraph after Paragraph 9.04:

9.05 *Limitation of Seller’s Liability*

- A. Buyer and Seller agree that the total liability of Seller to Buyer for claims, costs, losses, and damages arising from this Procurement Contract will be limited to the amount established in the Procurement Agreement as the Procurement Contract Price.
- B. Upon assignment the terms of this Paragraph 9.05 will be binding upon both the assignor and assignee with respect to Seller's liability, The terms of this limitation do not apply to or limit any claim by Buyer against Seller based on any of the following: (a) contribution or indemnification with respect to third-party claims, losses, and damages; (b) 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, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

ARTICLE 10—ENGINEER’S STATUS

ARTICLE 11—CHANGES

No suggested Supplementary Conditions in this Article.

ARTICLE 12—~~CLAIMS, DISPUTES, AND DISPUTE RESOLUTION~~

12.03 *Arbitration*

~~SC-12.03~~ Add the following new paragraph immediately after Paragraph 12.02:

12.03 *Arbitration*

- ~~A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-12.03). This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.~~
- ~~B. The demand for arbitration will be filed in writing with the other party to the Procurement Contract and with the selected arbitration administrator, and a copy will be sent to Engineer~~

for information. The demand for arbitration will be made within the specific time required in Article 12, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.

- C. ~~The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Procurement Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.~~
- D. ~~The arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Procurement Contract permits them to do so.~~
- E. ~~The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Procurement Contract provisions deemed applicable and relied on in making the award.~~
- F. ~~The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party of the right to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.~~
- G. ~~No arbitration arising out of or relating to the Procurement Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Procurement Contract unless:~~
 - 1. ~~the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;~~
 - 2. ~~such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;~~
 - 3. ~~such other individual or entity is subject to arbitration under a contract with either Buyer or Seller, or consents to being joined in the arbitration; and~~
 - 4. ~~the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.~~
- H. ~~The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.~~
- I. ~~Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and~~

~~Regulations or the Procurement Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.~~

ARTICLE 13—PAYMENT

13.01 *Applications for Progress Payments*

13.02 *Review of Applications for Progress Payments*

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 15—MISCELLANEOUS

No suggested Supplementary Conditions in this Article.

CHANGE ORDER NO.: [Number of Change Order]

Owner:

Engineer:

Contractor:

Project:

Contract Name:

Date Issued:

Owner's Project No.:

Engineer's Project No.:

Contractor's Project No.:

Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

Description:

[Description of the change]

Attachments:

[List documents related to the change]

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ _____	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ _____	[Increase] [Decrease] this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

<u>Recommended by Engineer (if required)</u>	<u>Accepted by Contractor</u>
By: _____	_____
Title: _____	_____
Date: _____	_____
<u>Authorized by Owner</u>	<u>Approved by Funding Agency (if applicable)</u>
By: _____	_____
Title: _____	_____
Date: _____	_____

TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS INDEX

DIVISION 1 - GENERAL REQUIREMENTS

01010	SUMMARY OF WORK
01025	MEASUREMENT AND PAYMENT
01600	MATERIALS AND EQUIPMENT
01700	CONTRACT CLOSEOUT

DIVISION 10 - MISCELLANEOUS

10020	PREFABRICATED BOARDWALK
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SECTION 01010

SUMMARY OF WORK

PART 1 GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS

Project includes action as necessary and/or required to provide labor and materials to perform the fabrication and delivery of prefabricated boardwalk system, including sealed shop drawing project submittals to be approved by the engineer. Boardwalk system to include but not limited to frames, decking, toe-kicks, railings, pan-foot supports, and all hardware for connections of all boardwalk components as indicated on plans and specifications.

1.02 CONTRACTS

All work will be awarded under one contract for boardwalk system manufacture and delivery.

1.03 ALTERNATES

The project does not include alternates.

1.04 WORK BY OTHERS

The boardwalk system will be unloaded and installed under a separate contract. Installation work under this contract to include but not limited to offload of boardwalk system upon delivery, assembly and installation of boardwalk frames and pan-foot supports, assembly of railings and platforms, installation of decking. All installation of supplied boardwalk system components will be performed using boardwalk manufacturer supplied hardware.

1.05 FUTURE WORK

No future work anticipated.

1.06 WORK SEQUENCE

It is anticipated that the boardwalk system will be manufactured and delivered to the main parking area at Pelizzari Natural Area. It is anticipated that boardwalk deliveries will happen in December 2025 or January 2026 dependent on weather conditions. Phases to be determined by the installation contractor's desired installation process and through initial project scheduling discussion with boardwalk manufacturer and installation contractor. Shop drawings for the project shall encompass the entire project prior to any fabrication.

1.07 COORDINATION

Work to be coordinated with Owner, Engineer and installation Contractor throughout the shop drawing, manufacture, installation, and close-out portions of the project.

1.08 AVAILABILITY OF LANDS

Work will take place on property owned or controlled by the OWNER, within the public right-of-way.

1.09 PRE-ORDERED ITEMS

No items have been pre-ordered for this project.

1.10 OWNER FURNISHED ITEMS

No owner furnished items as part of this project.

1.11 PROJECT IDENTIFICATION AND SIGNS

Project identification signs will be installed by the OWNER after completion of work.

1.12 AUDIO-VIDEO ROUTE SURVEY

No audio or video survey required for the project.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.01 SUMMARY

- A. Refer to Bid Form, General Conditions, and Agreement Between Buyer and Seller
- B. Bid price includes all labor, tools, equipment, materials, transportation, and applicable fees, use tax, and sales tax necessary to complete the work in accordance with the Plans and Specifications.
- C. All measurement and payment will be based on completed work, ready for use, performed in strict accordance with the Plans and Specifications.
- D. Bid quantities listed in Bid Form have been estimated and are only for the purpose of comparing, on a uniform basis, the Bids offered for the Work. Completed quantities for payment will be based on field measurements.
- E. Neither the Owner nor his agents shall be held responsible should any of the estimated quantities be found incorrect.
- F. Payment will be made only on items listed in the Bid Form. All other work not listed in the in this section shall be considered incidental to the performance of the Work.
- G. Owner reserves the right to delete any line item or quantity on the Bid Form

1.02 APPLICATION FOR PAYMENT

- A. Pay period: 30 days.
- B. Payment requests shall be submitted on the forms included in the Specifications.

1.03 SUBMITTALS

- A. Refer to form General Conditions

1.04 ITEMS OF THE BID FORM

BASE BID**Item No. 1.01 – General Conditions (Bonding, Engineering, and Delivery)**

- 1. Payment includes obtaining bonds, insurance riders, preparatory work and operation, for the movement of personnel, equipment, supplies, and incidentals to the project site. Includes delivery costs, temporary facilities needed to undertake the work as specified for contract close out. Item includes soft costs including engineering and professional sealed drawings.
- 2. Unit of measure: Lump Sum

Item No. 1.02 – 6' Boardwalk, Pan Foot Support

- 1. Payment includes furnishing of materials and delivery of prefabricated galvanized steel frame and timber decked modular boardwalk on standard 12"x12" pressure plate pan feet. Includes supplying steel pan feet support system, installation hardware and fasteners for framing, supports and decking connections, toe-kick curb rails and connection hardware, includes railing in areas called out on plans, and all other items needed for a complete boardwalk assembly per plans and specifications.
- 2. Unit of measure: Linear Foot

Item No. 1.03 – 10'x12' Pan-Foot Support Boardwalk Overlook w/Railing

1. Payment includes furnishing of materials and delivery of prefabricated galvanized steel and timber decking for assembly on site, utilizing pan-foot supports. Includes supplying installation hardware and fasteners for framing, supports and decking connections, toe-kick curb rails and connection hardware, and railing where indicated on plans, and all other items needed for a complete boardwalk assembly per plans and specifications.
2. Unit of Measure: Lump Sum

END OF SECTION

SECTION 01600

MATERIALS AND EQUIPMENT

PART 1 GENERAL

1.01 SUMMARY

- A. Furnish all labor, facilities, and materials necessary to properly transport, handle, store and protect all materials and equipment necessary for the performance of the work until arrival on site.
- B. All materials shall be new.
- C. Immediately upon delivery of boardwalk system materials, inspect shipments to assure compliance with requirements of Contract Documents and approved submittals and that products are properly protected and undamaged.

1.02 TRANSPORTATION AND HANDLING

- A. Properly protect all materials and equipment to prevent damage during transportation and handling.
- B. Detailed special handling requirements are specified under the appropriate specification section for the products handled.

1.03 STORAGE AND PROTECTION

- A. Store all materials and equipment to insure the preservation of their quality and fitness for the work.
- B. Store packaged materials in their original containers until ready for use.
- C. Protect all materials and equipment before and during delivery to site.
- D. Provide suitable weather tight storage sheds with raised floors to store and protect materials and equipment that could be damaged by exposure to weather.
- E. Repair or replace all damaged materials and equipment, subject to Engineer approval.
- F. No damaged material shall be used in the work.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 01700
CONTRACT CLOSE-OUT

PART 1 GENERAL

1.01 SUMMARY

- A. Section includes contract close-out requirements.
- B. Contract close-out shall be done in accordance with the Contract Documents before final payment will be released.

1.03 PROJECT RECORD DOCUMENTS

- A. Provide materials certifications as specified by the Engineer.
- C. Submittal of the Record Documents shall be made with a transmittal letter containing:
 - 1. Date
 - 2. Project title and number
 - 3. Contractor's name and address
 - 4. Title and number of each Record Document

1.04 GUARANTEES

- A. Provide in accordance with General Conditions.
- B. Manufacturer's Guarantee:
 - 1. For each item of equipment, furnish the guarantee of the manufacturer.
 - 2. Guarantee that the equipment will perform its intended service and that any defective design or workmanship shall be corrected or replaced at no expense to the OWNER.
 - 3. The guarantee period of the manufacturer's guarantee shall be one year from the date of final payment of the project by the Owner, unless specified otherwise.

1.05 SUBSTANTIAL COMPLETION

- A. Certification that the work is substantially complete shall be in accordance with General Conditions.

1.06 FINAL INSPECTION AND PAYMENT

- A. The final inspection, final application for payment and acceptance shall be in accordance with General Conditions.
- B. Final inspection will occur after complete assembly of boardwalk system by installation contractor.

1.07 BID AMOUNTS

- A. Contract closeout should be included in bid items identified in bid form and Measurement and Payment.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 10020

PREFABRICATED BOARDWALK SYSTEM

PART 1 – GENERAL

1.01 SECTION INCLUDES

- A. Project includes action as necessary and/or required to provide labor and materials to perform the fabrication, delivery, and installation of prefabricated boardwalk system, including sealed shop drawing project submittals to be approved by the engineer. Boardwalk system to include but not limited to frames, decking, toe-kicks, railings, pan-foot supports, cross-bracing, and helical pile cap supports, and all hardware for connections of all boardwalk components as indicated on plans and specifications.

1.02 SUBMITTALS

- A. Business data:
 - a. Proof of business in good standing with all agencies including, reporting agencies, banks, and the state for which it operates
 - b. Proof of business operations greater than 6 years
 - c. Affidavit of employed American Welding Society certified welders
 - d. Three references for similar scale projects including prefabricated boardwalk system on pan foot and helical pile support.
- B. Product Data:
 - a. Manufacturer's material data sheets
 - b. Installation process and requirements
 - c. Shop drawings for all components of the steel framing, decking and railing components.
 - d. Structural calculation for boardwalk elements as required by engineer.
- C. Certificate of steel origin (United States)
- D. Lumber mill certifications
- E. Other product and process information may be required upon Owner or Engineer request.
- F. Installation contractor to provide inventory list of received materials

PART 2- PRODUCTS

2.01 MATERIALS

- A. All frames and decking must meet or exceed International Building Code requirements of 100 psf load capacity.
- B. Galvanized structural steel frame sections constructed from ASTM A500 Structural Steel.
- C. Frame connections to be fabricated from ¼" A36 Structural Steel.
- D. Legs and leg-sleeves to be fabricated from ASTM A500 Structural Steel pipe.
- E. Entire post-fabrication frame assembly to be hot dipped galvanized with a minimum of 3.9 mill thickness of zinc-based galvanizing.
- F. All post-galvanized frame assemblies must be hand rasped and free of any sharp edges without compromising the galvanized integrity.
- G. All decking, deck framing, toe-kick rub rail and railing lumber components must meet the following criteria:
 - a. Framing Lumber:
 - i. Species: Southern yellow pine (SYP)
 - ii. Treatment: Pressure treated (for all lumber above ground and ground contact)
 - iii. Copper azole (A-C) to retention of 0.15 pounds per cubic foot.

- iv. Amine copper quaternary (ACQ) to 0.40 pounds per cubic foot.
 - v. Grade: No. 2 or better
- b. Decking, toe-kick rub rail and railing lumber components:
 - i. Species: Southern yellow pine (SYP)
 - ii. Treatment: Pressure treated (for all lumber above ground and ground contact)
 - iii. Copper azole (CA-C) to retention of 0.15 pounds per cubic foot.
 - iv. Amine copper quaternary (ACQ) to 0.40 pounds per cubic foot.
 - v. Grade: No. 1 or better
- c. Frame sections are to be adjustable and leveling. Height adjustments are to be constrained with a set bolt and 2 self-tapping screws per leg.
- H. All boardwalk surfaces are to be ADA compliant.
- I. Acceptable Manufacturers:

Wickcraft Company, Inc.
 2317 Daniels Street
 Madison, WI 53718
 Phone: (608) 244-9177

Modular Trail Structures, LLC
 PO Box 7383
 Madison, WI 53707
 Phone: (608) 609-9277

Or approved equals.

2.02 SUBMITTALS

- A. Preliminary Layout and Quantity Drawings (Pre-Bid)
 - a. Prospective boardwalk manufacturers to assemble example schedule including general timelines for shop drawing process, material procurement, fabrication, and delivery. Example schedule to be used for Owner and installation contractor information only, for purposes of project planning and understanding of product fabrication and delivery timeline with relation to other project contracts.
 - b. Provide overview of proposed prefabricated boardwalk system including:
 - c. Typical connection details for boardwalk frames (structural and non-structural) and timber decking panels
 - d. Typical pan foot and helical pile bracket connection details including connection hardware type and size
 - e. Estimated number of typical and custom frames for base bid project and alternates
 - f. Provide dimensions for proposed typical frames. Also include information for weight of typical frame and timber decking panels.
- B. Boardwalk System Shop Drawings (Post-Bid)
 - a. Boardwalk manufacturer to supply full construction layout and installation drawings to be stamped and sealed by registered State of Michigan engineer. Drawings shall show full layout with standard and custom frames. Multiple rounds of shop drawing review and comment may occur prior to final shop drawing approval.
 - b. Engineer will supply initial boardwalk layout CAD file drawings for manufacturer use. Boardwalk manufacturer to provide full CAD layout drawings with each round of shop drawing review and submittal for engineer verification with site layout drawings. Final shop drawings shall be accompanied with CAD drawing showing individual frames, frame labels, pan foot locations, helical pile locations and other pertinent layout information important to layout verification and installation.

- c. Drawings shall indicate system structural design criteria as well as steel, lumber, finishing and hardware material and grade information. Additional engineer stamped design calculation package may be required for local building department permit requirements.
- d. Drawings shall show cross section details, installation connection details and other pertinent details of connections for pan foot and helical pile cap supports.
- e. At a minimum for installation contractor identification, custom frames shall have individual numbering that is shown on drawings and also welded on to or marked on frames as to not be masked by galvanization or wear off before installation. Use of markers to mark frames will not satisfy this requirement.
- f. Provide bills of lading for all shipments at time of delivery showing materials provided for each shipment of boardwalk material.

2.03 WARRANTY

- A. Workmanship of the frames shall be warrantied against defect for the life of the boardwalk. During this period, if the product is covered by the warranty and fails under normal use, manufacturer will repair or replace at original owners' discretion. The decking and other non-frame elements of the boardwalk are excluded. "Lifetime" is defined as the lifetime of the product in use.

2.04 QUALIFIED EQUALS

- A. Boardwalk materials, suppliers, and design must be submitted to the engineer no less than ten (10) day prior to bid close date. The use or substitution of a qualified equal boardwalk supplier, design, or material must be pre-approved prior to submitting bid and satisfy all pre-qualification criteria below.
- B. Pre-Qualification Criteria Submittal
 - a. Contractor/Supplier shall show evidence of at least five (5) years experience or evidence of comprehensive experience in their construction discipline and (3) years management experience of their respective business or related managerial equivalent experience.
 - b. Contractor/Supplier shall list the last five (3) construction projects completed including the names, addresses, and phone numbers of project contacts. Provide a brief description of each project and their respective contract amount.
 - c. Contractor/Suppliers shall furnish names and telephone numbers of at least two (2) employees with the authority to take necessary corrective actions in the event of an emergency to be readily available on a 24-hour emergency basis and can respond within two hours.
 - d. Contractor/Suppliers shall provide a resume or documentation that demonstrates experience of all managerial and supervisory personnel involved in the performance, design and fabrication product.
 - e. Contractor/Supplier shall provide an inventory of trade specific equipment owned and show evidence of equipment and facilities necessary to perform the work.
 - f. Contractor/Supplier shall furnish address of the nearest service office and/or warehouse facility.
 - g. Contractor/Supplier shall provide evidence of five (5) years of financial stability. Submittals can be the most recent audited financial statement, current balance sheet, annual report, or a letter of credit from the Contractor/Supplier's bank which includes the duration of professional relationship, lending experience, and average balance.

PART 3- EXECUTION

3.01 BOARDWALK SYSTEM INSTALLATION AND ADJUSTMENTS

- A. Installation contractor to provide offload and stockpiling of boardwalk material. Contractor to inventory all materials and identify any discrepancies between bills of lading and actual material received. Contractor to make Engineer aware of any discrepancies in material received, and shall inform Engineer prior to inventory to allow for Engineer observation of the inventory.
- B. The installation contractor shall be solely responsible for all installation permits (if required), safety, and environmental concerns. System shall be installed per plans, specifications and manufacturer's recommendations.
- C. All materials and construction practices for foundation, railing, and decks, are to be designed and installed per local codes and industry standards.
- D. Installed products are to be done so in accordance with manufacturer's instructions and recommendations to maintain warranty.
- E. Leg/pile locations must be determined suitable and adequate before installation.
 - a. Suitable and adequate is to be determined by the Engineer for the project.
 - b. Debris, wood, stumps, and roots may be present and should be removed as needed to provide level bearing area under all pan-feet.
 - c. Any necessary information about the site conditions including soil load conditions are to be provided by the Owner/Engineer.
- F. Installation contractor to verify all boardwalk sections are leveled and/or positioned to meet and maintain specified gradient (slope) as indicated on the plans and/or as follows:
 - a. Cross slope maximum: 1%
 - b. Longitudinal slope maximum: 1.5% unless indicated otherwise on plans
 - c. Longitudinal slope greater 5% shall be considered a ramp and have handrails. No ramps should exceed 8.33%.
- G. Final boardwalk leveling adjustments to occur after all frames and decking are set and before toe-kick rub rail and railing installation.
- H. Installation contractor shall include releveled of all adjustable leg supported boardwalk sections as required through close-out and for the duration of one full season (inclusive of a full winter/spring freeze-thaw cycle).

END OF SECTION