



Department of  
Environmental  
Conservation

Division of Environmental Remediation

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**City of Newburgh Washington Lake Filtration  
Plant**

**GAC Contactor Equipment Purchase**

**Site Number 336022**

**Contract No. OP10261**

**Location: Newburgh, New York**

# **Project Manual**

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**ARCADIS CE, Inc.**

**August 2016**

New York State Department of Environmental Conservation  
ANDREW M. CUOMO, *Governor*    BASIL SEGGOS, *Commissioner*



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –  
DIVISION OF ENVIRONMENTAL REMEDIATION  
GAC CONTACTOR EQUIPMENT PURCHASE  
FOR WASHINGTON LAKE FILTRATION PLANT  
NEWBURGH, NEW YORK  
NYSDEC CONTRACT NO. OP10261

**SEALS AND CERTIFICATIONS**

ENGINEER: Arcadis CE, Inc. 855 Route 146, Suite 210, Clifton Park NY 12065.

<p>Daniel J. Loewenstein, PE License No. NY PE-066594</p> 	<p>The seal and signature to the left applies to the following Specifications Divisions and Sections of this Project Manual:</p> <ul style="list-style-type: none"><li>• Division 01, General Requirements</li><li>• Section 46 21 61, GAC Pressure Contactors.</li></ul>
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Engineer's seal and signature does not apply to the documents that comprise Division 00, Bidding and Contracting Requirements.

It is a violation of Section 7209 of Article 145 of the New York State Education Law, and other applicable laws and regulations governing professional licensing and registration, for any person, unless acting under the direction of the licensed and registered design professional(s) indicated above, to alter in any way the Specifications in this Project Manual.

++ END OF SEALS AND CERTIFICATIONS ++



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New York State Department of Environmental Conservation  
Division of Management & Budget  
Bureau of Contract & Grant Development  
625 Broadway, 10th Floor  
Albany, New York 12233-1080

## **INVITATION FOR BIDS (IFB)**

**Name of Contract:** GAC Contactor Equipment Purchase for Washington Lake Filtration Plant

**NYSDEC Contract No. and IFB No.:** OP10261

**Release Date:** August 15, 2016

**Bid Due Date:** September 6, 2016 at 1:00 p.m. EDT

*Submit Bid to the contact person and address indicated on the second page of the General Information document that is part of the Bidding Documents.*

**Pre-Bid Conference:** A pre-bid conference will be held at the City of Newburgh's Washington Lake Filtration Plant, 493 Little Britain Road, Newburgh NY 12550, in the main building's conference room, at **11:00 a.m. EDT on August 23, 2016**. Attendance at the pre-bid conference is mandatory.

**Requests for Interpretations and Clarifications of Bidding Documents are Due:** Not later than 4:00 p.m. EDT on August 29, 2016.

*Submit requests for interpretation in writing to the contact person(s) indicated in, and in accordance with the requirements of, the provision entitled "Method/Response to IFB Inquiries and Addenda" in the General Information document that is part of the Bidding Requirements.*

### **Purpose**

The contemplated Contract includes furnishing granular activated carbon ("GAC") pressure contactor equipment, and appurtenances (all of which are, collectively, "the Goods"), and associated Special Services (including inspecting the Goods upon delivery to the Point of Destination, instructing the installing construction contractor in handling, storing, and installing the Goods, checkout and startup assistance following installation by the construction contractor, assisting with field acceptance testing, and instructing the City's operations and maintenance personnel) for the City of Newburgh's Washington Lake Filtration Plant.

The Seller will be under contract with the New York State Department of Environmental Conservation ("NYSDEC", "Department",

“Buyer”, or “Project owner”). NYSDEC will award a separate construction contract for constructing the building that will permanently house the Goods and related systems, installing the Goods, and providing related equipment and systems. The purchase Contract will not be assigned to the installing construction contractor; however, Seller shall cooperate fully and communicate directly with the installing construction contractor(s) retained by NYSDEC to ensure timely and effective completion of the Project. NYSDEC anticipates awarding separate, multiple prime construction contracts for the Project, including: (a) General Construction; (b) Electrical Construction; (c) Plumbing Construction; and (d) HVAC Construction. Seller shall cooperate and coordinate with all installing construction contractors. The contractor for general construction will handle the Goods, including unloading from Seller’s delivery vehicles and installation into the Goods’ permanent location.

NYSDEC, acting through its Division of Environmental Remediation, is implementing the Project to ensure adequate water supply to the City of Newburgh (“City”). In May 2016 the City declared a state of emergency when constituents of concern were discovered in the surface water stream feeding the City’s water supply reservoir, Washington Lake. The constituents of concern arise from upstream, source(s) including (but not necessarily limited to) Stewart International Airport. The City has switched its raw water source to the New York City Catskill Aqueduct as an interim measure. However, in October 2017, New York City will take the aqueduct out of service for inspection and repairs. Under the Project, treatment facilities will be provided at the Washington Lake Filtration Plant to ensure safe drinking water for the City of Newburgh. Time to implement the Project is aggressive in anticipation of completing both the furnishing of Goods and Special Services under this Contract, as well as construction to be implemented under separate, forthcoming construction contracts, by October 2017.

Due to critical public health and safety concerns, compliance with the Contract Times is of the essence, as indicated in Paragraph 5.01 of the Agreement; liquidated and special damages indicated in Article 5 of the Agreement are applicable for Seller’s failure to comply with the Contract Times.

### **Issuance of Bidding Documents**

Each prospective Bidder whose equipment is named in the Specifications or that requests a copy of the Bidding Documents from the NYSDEC will be allowed to access and download an electronic copy (as portable document format (PDF) files) of the Bidding Documents via the method indicated in the issue of the *New York State Contracts Reporter* in which the invitation to bid is published. Printing the Bidding Documents is the responsibility of the Bidder. Bidding Documents will be issued only by the NYSDEC. Partial sets of Bidding Documents will not be available from the NYSDEC. NYSDEC will not be responsible for full or partial sets of Bidding Documents, including Addenda (if any), obtained from sources other than the NYSDEC.

### **Contract Period**

The Contract Times will commence running as indicated in Paragraph 2.04 of the General Conditions (in Appendix C). The Contract Times are expected to commence running on or around October 10, 2016, although such date is not guaranteed. Contract Times will not be changed regardless of whether the Contract Times commence running after the date indicated in this paragraph.

The Contract Times are indicated in Article 5 of the Agreement (including the Contract Time by which the Goods and Special Services shall be ready for final inspection by Buyer and Engineer).

Seller’s obligations for general warranties and guarantees are indicated in Paragraph 5.08 of the General Conditions, and Seller’s correction period obligation is indicated in Paragraph 8.03 of the General Conditions.

## GENERAL INFORMATION

### NOTICES TO BIDDERS:

Receipt of these Bidding Documents does not indicate that NYSDEC has pre-determined a company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on NYSDEC's assessment of Bid submissions compared to the specific requirements and qualifications contained in these Bidding Documents.

NYSDEC will receive Bids pursuant to the provisions of the New York State Finance Law. The following procedures shall be used for Bid submittals:

1. **BID PREPARATION**

Prepare your Bid on the forms included herein as Attachments I through VI, inclusive, using indelible ink. Print the name of your company on each page of the Bid in the block provided. One original (including original, "wet" signatures) of the Bid is required, unless otherwise specified elsewhere in the Bidding Documents.

2. **BID SUBMISSION**

**Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of Bids to NYSDEC **prior to** the date and time of the Bid opening. **LATE BIDS may be rejected. E-mail Bid submissions are not acceptable and will not be considered.**

- **Original Bid must be received by the NYSDEC not later than the "Bid Due Date" and time indicated on the first page of the Invitation for Bids (IFB) to the address and NYSDEC contact person indicated on the second page of this General Information document.**
- **To be considered responsive, each Bid submission must include:**
  1. **Bid Form; Attachment I**
  2. **Completed Contract Bid and Acknowledgment of Receipt Form; Attachment II**
  3. **MacBride Fair Employment Principles/Non-Collusion Requirements/State Ethic Law Provision/Procurement Lobby Law Affirmation form; Attachment III**
  4. **Procurement Lobby Law Bidder/Proposer Disclosure of Prior Non-Responsibility Determination Form; Attachment IV**
  5. **Vendor Responsibility Questionnaire; Attachment V (if price exceeds \$100,000).** Vendor Responsibility Questionnaire (For-Profit Business Entity {Non-Construction} form number AC3290-S) may be submitted online, as indicated below in the provision entitled, "Seller's Responsibility". When the Vendor Responsibility Questionnaire is submitted online, include in the Bid a written statement indicating that the Questionnaire was submitted online and the date of such submittal.
  6. **ST-220-CA, Contractor Certification to Covered Agency and ST-220-TD Contractor Certification; Attachment VI (if price exceeds \$100,000)**
  7. **Proof of Compliance with Workers' Compensation & Disability Coverage Required: Pages 8-9**
  8. **Bid Bond on the form included in the Bidding Documents.**

**Bidders are strongly advised** that Bids submitted with conditions or other exception(s) to the terms and conditions of the Bidding Documents are subject to rejection and disqualification. NYSDEC reserves the right to waive any and all informalities in Bids in its determination regarding award of the Contract.

- **Bid envelopes**

An envelope containing a bid should be marked "**BID ENCLOSED**" and state the **NYSDEC Contract/FB No. (OP10261), Bid Opening Date, and Time** on the envelope containing the sealed Bid. Bids shall be addressed and delivered to the following address and contact person:

NYSDEC  
Bureau of Expenditures  
625 Broadway 10th Floor  
Albany, NY 12233-5025  
Attn: Lori Liddane,

BID ENCLOSED FOR  
NYSDEC Contract/IFB No. OP10261  
Bid Due Date and Time: \_\_\_\_\_ [*Bidder to fill in*]

**Bid submissions must include** time to comply with the security procedures in effect at the NYSDEC Central Office when hand delivering Bids or using independent courier services. **Bidders assume all risks for timely and properly submitted delivery of their Bid.**

#### **QUALIFICATION OF BIDDER:**

Bids will be accepted from Bidders who are authorized dealers or manufacturers of the equipment as described in the Bidding Documents. Each Bidder submitting a Bid hereby guarantees that it is a manufacturer or an authorized dealer of the Goods and Special Services required by the Bidding Documents and agrees to supply NYSDEC with all of the Goods and Special Services required for fulfillment of this Contract.

**Cancellation For Convenience By The State** - NYSDEC retains the right to cancel this Contract, in whole or in part without reason, provided that the Seller is given at least 30 days' notice of NYSDEC's intent to cancel, unless shorter time is allowed NYSDEC elsewhere in the Contract Documents. This provision should not be understood as waiving the NYSDEC's right to cancel or terminate the Contract for cause or to stop or suspend Seller's performance immediately for unsatisfactory performance by Seller or other reasons set forth in the Contract Documents, but is supplementary to that provision. Under no event shall NYSDEC's right to cancel terminate, whether for cause or for convenience, nor NYSDEC's right to stop or suspend Seller's performance, be construed as imparting on either NYSDEC or Engineer any obligation or responsibility for Seller's performance in accordance with the Contract Documents. In accordance with Paragraph 5.08 of the General Conditions (in Appendix C), Seller is solely responsible for complying with the Contract Documents.

**Contract Cancellation** - If the Contract is cancelled, NYSDEC reserves the right to make award on another compliant Bid for the original bid letting, but is not obligated to do so; NYSDEC is not obligated to hold another bid letting.

#### **PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law §139-j and 139-k, the Bidding Documents include and imposes certain restrictions on communications between a Governmental Entity and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the Contract by the Department and, if applicable, Office of the State Comptroller (restricted period) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in the paragraph titled, "Method/Response to IFB Inquiries and Addenda" in this General Information document. NYSDEC employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes.

Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period the Bidder is debarred from obtaining governmental contracts. Further information about these requirements, including a copy of the

lobbying law, can be found at: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

For information concerning NYSDEC's guidelines, see the New York State Department of Environmental Conservation Guidelines Regarding Permissible Contacts during a Procurement and the Prohibition of Inappropriate Lobbying Influence, which is attached as Attachment IV.

#### **ELECTRONIC PAYMENTS:**

Payments for expenditures incurred under this Contract will be rendered electronically to the Seller unless payment by paper check is expressly authorized by the Commissioner of NYSDEC ("Commissioner"), in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. The Seller shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Office of the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us). The Seller acknowledges that it will not receive payment under this **Contract** if Seller does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

#### **APPENDICES:**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly part of the Contract Documents as fully as if set forth at length herein. **Please retain Appendix A and all Contract Documents for future reference.**

Appendix B, Standard Clauses for All New York Department of Environmental Conservation Contracts, dated November 2015, attached hereto, is hereby expressly part of the Contract Documents as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain Appendix B and all Contract Documents for future reference.**

Appendix C, comprised of the General Conditions and Supplementary Conditions, is expressly part of the Contract Documents as set forth therein.

Other documents, including the Specifications, are part of the Contract Documents are indicated in the Agreement.

#### **CONFLICT OF TERMS AND CONDITIONS:**

Conflicts between the Contract Documents shall be resolved in the following order of precedence:

- a. Appendix A
- b. Appendix B
- c. Change Orders, Work Change Directives, and Field Orders.
- d. Addenda
- e. Agreement (and any exhibits thereto), Appendix C (General Conditions and Supplementary Conditions), performance bond and payment bond, Specifications, Drawings (if any), General Information (part of the Bidding Requirements), and other Contract Documents.
- f.

The items that together comprise the Contract Documents are indicated in the Agreement.

#### **SELLER RESPONSIBILITY:**

- a. The following provisions augment Article 5 of the General Conditions (in Appendix C) as may be modified by the Supplementary Conditions (Appendix C).
- b. General Responsibility: Seller shall at all times during the Contract term remain responsible for Seller's obligations under the Contract. Seller agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- c. Suspension of Seller's Performance of the Contract (for Non-Responsibility): The Commissioner or his or her

designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of Seller. In the event of such suspension, Seller will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Seller must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

- d. If the bid price exceeds \$100,000, Bidder must complete and file the required Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"). NYSDEC recommends that Bidders file the Questionnaire (For-Profit Business Entity {Non-Construction} form number AC3290-S) online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors, including Bidders, must provide their New York State Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Bidders opting to complete and submit a paper Questionnaire must complete the form attached hereto as **Attachment V** and submit it with their Bid.

NYSDEC reserves the right to request a completed Questionnaire if the bid price is less than \$100,000 if deemed appropriate by NYSDEC.

- e. Upon written notice to the Seller, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Seller's expense where the Seller is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

#### **TAX LAW 5-A AMENDED APRIL 26, 2006**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded New York State contracts for commodities, services and technology **valued at more than \$100,000** to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor/and Seller certification forms and instructions for completing the forms are attached to this bid as Attachment VI. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the Bid and submitted to the procuring covered agency certifying that the contractor or Bidder filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Bidder non-responsive, non-responsible, or both. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors and Bidders may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.tax.ny.gov>.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Bidders are advised that effective January 1, 2005, Article 27, Title 21 of the New York State Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Bidders are encouraged to contact NYSDEC, Bureau of Waste Reduction & Recycling at (518) 402-8706 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Bidders may also visit NYSDEC's website for additional information: <http://www.dec.ny.gov/chemical/8512.html>.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES**

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Bidder and Seller agrees to be bound by the provisions further set forth in Appendix B Article XIX to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered NYSDEC Contracts.

**DEBRIEFING:**

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing following opening and review of the Bids. Disclosure of the content of competing Bids other than statistical tabulations of Bids received in response to an IFB, is prohibited prior to Contract award. Prior to Contract award, NYSDEC will, upon request, provide a debriefing which would be limited to review of that Bidder's own Bid. After Contract award, NYSDEC will upon request, provide a debriefing to any Bidder that submitted a Bid, regarding the reason that the Bid submitted by the unsuccessful Bidder was not selected for Contract award. The post award debriefing should be requested by the Bidder within five days of the Contract award.

**METHOD/RESPONSE TO IFB INQUIRIES AND ADDENDA:**

All requests for interpretation or clarification of the Bidding Documents and information pertinent to the preparation and submission of Bids and the procurement process are to be received by the NYSDEC by the date and time indicated on the first page of the Invitation for Bids. To be considered, all such requests shall be in writing (including e-mail) and submitted to:

Designated NYSDEC Contacts for All Inquiries on the Bidding Documents:

**Primary Contact**

Benjamin Rung  
NYSDEC  
625 Broadway, 12th Floor  
Albany NY 12233-7017  
Telephone: (518) 402-9813  
E-Mail: [benjamin.rung@dec.ny.gov](mailto:benjamin.rung@dec.ny.gov)

**Secondary Contact**

Gerard Burke  
NYSDEC  
625 Broadway, 12th Floor  
Albany NY 12233-7017  
Telephone: (518) 402-9813  
E-Mail: [gerard.burke@dec.ny.gov](mailto:gerard.burke@dec.ny.gov)

Interpretations or clarifications in response to such questions, or as otherwise deemed necessary by the NYSDEC will be issued by Addenda transmitted or delivered to each entity recorded as having received the Bidding Documents from the NYSDEC for receipt not later

than three days prior to the date for the opening of Bids. Addenda may be issued after the stated period and before the receipt of Bids to change the date or time for receipt of Bids, or to make minor changes or clarifications to the Bidding Documents that will not have a significant effect on price. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Bidders are cautioned to read the Bidding Documents thoroughly, visit the Point of Destination, become familiar with Laws and Regulations applicable to furnishing the Goods and Special Services, and all other items necessary for preparing the Bid, and to factor into Bidder's bid price all such considerations. Prior to bid submission Bidder has given NYSDEC notice of all errors, conflicts, ambiguities, or items requiring interpretation or clarification in the Bidding Documents, and that NYSDEC's response thereto is acceptable to Bidder. Bidder accepts full responsibility for failing to submit such requests for clarifications or interpretation to NYSDEC in a timely manner as indicated in the Bidding Documents.

Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of Bids. Bidders entering into a Contract with the State of New York are expected to comply with **all** the terms and conditions of the Contract Documents as issued.

Prospective Bidders are advised that any Bid submitted with conditions or exceptions to the requirements of the Bidding Documents, including exceptions to the contractual terms and conditions, is subject to rejection and disqualification.

Any and all communications between any of the parties, (i.e., NYSDEC or Bidders) relating to award of this Contract shall be through the NYSDEC personnel indicated in this provision as contact personnel for receipt of requests for interpretations and clarifications on the Bidding Documents.

The NYSDEC is responsible for transmitting Addenda to, and for consideration requests for interpretations or clarifications on the Bidding Documents received from, only those entities that obtained the Bidding Documents from the NYSDEC. Entities that obtained the Bidding Documents from sources other than the NYSDEC bear the sole responsibility for obtaining Addenda (if any) that are issued.

#### **QUANTITIES:**

The quantity of the Goods and Special Services to be furnished under the Contract are indicated in the Specifications, including (but not necessarily limited to) Specifications Section 46 61 21, GAC Pressure Contactors.

#### **CONTRACT PERIOD:**

The Contract Times will commence running as indicated in Paragraph 2.04 of the General Conditions (in Appendix C). The Contract Times will not be changed regardless of whether the Contract Times commence running after the estimated date indicated in the Invitation for Bids.

The Contract Times are indicated in Article 5 of the Agreement. Seller's obligations for general warranties and guarantees are indicated in Paragraph 5.08 of the General Conditions, and Seller's correction period obligation is indicated in Paragraph 8.03 of the General Conditions.

#### **DIESEL EMISSIONS REDUCTION ACT 2006**

In 2007, New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section 19-0323 which requires the use of best available retrofit technology (BART) and ultra-low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The Department has promulgated regulations (6 NYCRR Part 248) to provide guidance on provisions of the law. The regulations may be found on the Department's website at <http://www.dec.ny.gov/regs/2492.html>.

Seller must comply with the specifications and provisions of ECL Section 19-0323 and 6 NYCRR Part 248, which require the use of BART and ULSD, unless specifically waived by the Department. Qualifications for a waiver under this law are the responsibility of the Seller.

**PRICE:**

General

Prices shall be net, F.O.B. at the Point of Destination indicated in the Agreement.

**ASSESSMENT OF BIDS AND METHOD OF AWARD:**

A. *Rejection of Bids; Disqualification of Bidders*

1. NYSDEC reserves the right to reject any or all Bids, including without limitation, non-conforming, non-responsive, unbalanced, or conditional Bids. NYSDEC will reject the Bid of any Bidder that NYSDEC finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then NYSDEC will reject the Bid as non-responsive; provided that NYSDEC also reserves the right to waive all minor informalities not involving price, time, or changes in the Goods and Special Services.
2. NYSDEC reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any bid item.
3. More than one Bid for the same Contract from an individual or entity under the same or different names may not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Goods and Special Services may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
4. NYSDEC reserves the right to reject any Bid not accompanied by required documentation.
5. NYSDEC reserves the right to reject a Bid when NYSDEC deems that the Bidder is not sufficiently qualified.

B. If a Contract is to be awarded, NYSDEC will award the Contract to the Bidder who has been neither disqualified nor rejected pursuant to Paragraph A (immediately above) or other provisions of the Bidding Documents, and who submitted the lowest-priced responsive Bid.

C. *Assessment of Bids*

1. In assessing the Bids, NYSDEC will consider whether or not the Bids comply with the prescribed requirements, and such alternatives (if any), unit prices, and other data, as may be requested in the Bidding Documents.

D. In evaluating Bidders, NYSDEC will consider the qualifications of Bidders, whether the Bids comply with the prescribed requirements, the alternatives (if any), the prices submitted, and other data as may be requested in the Bid Form, with the Bid, or prior to the Notice of Award.

E. NYSDEC may perform such investigations as NYSDEC deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed subcontractors or Suppliers.

F. If a Contract is awarded, NYSDEC will issue to Successful Bidder a written Notice of Award, issued with accompanying documents as indicated in the provisions entitled, "Bonds and Insurance" and "Signing of Agreement" of this General Information document.

**BONDS AND INSURANCE:**

A. The General Conditions and the Supplementary Conditions set forth NYSDEC's requirements for furnishing by Seller of performance and payment bonds and insurance. Performance bond, payment bond, and other contract bonds (if any) required by the Contract Documents shall be furnished on the forms included in the Contract Documents.

## **SIGNING OF AGREEMENT:**

- A. When NYSDEC issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 10 days after the date indicated on the Notice of Award, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to NYSDEC together with other Contract Documents. After NYSDEC signs the Agreement, NYSDEC shall deliver one fully-executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in the General Conditions (as may be modified by the Supplementary Conditions).
- B. The Contract Times will commence running as provided in Paragraph 2.04 of the General Conditions (as may be modified by the Supplementary Conditions),

## **BIDDER RESPONSIBILITY ON ACCURACY:**

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to submitting the Bid, as requests for Bid withdrawals of any type are not likely to be granted. Bidders, in the preparation of their Bids, should maintain complete and accurate calculation worksheets, which clearly support their submissions.

## **“OR-EQUALS” DURING BIDDING**

- A. The Contract for the Goods and Special Services, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Seller to request that NYSDEC authorize the use of an “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by NYSDEC until after the Effective Date of the Agreement. The procedure for submittal of any such request by Seller and consideration by NYSDEC is set forth in the General Conditions (as may be modified by the Supplementary Conditions), which may be supplemented by the Division 01 Specifications.
- B. All prices that Bidder sets forth in its Bid shall be based on the presumption that the Seller will furnish the materials and equipment specified or described in the Contract Documents, including Addenda (if any). Any assumptions regarding the possibility of post-bid-opening approvals of “or-equal” requests are made at Bidder’s sole risk.
- C. Requests for approval of substitute items is not allowed for this Contract at any time.

## **BID SECURITY**

- A. A Bid shall be accompanied by bid security made payable to NYSDEC in the amount of five percent of Bidder's maximum bid price and in the form of a bid bond.
- B. When a bid bond is furnished as bid security, the bond shall be in the form of the specimen bid bond form bound into the Bidding Documents. Bid bond shall be issued by a surety complying with the requirements set forth in the General Conditions (as may be modified by the Supplementary Conditions).
- C. *Bid Security of Successful Bidder*
  - 1. The bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security, and complied with the other conditions of the Notice of Award, whereupon the bid security will be returned or disposed of in accordance with Paragraph E of this provision.
  - 2. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within the number of days after the Notice of Award as indicated in the provisions entitled, “Bonds and Insurance” and “Signing of Agreement” of this General Information document for delivery of the executed Contract, NYSDEC may annul the Notice of Award and may retain from the bid security an amount equal to the damages which NYSDEC may suffer by reason of such failure. Said

damages shall be the difference between that Bidder's Bid and the next-lowest, responsive Bid submitted by a responsible Bidder, but such amount shall not exceed the bid security amount, and, if there is no such next-lowest, responsive Bid submitted by a responsible Bidder, then the bid security amount of that Bidder will be forfeited to NYSDEC as liquidated damages for such failure. Such forfeiture shall be NYSDEC's sole and exclusive remedy.

D. *Bid Security of Other Bidders*

1. The bid security of other Bidders whom NYSDEC believes to have a reasonable chance of receiving the award may be retained by NYSDEC until the earlier of the seventh day after the Effective Date of the Agreement or the 46th day after the Bid opening whereupon the bid security furnished by such Bidders will be returned or disposed of in accordance with Paragraph E of this provision.
2. The bid security of Bidders whom NYSDEC believes do not have a reasonable chance of receiving an award will be returned (or disposed of in accordance with Paragraph E of this provision) within seven days of the opening of Bids.

E. When the submitted form of bid security is a bid bond, NYSEC may, at NYSDEC's option, destroy the bid bond submitted instead of returning it to the Bidder.

**END OF GENERAL INFORMATION DOCUMENT.**

**ATTACHMENT I  
NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BID FORM**

Please use ink or typewriter when preparing your Bid.

**Company Name**

**Description**

**PRICE MUST INCLUDE DELIVERY TO THE POINT OF  
DESTINATION INDICATED IN THE AGREEMENT**

**\*\*\*DELIVERY TO BE F.O.B. POINT OF DESTINATION\*\*\***

Bidder will furnish the Goods and Special Services in accordance with the Contract Documents for the following price(s):

**Item 1 – For furnishing all Goods and  
Special Services, the lump sum of: U.S.\$ \_\_\_\_\_**

For unit price items (if any), 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 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.

## ATTACHMENT II

### ACKNOWLEDGMENT OF RECEIPT FORM

#### Furnishing Goods and Special Services for GAC Contactor Equipment Purchase for Washington Lake Filtration Plant

In submitting this Bid, Bidder represents that:

1. Bidder accepts all of the terms and conditions of the Bidding Documents, including without limitation those dealing with the disposition of bid security. This Bid will remain subject to acceptance for 45 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of NYSDEC.
2. That Bidder has received the following Addenda (if "none", so indicate):

Addendum No.	Addendum Date

3. The Bidder hereby declares that either personally or through authorized representative(s), the Bidder has carefully examined all Bidding Documents and understands all terms and conditions of the Bidding Documents. The Bidder further understands that in signing this Bid, the right to plead any misunderstanding regarding the same is waived.
4. Pursuant to and in compliance with the Bidding Documents, the Bidder hereby offers to furnish all labor, materials, supplies, and equipment necessary for the completion of this Contract, as required by and in strict compliance with the Contract Documents.
5. Bidder has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, or the furnishing of Goods and Special Services, if required to do so by the Bidding Documents, or if, in Bidder's judgment, any local condition may affect cost, progress, or the furnishing of Goods and Special Services.
6. Bidder is familiar with all Laws and Regulations in effect as of the date of the Bid that may affect cost, progress, and the furnishing of Goods and Special Services.
7. Bidder has carefully studied, considered, and correlated the following:
  - a. Information known to Bidder;
  - b. Information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided;
  - c. Information and observations obtained from Bidder's visits, if any, to the Point of Destination and the site where the Goods will be installed or Special Services will be provided;
  - d. Any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Bidding Documents.
8. Bidder has given NYSDEC written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the

Bidding Documents, and the written resolution (if any) thereof by NYSDEC is acceptable to Bidder.9. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing the Goods and Special Services for which this Bid is submitted.

The Bidder must complete, sign and return this form to have its Bid considered. Failure to provide all the requested information or to sign where provided may result in the Bid being disqualified or rejected.

The undersigned hereby designates the following office as the office to which Notice of Intent to Award (if any) and Notice of Award may be mailed or delivered:

---

**Company Name**

---

**Street Address**

---

**City, State and Zip Code**

---

**Signature** **Date**

---

**Title** **E-mail Address**

**FEIN #:** \_\_\_\_\_

**Phone Number** (     ) \_\_\_\_\_

**Fax Number** (     ) \_\_\_\_\_

## **ATTACHMENT III**

**MacBride Fair Employment Principles/Non-Collusion Requirements/State  
Ethics Law Provision/Procurement Lobby Law Affirmation form**

**BIDDER'S/PROPOSER'S CERTIFICATION**

NON-COLLUSIVE BIDDING

AND

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES

AND

STATE ETHICS LAW PROVISION

AND

PROCUREMENT LOBBY LAW

BY SUBMISSION OF THIS BID/PROPOSAL AND BY SIGNING HEREUNDER THE BIDDER/PROPOSER, AND EACH PERSON SIGNING ON BEHALF OF SUCH PARTY CERTIFIES, AND IN THE CASE OF A JOINT BID/PROPOSAL, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

**A. NON-COLLUSION State Finance Law §139-d**

1. The prices in this bid/proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening, directly or indirectly, to any other bidder/proposer or to any competitor; and

3. No attempt has been made or will be made by the bidder/proposer to induce any other person, partnership or corporation to submit or not to submit a bid/proposal for the purpose of restricting competition.

**B. MACBRIDE FAIR EMPLOYMENT PRINCIPLES State Finance Law §165(5)**

1. it or any individual or legal entity in which the bidder/proposer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder/proposer, either: (answer yes or no to one or both of the following, as applicable).

2. has business operations in Northern Ireland;

No  Yes (check answer) **IF YES, COMPLETE #3**

3. shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

No  Yes (check answer)

**C. STATE ETHICS LAW PROVISION**

By submittal of this bid/proposal, the undersigned hereby certifies, for and on behalf of the bidder/proposer, that he is familiar with the following provisions of the State Ethics Law provisions applicable to post employment restrictions affecting former state employees: POL §73(8)(a)(i) the two year bar, and §73(8)(a)(ii), the life-time bar, and that submittal of this bid/proposal is not in violation of either provision, and that no violation will occur by entering into a contract or in performance of the contractual services, and further that the bidder/proposer recognizes that the Department may rely upon this certification

Except as follows: (attach information if needed)

(Bidder/Proposer is to make full disclosure of any circumstances which could affect its ability to perform in complete compliance with the cited laws. Any questions as to the applicability of these provisions should be addressed to the New York State Commission on Public Integrity, 540 Broadway, Albany, New York 12207. Telephone Number: 518-408-3976)

**D. PROCUREMENT LOBBYING AFFIRMATION**

The Undersigned affirms that it understands and agrees to comply with the procedures of the New York State Department of Environmental Conservation relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Date: \_\_\_\_\_ Print Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

# **ATTACHMENT IV**

## **Procurement Lobbying Law**

## **New York State Department of Environmental Conservation Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses restrictions on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of offerers<sup>1</sup> during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period<sup>2</sup> the only New York State Department of Environmental Conservation (Department) officer(s) or employee(s) that the offerer may “contact” is/are the Department designated contact person(s) for that procurement. In this regard, “contact” means any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all offerers;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an offerer that the Department designated contact for a procurement fails to respond to in a timely manner;
- negotiations with the Department following tentative award;
- contacts between designated Department staff and offerer to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement, and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

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<sup>1</sup> Individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

<sup>2</sup> The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals (RFP), Invitation for Bids (IFB), solicitation of proposals or any other method for soliciting responses from offerers intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and the Office of the State Comptroller (if required).

An offerer shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies, public authorities and public benefit corporations, members of the New York State Legislature, and Legislative employees.

An offerer who contacts the Department designated contact person for a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the offerer or is retained, employed or designated by or on behalf of the offerer to appear before or contact the Department about the procurement.

An offerer that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must: certify that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence; and disclose whether any governmental entity has, within the prior four years, found the offerer non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. Further, all Department procurement contracts will contain: a certification by the offerer that all information provided to the Department with respect to the Lobbying Law is complete, true and accurate; and a provision authorizing the Department to terminate the contract in the event such information is found to be intentionally false or incomplete.

The Department will investigate all allegations of violations of the Department guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. A finding that an offerer has knowingly and willfully committed such a violation may result in a determination that the offerer and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four (4) years of the first such determination may render the offerer and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services (OGS) of any determination of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at the following address: <http://ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>. A copy of the new Procurement Lobbying Law is also available on this website. Frequently Asked Questions (FAQ's) and answers adopted by the council may be found at the following address: <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.asp>.

**Procurement Lobby Law**  
**Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form: \_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please check the applicable box.):

No  Yes

If yes, please answer the questions 2 - 4, if no, go to question 5:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please check the applicable box.):

No  Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please check the applicable box.):

No  Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: *(Add additional pages as necessary.)*

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



**Offerer's Affirmation of Understanding of and Agreement pursuant to  
State Finance Law §139-j (3) and §139-j (6) (b)**

Offerer affirms that it understands and agrees to comply with the procedures of the New York State Department of Environmental Conservation relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Contractor

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

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

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT V**

**Vendor Responsibility Questionnaire**

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**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

**COMPLETION & CERTIFICATION**

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

**NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)**

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us) or call 866-370-4672.

**DEFINITIONS**

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf). These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

**RESPONSES**

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**REPORTING ENTITY**

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

**ASSOCIATED ENTITY**

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

**STRUCTURE OF THE QUESTIONNAIRE**

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>			
<u>Legal Business Entity Name*</u>		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation (including PC)</u>		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership (including LLP, LP or General)</u>		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States    State    _____			
<input type="checkbox"/> Other            Country    _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," Enter <u>DUNS</u> Number			

\*All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf)

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**I. LEGAL BUSINESS ENTITY INFORMATION**

1.4 If the <u>Legal Business Entity</u> 's <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
--	--

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> <u>New York State Small Business</u> (SB) <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**II. REPORTING ENTITY INFORMATION**

2.0 The Reporting Entity for this questionnaire is:  
 Note: Select only one.  
 Legal Business Entity  
*Note: If selecting this option, "Reporting Entity" refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*  
 Organizational Unit within and operating under the authority of the Legal Business Entity  
 SEE DEFINITIONS OF "REPORTING ENTITY" AND "ORGANIZATIONAL UNIT" FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.  
*Note: If selecting this option, "Reporting Entity" refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

**IDENTIFYING INFORMATION**

a) <u>Reporting Entity</u> Name	
Address of the <u>Primary Place of Business</u> (street, city, state, zip code)	Telephone  ext.
b) Describe the relationship of the <u>Reporting Entity</u> to the <u>Legal Business Entity</u>	
c) Attach an <u>organizational chart</u>	
d) Does the Reporting Entity have a <u>DUNS</u> Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," enter <u>DUNS</u> Number	
e) Identify the designated manager(s) responsible for the business of the <u>Reporting Entity</u> . <i>For each person, include name and title. Attach additional pages if necessary.</i>	
Name	Title

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

For each "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each "Other," provide an explanation which provides the basis for not definitively responding "Yes" or "No." Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

**III. LEADERSHIP INTEGRITY**

*Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:*

3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other

For each "Yes" or "Other" explain:

**IV. INTEGRITY – CONTRACT BIDDING**

*Within the past five (5) years, has the reporting entity:*

4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers' Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each "Yes," explain:

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**V. INTEGRITY – CONTRACT AWARD**

*Within the past five (5) years, has the reporting entity:*

- |   |  |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?     | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**VI. CERTIFICATIONS/LICENSES**

*Within the past five (5) years, has the reporting entity:*

- |   |  |
|---|--|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**VII. LEGAL PROCEEDINGS**

*Within the past five (5) years, has the reporting entity:*

- |  |  |
|--|--|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or willful</u> ?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed:<br>a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or<br>b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.  
(See definition of "associated entity" for additional information to complete this section.)*

9.1 Does the Reporting Entity have any Associated Entities?

Yes  No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

Yes  No

- a) Any business-related activity; or
- b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

If "Yes," provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

Yes  No

If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

9.3 Within the past five (5) years, has any Associated Entity:

a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

Yes  No

b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

Yes  No

c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

Yes  No

d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

Yes  No

e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

Yes  No

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

Yes  No

g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

Yes  No

For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," indicate the question number(s) and explain the basis for the claim.

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_;

\_\_\_\_\_ Notary Public

**ATTACHMENT VI**

**Tax Law Section 5-A Forms**

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# Contractor Certification to Covered Agency **ST-220-CA**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

(6/06)

**For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).**

Contractor name				For covered agency use only Contract number or description
Contractor's principal place of business		City	State	
Contractor's mailing address (if different than above)				Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number				\$
Contractor's telephone number		Covered agency name		
Covered agency address				Covered agency telephone number

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement

on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }

: SS.:

COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20 \_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_,

Town of \_\_\_\_\_,

County of \_\_\_\_\_,

State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

G (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

G (If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

G (If a partnership): \_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

G (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to

42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call

Need help?



Internet access: www.nystax.gov (for information, forms, and publications)



Fax-on-demand forms: 1 800 748-



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-2100 From areas outside the U.S. and outside Canada:

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

(518) 485-6800.



# Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-TD

(5/07)

**For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need help? below).**

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )
Covered agency or state agency	Contract number or description	Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address		Covered agency telephone number	

## General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*, available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

## Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-

**Sales Tax Information Center:** 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)





## BID BOND

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

---

BIDDER (*Name and Address*):

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

OBLIGEE (*Name and Address*):

New York State Department of Environmental Conservation, Division of Environmental Remediation,  
625 Broadway, Albany NY 12233

BID

Bid Due Date:

Description (*Project Name— Include Location*): GAC Contactor Equipment Purchase for Washington  
Lake Filtration Plant, NYSDEC Contract No. OP10261, 493 Little Britain Road, Newburgh, NY 12550

BOND

Bond Number:

Date:

Penal sum \_\_\_\_\_ \$ \_\_\_\_\_  
(Words) (Figures)

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

**BIDDER**

**SURETY**

(Seal)

(Seal)

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

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

By:

\_\_\_\_\_  
Signature

By:

\_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Oblige 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 Oblige for the work required by the Contract Documents, provided that:
  - 1.1 If there is no such next Bidder, and Oblige does not abandon the Project, then Bidder and Surety shall pay to Oblige the penal sum set forth on the face of this Bond, and
  - 1.2 In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
  - 1.3 Recovery under the terms of this Bond shall be Oblige's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Oblige) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Oblige accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Oblige) 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 Oblige, or
  - 3.3 Oblige 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 Oblige, 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 Oblige and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at

length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –  
DIVISION OF ENVIRONMENTAL REMEDIATION  
GAC CONTACTOR EQUIPMENT PURCHASE  
FOR WASHINGTON LAKE FILTRATION PLANT, NEWBURGH, NEW YORK  
NYSDEC CONTRACT NO. OP10261**

**AGREEMENT**

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**AGREEMENT**

THIS AGREEMENT is by and between New York State Department of Environmental Conservation (acting through its Division of Environmental Remediation), 625 Broadway, Albany, NY 12233 (the initial “Buyer”, also referred to as “Project owner”, “Department”, and “NYSDEC”) and \_\_\_\_\_ [*insert legal/contractual name and address*] (“Seller”, also referred to as “Vendor” and “Contractor”).

Buyer and Seller hereby agree as follows:

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

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

## **ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows: **Washington Lake Filtration Plant GAC Contactor System.**

## **ARTICLE 3 – ENGINEER**

- 3.01 The Contract Documents for the Goods and Special Services have been prepared by Arcadis CE, Inc., 855 Route 146, Suite 210, Clifton Park, NY 12065 ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

## **ARTICLE 4 – POINT OF DESTINATION**

- 4.01 The Point of Destination is designated as: City of Newburgh Washington Lake Filtration Plant (als known as the "City of Newburgh Water Treatment Plant"), 493 Little Britain Road, Newburgh, NY 12550.

## **ARTICLE 5 – CONTRACT TIMES**

### *5.01 Time of the Essence*

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

### *5.02 Milestones*

- A. *Days for Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings, including product data and informational submittals to be furnished prior to fabrication, and Samples required by the Contract Documents, to Engineer for review and approval or acceptance (as applicable) within 30 days after the date when the Contract Times commence to run as provided in Paragraph 2.04 of the General Conditions. It is the intent of the parties that (1) Engineer will perform such review and issue its approval or acceptance (as applicable), or a denial accompanied by substantive comments regarding information needed to gain approval or acceptance (as applicable), within 21 days of Engineer's receipt of Seller's initial submittal of such Shop Drawings, Samples, and other submittals required prior to fabrication of the Goods; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.

B. *Days to Achieve Delivery of Goods:* The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery not later than the following:

1. Coordinate with Buyer and installing construction contractor the schedule for delivering the Goods to the Point of Destination within the time frames indicated below; actual required times and dates for delivering the Goods will be determined by installing construction contractor's progress within the times indicated below. The following Contract Times "windows" apply to the delivery of the Goods:

	<b>Milestone</b>	<b>Contract Times <sup>(1)</sup></b>
a.	Delivery of Pressure Contactor Nos. 1 through 6	March 13, 2017 <sup>(1)(2)</sup>
b.	Delivery of Pressure Contactor Nos. 7 through 12	April 3, 2017 <sup>(1)(3)</sup>
c.	Delivery of Pressure Contactor Nos. 13 through 18	April 24, 2017 <sup>(1)(4)</sup>

**Notes:**

- (1) Each shipment will consist of multiple trucks which may be scheduled by installing construction contractor to arrive on up to two consecutive days per delivery.
- (2) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 135 days beyond the dates indicated for pressure contactor nos. 1 through 6. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.
- (3) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 114 days beyond the dates indicated for pressure contactor nos. 7 through 12. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.
- (4) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 93 days beyond the dates indicated for pressure contactor nos. 13 through 18. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.

2. For the Milestones indicated in Paragraph 5.02.B of this Agreement, do not deliver the Goods earlier than 14 days prior to the date associated with each associated Milestone, unless mutually acceptable to Buyer and Seller.

C. *Days for Furnishing Special Services:*

1. Certain Special Services shall be performed by Seller at the Point of Destination concurrent with delivery of the Goods, including assisting installing construction contractor and Engineer with inspecting all of the Goods (including required spare parts and extra materials) upon delivery and instructing installing construction contractor in handling, storing, and installing the Goods.
2. Furnishing of the balance of Special Services, Seller shall furnish Special Services for each delivery of the Goods on or around the times indicated below:

	<b>Milestone</b>	<b>Start Special Services <sup>(2)</sup></b>	<b>Finish Special Services <sup>(3)</sup></b>
a.	Special Services for Pressure Contactor Nos. 1 through 6 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
b.	Special Services for Pressure Contactor Nos. 7 through 12 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
c.	Special Services for Pressure Contactor Nos. 13 through 18 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
d.	Special Services for startup, initial operation, training of operations and maintenance personnel	28 <sup>(3)</sup>	42 <sup>(3)</sup>
Notes:			
<p>(1) Services include checkout of installed pressure contactors prior to installation of GAC media (media to be furnished and installed under a separate contract between installing construction contractor and NYSDEC).</p> <p>(2) Number of days after completion of delivery of the associated Goods.</p> <p>(3) Number of days after completion of delivery of final shipment of GAC media furnished and installed under a separate contract between installing construction contractor.</p> <p>(4) Start dates of each required element of Special Services is subject to change based on progress of installing construction contractor and NYSDEC), without change in Contract Price.</p>			

### 5.03 *Buyer's Final Inspection*

A. *Days to Achieve Final Inspection:* The Goods and Special Services shall be ready for final inspection pursuant to Paragraph 8.01.C of the General Conditions not later than the earlier of: (1) 21 days after the Goods have been placed into continuous operation in accordance with the Contract Documents, or (2) Seller's completion of furnishing Special Services.

### 5.04 *Liquidated Damages*

A. Buyer and Seller recognize that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.02 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. 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 requirements of Paragraph 5.02. Further, they recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer:

1. \$5,000 for each day that expires after the respective times indicated in Paragraph 5.02.B.1 of this Agreement for delivery of acceptable Goods. In the event of multiple deliveries of the Goods, Seller is liable for liquidated damages for each late delivery, but liquidated damages for more than one late delivery will not be cumulative (e.g., maximum daily rate of liquidated damages is the specific amount per day indicated in this paragraph).
2. \$1,000 for each day that expires after the times indicated in Paragraph 5.02.B.2 of this Agreement for Seller's furnishing of the Special Services, unless such time is changed by mutual agreement between Buyer and Seller.
3. \$1,000 for each day that expires after the time specified in Paragraph 5.03 of this Agreement for Seller's readiness for final inspection, unless such Contract Time is changed by the parties in accordance with the Contract Documents.

#### 5.05 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Seller shall pay Buyer the actual costs reasonably incurred by Buyer for engineering and inspection forces employed by Project owner, Buyer, or both relative to the Goods and Special Services for each day that expires after the number of days specified in Paragraph 5.02.B.3 of this Agreement for delivery of the final GAC contactor and its other associated Goods at the Point of Destination (adjusted for changes thereof, if any, made in accordance with Article 7 of the General Conditions) until the Goods are delivered to the Point of Destination in accordance with the Contract Documents.
- B. After delivery of the Goods to the Point of Destination in accordance with the Contract Documents, if Seller neglects, refuses or fails to complete the Special Services and achieve readiness for final inspection within the Contract Times or proper extension thereof, if any, granted by Buyer, Seller shall pay Buyer the actual costs reasonably incurred by Buyer and Project owner for engineering and inspection forces employed by Buyer and Project owner relative to the Goods and Special Services for each day that expires after the time specified in Paragraph 5.02.C for completion of the Special Services (adjusted for extensions thereof, if any, made in accordance with Article 7 of the General Conditions) until the Goods and Special Services are complete in accordance with the Contract Documents.

#### 5.06 *Deduction of Liquidated and Special Damages from Payments*

- A. Buyer may deduct liquidated damages and special damages as determined by the provisions of this Article 5 from payments due Seller under this Contract.

### **ARTICLE 6 – CONTRACT PRICE**

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:
  - A. A lump sum of \$\_\_\_\_\_, in current United States funds.

## ARTICLE 7 – PAYMENT PROCEDURES

### 7.01 *Submittal and Processing of Payment*

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

### 7.02 *Progress Payments; Retainage*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
  - 1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to 10 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
  - 2. Upon receipt of the second such Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to 90 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions. This Application for Payment may be comprised of multiple, separate Applications for Payment based on deliveries of the Goods, in accordance with the Contract Times and installing construction contractor's progress schedule; in such event, amount of individual Applications for Payment under this provision will be determined based on the Goods furnished in accordance with the Contract Documents and the Schedule of Values required of Seller in accordance with Specifications Section 01 29 73, Schedule of Values. Submit not more than one Application for Payment per calendar month.

### 7.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Buyer shall pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, special damages, and performance damages.

### 7.04 *Set-Offs*

- A. In addition to Buyer's rights under Paragraph 5.06 of this Agreement, Buyer may deduct from payments due Seller other set-offs to which Buyer is entitled in accordance with the Contract Documents.

B. *Engineer may Recommend Reductions in Payment:* Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:

1. the Goods or Special Services are non-conforming or defective, requiring correction or replacement;
2. the Contract Price has been reduced by Change Orders;
3. Buyer has been required to correct non-conforming Goods or Special Services, or has accepted non-conforming or defective Goods or Special Services;
4. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify cancellation or termination for cause under the Contract Documents.

C. *Reductions in Payment by Buyer:*

1. 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 on account of Seller's conduct in the furnishing of the Goods and Special Services, or Buyer has incurred costs, losses, or damages on account of Seller's conduct in furnishing 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. In performing its Special Services, Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the location where the Goods are installed;
  - 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, tests and inspections, or return visits to manufacturing or assembly facilities;
  - e. the Goods, Special Services, or both are non-conforming or defective, requiring correction or replacement;
  - f. Buyer has been required to correct non-conforming or defective Goods, Special Services, or both, or has accepted non-conforming or defective Goods or Special Services;
  - g. the Contract Price has been reduced by Change Orders;
  - h. an event that would constitute a default by Contractor and therefore justify cancellation or termination for cause has occurred;

- i. liquidated damages, special damages, or both have accrued as a result of Seller's failure to achieve comply with the Contract Times;
  - j. Liens have been filed in connection with the Goods or Special Services, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such Liens;
  - k. there are other items entitling Buyer to a set off against the amount recommended.
2. If Buyer imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Buyer will give Seller immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Seller any amount remaining after deduction of the amount so withheld. Buyer shall promptly pay Seller the amount so withheld, or any adjustment thereto agreed to by Buyer and Seller, if Seller remedies the reasons for such action. The reduction imposed shall be binding on Seller unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Buyer's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due in accordance with the Contract Documents and subject to interest as provided in Article 8 of this Agreement.

#### **ARTICLE 8 – INTEREST**

- 8.01 Refer to Appendix A, Standard Clauses for New York State Contracts, provision entitled, "Late Payment", for provisions on interest due on late payments.

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

- 9.01 To induce Buyer to enter into this Agreement, Seller makes the following representations:
- A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
  - B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
  - C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.

- D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

## **ARTICLE 10 – CONTRACT DOCUMENTS**

### *10.01 Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 14, inclusive);
  - 2. Performance Bond (pages 1 to    , inclusive);
  - 3. Payment Bond (pages   1   to    , inclusive);
  - 4. Bidding Requirements, as follows:
    - 1. General Information (nine pages)
  - 5. Appendix A, Standard Clauses for New York State Contracts (comprised of five pages plus a title page);
  - 6. Appendix B, Standard Clauses for New York State Department of Environmental Conservation Contracts (comprised of nine pages plus a title page);
  - 7. Appendix C, comprised of:
    - 1. General Conditions (pages   i   to  31 , inclusive);
    - 2. Supplementary Conditions (pages   1   to  12 , inclusive);
  - 8. Specifications as listed in table of contents of the Project Manual;
  - 9. Addenda Nos.     through    ;

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

a. \_\_\_\_\_.

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

a. Notice to Proceed;

b. Change Order(s);

c. Work Change Directive(s).

d. Field Order(s).

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

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

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

## **ARTICLE 11 – MISCELLANEOUS**

### *11.01 Terms*

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

### *11.02 Assignment of Contract*

A. Refer to Appendix A, Standard Clauses for New York State Contracts, provision entitled, “Non-Assignment Clause”.

### *11.03 Successors and Assigns*

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

### *11.04 Severability*

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

#### 11.05 *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 Contract. For the purposes of this Paragraph 11.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the 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 Contract.

#### 11.06 *Limitations*

- 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 Contract. Upon assignment the terms of this Paragraph 11.06.A shall be binding upon the 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) 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.
- B. Upon assignment (if any), the terms of this Paragraph 11.06.B shall be binding upon both the assignor and assignee with respect to Seller's liability, and upon Seller with respect to both assignor's and assignee's liabilities. The terms of this mutual limitation 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 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.

11.07 *Other Provisions*

A. (None).

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement. Counterparts have been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf. The signatory for the Buyer provides the following Agency Certification: **"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."**

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement) – *date upon filing in New York State Comptroller's Office as indicated below.*

FOR BUYER (DEPARTMENT):

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

FOR SELLER:

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

For Attorney General

Date: \_\_\_\_\_

APPROVED:

Thomas P. DiNapoli  
State Comptroller

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Contract is not effective until it is approved by the New York State Comptroller and filed in the Comptroller's office (Section 112, State Finance Law).

**(CORPORATE ACKNOWLEDGMENT WITH SEAL)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, New York; that (s)he is \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*firm*) the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that (s)he signed his(her) name thereto by like order.

**Seal**

\_\_\_\_\_  
**Notary Public**

**(CORPORATE ACKNOWLEDGMENT WITHOUT SEAL)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_, to me known, who being duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, New York; that (s)he is an officer of \_\_\_\_\_ (*firm*) ; namely, the \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*firm*); that (s)he is authorized by the governing body of said corporation to sign contracts; and that (s)he did sign the foregoing instrument on behalf of, and with authority to bind said corporation.

\_\_\_\_\_  
**Notary Public**

**(CO-PARTNERSHIP ACKNOWLEDGMENT)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be a member of \_\_\_\_\_, the firm described in and which executed the foregoing instrument, and (s)he acknowledged to me that (s)he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

**Seal**

\_\_\_\_\_  
**Notary Public**

(INDIVIDUAL ACKNOWLEDGMENT)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and (s)he duly acknowledged to me that (s)he executed the same.

Seal

\_\_\_\_\_  
Notary Public

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: NYSDEC Div of Environ Remediation  
625 Broadway, Albany, NY 12233  
Phone: (518)  
Facsimile: (588)  
E-mail: \_\_\_\_\_

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

# PERFORMANCE BOND FOR PROCUREMENT CONTRACTS

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

SELLER (Name and Address):

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

BUYER (Name and Address):

BUYER (Name and Address):

New York State Department of Environmental Conservation – Division of Environmental Remediation, 625 Broadway,  
Albany NY 12233

## CONTRACT

Date:

Amount:

Description (Name and Location): GAC Contactor Equipment Purchase for Washington Lake  
Filtration Plant, NYSDEC Contract No. OP10261, 493 Little Britain Road, Newburgh NY 12550.

## BOND

Date (Not earlier than Contract Date):

Bond Number:

Amount:

Modifications to this Bond Form:

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

### **Seller as Principal**

Company: (Corp. Seal)

Signature:  
Name and Title:

### **Surety**

Company: (Corp. Seal)

Signature:  
Name and Title:  
(Attach Power of Attorney)  
Address:

Telephone Number:

(Space is provided below for signatures of additional parties, if required.)

### **Seller as Principal**

Company: (Corp. Seal)

Signature:  
Name and Title:

### **Surety**

Company: (Corp. Seal)

Signature:  
Name and Title:

Address:

Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer for the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. If Seller performs the Contract, Surety and Seller have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Buyer Default, Surety's obligation under this Bond shall arise after:
  - 3.1. Buyer has notified Seller and Surety pursuant to Paragraph 10 that Buyer is considering declaring a Seller Default and has requested and attempted to arrange a conference with Seller and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. (If Buyer, Seller, and Surety agree, Seller shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Buyer's right, if any, subsequently to declare a Seller Default); and
  - 3.2. Buyer has declared a Seller Default and formally terminated Seller's right to complete the Contract. Such Seller Default shall not be declared earlier than 20 days after Seller and Surety have received notice as provided in Paragraph 3.1; and
  - 3.3. Buyer has agreed to pay the Balance of the Contract Price to:
    - a. Surety in accordance with the terms of the Contract;
    - b. Another seller selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Buyer has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
  - 4.1. Arrange for Seller, with consent of Buyer, to perform and complete the Contract; or
  - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 4.3. Obtain bids or negotiated proposals from qualified sellers acceptable to Buyer for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Buyer and a seller selected with Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to Buyer the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Buyer resulting from Seller Default; or
  - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances, either:

- a. determine the amount for which it may be liable to Buyer and, as soon as practicable after the amount is determined, tender payment therefor to Buyer; or
  - b. deny liability in whole or in part and notify Buyer citing reasons therefor.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Buyer to Surety demanding that Surety perform its obligations under this Bond, and Buyer shall be entitled to enforce any remedy available to Buyer. If Surety proceeds as provided in paragraph 4.4, and Buyer refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Buyer shall be entitled to enforce any remedy available to Buyer.
6. After Buyer has terminated Seller's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3, then the responsibilities of Surety to Buyer shall not be greater than those of Seller under the Contract, and the responsibilities of Buyer to Surety shall not be greater than those of Buyer under the Contract. To a limit of the amount of this Bond, but subject to commitment by Buyer of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
  - 6.1. the responsibilities of Seller for correction or replacement of defective Goods and Special Services and completion of the Contract;
  - 6.2. Additional legal, design professional, and delay costs resulting from Seller's Default, and resulting from the actions of or failure to act of Surety under Paragraph 4; and
  - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Seller.
7. Surety shall not be liable to Buyer or others for obligations of Seller that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Buyer or its heirs, executors, administrators, successors, or assigns.
8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location of the Point of Destination, and shall be instituted within two years after Seller Default or within two years after Seller ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to Surety, Buyer or Seller shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal

requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12. Definitions.

- 12.1. *Balance of the Contract Price*: The total amount payable by Buyer to Seller under the Contract after all proper adjustments have been made, including allowance to Seller of any amounts received or to be received by Buyer in settlement of insurance or other Claims for damages to which Seller is entitled, reduced by all valid and proper payments made to or on behalf of Seller under the Contract.
- 12.2. *Contract*: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
- 12.3. *Seller Default*: Failure of Seller, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4. *Buyer Default*: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

# PAYMENT BOND FOR PROCUREMENT CONTRACTS

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

SELLER (Name and Address):

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

BUYER (Name and Address):

New York State Department of Environmental Conservation – Division of Environmental Remediation, 625 Broadway,  
Albany NY 12233

## CONTRACT

Date:

Amount:

Description (Name and Location): GAC Contactor Equipment Purchase for Washington Lake  
Filtration Plant, NYSDEC Contract No. OP10261, 493 Little Britain Road, Newburgh NY 12550.

## BOND

Date (Not earlier than Contract Date):

Bond Number:

Amount:

Modifications to this Bond Form:

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

### **Seller as Principal**

Company: (Corp. Seal)

Signature:  
Name and Title:

### **Surety**

Company: (Corp. Seal)

Signature:  
Name and Title:  
(Attach Power of Attorney)  
Address:  
Telephone Number:

(Space is provided below for signatures of additional parties, if required.)

### **Seller as Principal**

Company: (Corp. Seal)

Signature:  
Name and Title:

### **Surety**

Company: (Corp. Seal)

Signature:  
Name and Title:  
Address:  
Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. With respect to Buyer, this obligation shall be null and void if Seller:
  - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2. Defends, indemnifies and holds harmless Buyer from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided Buyer has promptly notified Seller and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Seller and Surety, and provided there is no Buyer Default.
3. With respect to Claimants, this obligation shall be null and void if Seller promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1. Claimants who are employed by or have a direct contract with Seller have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2. Claimants who do not have a direct contract with Seller:
    - a. Have furnished written notice to Seller and sent a copy, or notice thereof, to Buyer, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - b. Have either received a rejection in whole or in part from Seller or not received within 30 days of furnishing the above notice any communication from Seller by which Seller had indicated the claim will be paid directly or indirectly; and
    - c. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Seller.
5. If a notice required by Paragraph 4 is given by Buyer to Seller or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Buyer to Seller under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By Seller furnishing and Buyer

accepting this Bond, they agree that all funds earned by Seller in the performance of the Contract are dedicated to satisfy obligations of Seller and Surety under this Bond, subject to Buyer's priority to use the funds for the completion of the furnishing the Goods and Special Services.

9. Surety shall not be liable to Buyer, Claimants or others for obligations of Seller that are unrelated to the Contract. Buyer shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Goods relevant to the claim are located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Buyer or Seller shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Buyer or Seller, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Seller shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. Definitions

- 15.1 *Claimant*: An individual or entity having a direct contract with Seller or with a Subcontractor of Seller to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for furnishing the Goods and Special Services by Seller and Seller's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- 15.2 *Contract*: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
- 15.3 *Buyer Default*: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

**Document 00 72 61**

**Appendix A**  
**Standard Clauses for New York State Contracts**

## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin:

(a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**Document 00 72 62**

**Appendix B**  
**Standard Clauses for**  
**New York State Department of Environmental Conservation**  
**Contracts**

## APPENDIX B

### Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

#### I. **Postponement, suspension, abandonment or termination by the Department:**

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold Harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

#### III. **Conflict of Interest**

(a) **Organizational Conflict of Interest.** To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may,

without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) **Personal Conflict of Interest:** The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has

developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

**If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.**

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. **Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal Requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual (ADAI) within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee (ACRC) within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Gregory Scott, Environmental Program Specialist 2  
(Name and Title)

625 Broadway, 10th Floor  
Albany, NY 12233-1080  
(Address)

(518) 402-9240  
(Telephone)

The designated appeal individual to review decisions is:

Anne Marie Cramer, Bureau Chief  
(Name and Title)

625 Broadway, 10th Floor  
Albany, NY 12233-1080  
(Address)

(518)402-9240  
(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation  
Nancy W. Lussier Chair  
Contract Review Committee  
625 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12233-5010  
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

## IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**  
If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- (4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

- (1) procure for the Department the right to continue using the same item or parts thereof;
- (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
- (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
- (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

**XVI. Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

**XVII. Freedom of Information Requests** The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

**XVIII. Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

## **XIX. Article 15-Requirements**

### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

#### **(a) General Provisions**

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

**(b) Contract Goals**

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

**(c) Equal Employment Opportunity (EEO)**

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the

areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii) Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the

implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of 10% Minority Labor Force Participation, **10%** Female Labor Force Participation.

#### (2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### (3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### (d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### (e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

**(f) Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

**(g) Liquidated Damages - MWBE Participation**

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

**(h) Forms**

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at <http://www.dec.ny.gov/about/48854.html>

**Appendix C**  
**Standard General Conditions of Procurement Contracts**  
(EJCDC P-700, 2010 edition)  
Document 00 72 63  
**and**  
**Supplementary Conditions**  
Document 00 73 06

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

These Standard General Conditions for Procurement Contracts have been prepared for use with the Suggested Instructions to Bidders for Procurement Contracts (EJCDC P-200, 2010 Edition), the Agreement Between Buyer and Seller for Procurement Contracts (EJCDC P-520, 2010 Edition), and the Guide to Preparation of Supplementary Conditions for Procurement Contracts (EJCDC P-800, 2010 Edition). Their provisions are interrelated and a change in one may necessitate a change in the others. Additional information concerning the use of the EJCDC Procurement Documents may be found in the Commentary on Procurement Documents (EJCDC P-001, 2010 Edition).

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# STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.
  3. *Application for Payment*—The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*— The offer or proposal of a Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
  5. *Bidder*—The individual or entity that submits a Bid directly to Buyer.
  6. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
  8. *Buyer*—The individual or entity purchasing the Goods and Special Services.
  9. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.

10. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*—Those items so designated in the Agreement. Shop Drawings and other Seller submittals are not Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
13. *Contract Price*—The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.
14. *Contract Times*—The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.
15. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Drawings as so defined.
16. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
17. *Engineer*—The individual or entity designated as such in the Agreement.
18. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.
19. *General Requirements*—Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
20. *Goods*—The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.
21. *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.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.
24. *Notice of Award*—The written notice by Buyer to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.
25. *Notice to Proceed*—A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.
26. *Point of Destination*—The specific address of the location where delivery of the Goods shall be made, as stated in the Agreement.
27. *Project*—The total undertaking of which the Goods and Special Services may be the whole, or only a part.
28. *Project Manual*—The documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual is contained in its table of contents.
29. *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.
30. *Seller*—The individual or entity furnishing the Goods and Special Services.
31. *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.
32. *Special Services*—Services associated with the Goods to be furnished by Seller as required by the Contract Documents.
33. *Specifications*—That part of the 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.
34. *Successful Bidder*—The Bidder submitting a responsive Bid, to whom Buyer makes an award.

35. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
36. *Work Change Directive*—A written statement to Seller issued on or after the Effective Date of the Agreement and signed by Buyer ordering an addition, deletion, or other revision in the Contract Documents with respect to the Goods and Special Services. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 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 Contract Documents.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods 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 Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.
  2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that fail to conform to the Contract Documents.
  3. The word “receipt” when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.
  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 shall mean 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 Contract Documents.

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

## **ARTICLE 2 - PRELIMINARY MATTERS**

### *2.01 Delivery of Bonds*

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish.

### *2.02 Evidence of Insurance*

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller shall deliver to Buyer, with copies to each additional insured identified by name in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Seller is required to purchase and maintain in accordance with Article 4.

### *2.03 Copies of Documents*

- A. Buyer shall furnish Seller up to five printed or hard copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

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

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### *2.05 Designated Representatives*

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

### *2.06 Progress Schedule*

- A. Within 15 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Contract Documents. No progress payment will be made to Seller until an acceptable schedule is submitted to Buyer and Engineer.

- B. 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 and the Contract Times. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

### 2.07 *Preliminary Conference*

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

### 2.08 *Safety*

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

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

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

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

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

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

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies:

1. *Seller's Review of Contract Documents Before the Performance of the Contract:* Before performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Seller shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Seller discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with the furnishing of any Goods and Special Services affected thereby.
2. *Seller's Review of Contract Documents During the Performance of the Contract:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract, any standard, specification, manual or code, or of any instruction of any Supplier, Seller shall promptly report it to Engineer in writing. Seller shall not proceed with the furnishing of the Goods and Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued.
3. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Seller had actual knowledge thereof.

#### B. Resolving Discrepancies:

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

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

### 3.04 *Amending and Clarifying Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods and Special Services or to modify contractual terms and conditions by a Change Order.
- B. Buyer may issue a Work Change Directive providing for additions, deletions, or revisions to the Goods and Special Services, in which case (1) the Contract Price shall be equitably adjusted to account for any reasonable and necessary credits to Buyer for any such deletion, or for costs (including reasonable overhead and profit) incurred by Seller to accommodate such an addition or revision and (2) the Contract Times shall be equitably adjusted to account for any impact on progress and completion of performance. Such adjustments subsequently shall be duly set forth in a Change Order.
- C. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods and Special Services may be authorized, by one or more of the following ways:
  - 1. A Field Order;
  - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 5.06.D.3); or
  - 3. Engineer's written interpretation or clarification.

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

### 4.01 *Bonds*

- A. Seller shall furnish to Buyer performance and payment bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Seller's obligations under the Contract Documents. These bonds shall remain in effect until 1) one year after the date when final payment becomes due or 2) completion of the correction period specified in Paragraph 8.03, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Seller shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Seller is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, 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 requirements of Paragraphs 4.01.B and 4.02.

#### 4.02 *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 shall not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Contract, Seller shall comply with the written request of assignee to provide certificates of insurance to assignee.
- D. Buyer does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Seller's liability under the indemnities granted to Buyer in the Contract Documents.

#### 4.03 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the 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 shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

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

#### 5.01 *Supervision and Superintendence*

- A. 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 Contract Documents. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Contract Documents. Seller shall not be responsible for the negligence of Buyer or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure that is shown or indicated in and expressly required by the Contract Documents.

### 5.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, shall be as specified, and unless specified otherwise in the Contract Documents, shall 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.

### 5.03 *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 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 shall not be Seller's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this provision shall 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 Agreement if there were no Bids) having an effect on the cost or time of performance shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.

### 5.04 *Or Equals*

- A. Whenever the Goods, or an item of material or equipment to be incorporated into the Goods, are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, 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:
    - a. 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
    - b. Seller certifies that if approved: 1) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and 2) the proposed item will conform substantially to the detailed requirements of the item named in the 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 5.04.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 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.

#### 5.05 Taxes

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

#### 5.06 Shop Drawings and Samples

- A. Seller shall submit Shop Drawings and Samples to Buyer for Engineer's review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will 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.

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

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:
  - a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and
  - b. that all materials are suitable with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.
2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.
3. Each submittal shall bear a stamp or include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.
4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples.
2. Engineer's review and approval will be only to determine if the Goods and Special Services covered by the submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole.
3. Engineer's review and approval shall not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has complied with the requirements of Paragraph 5.06.C.4 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's review and approval shall not relieve Seller from responsibility for complying with the requirements of Paragraph 5.06.C.1.

E. *Resubmittal Procedures:*

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 any revisions other than the corrections called for by Engineer on previous submittals.

5.07 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement.
- 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 shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraphs 11.03 or 11.04, or as Buyer and Seller may otherwise agree in writing.

5.08 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. 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 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 Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods shall comply with the requirements of Paragraph 5.02.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; or
  2. corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Contract Documents and the 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 Contract Documents shall 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 Contract Documents:

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

E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

F. Seller makes no implied warranties under this Contract.

#### 5.09 *Indemnification*

~~A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer and Engineer, and the officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors of each and any of them 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 Contract Documents, provided that any such claim, cost, loss, or damages 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 or Engineer or any of their respective assignees, consultants, agents, 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 5.09.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~

~~C. The indemnification obligations of Seller under Paragraph 5.09.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants arising out of:~~

- ~~1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or~~
- ~~2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

#### 5.10 *Delegation of Professional Design Services*

- A. Seller will not be required to provide professional design services unless such services are specifically required by the Contract Documents or unless such services are required to carry out Seller's responsibilities for furnishing the Goods and Special Services. Seller shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to the Goods and Special Services are specifically required of Seller by the Contract Documents, Buyer and Engineer will specify all performance and design criteria that such services must satisfy. Seller shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Goods and Special Services designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Buyer and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Buyer and Engineer have specified to Seller all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 5.10, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 5.06.D.2.
- E. Seller shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 6 - SHIPPING AND DELIVERY

### 6.01 *Shipping*

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

### 6.02 *Delivery*

- A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.
- B. Seller shall provide written notice to Buyer at least 10 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated 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 during the Contract Times for delivery set forth in the Agreement, or another date agreed by Buyer and Seller.
- E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

### 6.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. 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.

### 6.04 *Progress Schedule*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06 as it may be adjusted from time to time as provided below.
  - 1. Seller shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.06) proposed adjustments in the progress schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 7. Adjustments in Contract Times may only be made by a Change Order.

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

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

- A. Buyer may at any time, without notice to any surety, make an addition, deletion, or other revision to the Contract Documents with respect to the Goods and Services, within the general scope of the Contract, by a Change Order or Work Change Directive. Upon receipt of any such document, Seller shall promptly proceed with performance pursuant to the revised Contract Documents (except as otherwise specifically provided).
- B. If Seller concludes that a Work Change Directive issued by Buyer affects the Contract Price or Contract Times, then Seller shall notify Buyer within 15 days after Seller has received the Work Change Directive, and submit written supporting data to Buyer within 45 days after such receipt. If Seller fails to notify Buyer within 15 days, Seller waives any Claim for such adjustment. If Buyer and Seller are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 9.06.
- C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments to Contract Price or Contract Times.

### *7.02 Changing Contract Price or Contract Times*

- A. The Contract Price or Contract Times may only be changed by a Change Order.
- B. Any Claim for an adjustment in the Contract Price or Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 9.06.
- ~~C. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include but are not limited to acts or neglect by Buyer, inspection delays, fires, floods, epidemics, abnormal weather conditions, acts of God, and other like matters. If such an event occurs and delays Seller's performance, Seller shall notify Buyer in writing within 15 days of knowing or having reason to know of the beginning of the event causing the delay, stating the reason therefor.~~
- D. Seller shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Seller. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.
- E. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable

and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.

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

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

### *8.01 Inspections and Testing*

#### *A. General:*

1. The 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 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 Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 8.01.A.2 immediately above); 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 Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination.
6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.

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

*B. Inspection on Delivery:*

1. Buyer or Engineer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such 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. Within ten days of such visual inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming and that Buyer has acknowledged their receipt upon delivery.
3. If, on the basis of the visual inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.

*C. Final Inspection:*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as indicated, Buyer or Engineer will make a final inspection.
2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.
3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

*8.02 Non-Conforming Goods 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 8.03, 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 Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Remedying Non-Conforming Goods and Special Services:*

1. 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.
2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.

D. *Buyer's Acceptance of Non-Conforming Goods:*

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 as provided in Paragraph 8.02.E.

- E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations shall 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.

F. *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.

### 8.03 *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 earlier of the date on which Buyer has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

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

### 9.01 *Duties and Responsibilities*

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

### 9.02 *Clarifications and Interpretations*

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

### 9.03 *Authorized Variations*

- A. Engineer may authorize minor deviations or variations in the Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 5.06.C.4, or 2) a Field Order.

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

- A. Engineer will have the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer will also have authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 8.01 whether or not the Goods are fabricated or installed, or the Special Services are completed.

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

- A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. ~~Claims, disputes~~ and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the

Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.

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

#### *9.06 ~~Claims and Disputes~~*

- ~~A. *Notice:* Written notice of each Claim relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to either party's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data shall be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.~~
- ~~B. *Engineer's Decision:* 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.~~
- ~~C. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 9.06.B., 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.~~
- ~~D. 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 9.06.C, 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 Article 13.~~
- ~~E. If Article 13 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 13, 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.~~
- ~~F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 9.06.~~

~~G. 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 time periods established in this Paragraph 9.06; if so, a written record of such mutual agreement should be made and jointly executed.~~

## **ARTICLE 10 - PAYMENT**

### *10.01 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 Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.
1. The first application for Payment will be submitted after review and approval by Engineer of all Shop Drawings and of all Samples required by the Contract Documents.
  2. The second Application for Payment will be submitted after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice, or other documentation 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. In the case of multiple deliveries of Goods, additional Applications for Payment accompanied by the required documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.

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

- A. Engineer will, within ten days after receipt of each Application for Payment, 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. In the latter case, Seller may make the necessary corrections and resubmit the Application.
1. Engineer's recommendation of payment requested in the first Application for Payment will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data, that the Shop Drawings and Samples have been reviewed and approved as required by the Contract Documents and Seller is entitled to payment of the amount recommended.
  2. Engineer's recommendation of payment requested in the Application for Payment submitted upon Buyer's acknowledgment of receipt of the Goods will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data Seller is entitled to payment of the amount recommended. Such recommendation will not constitute a representation that Engineer has made a final inspection of the Goods, that the Goods are free from non-conformities,

acceptable or in conformance with the Contract Documents, that Engineer has made any investigation as to Buyer's title to the Goods, that exhaustive or continuous inspections have been made to check the quality or the quantity of the Goods beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle Seller to additional payments by Buyer or Buyer to withhold payment to Seller.

3. Engineer may refuse to recommend that all or any part of a progress payment be made, or Engineer may nullify all or any part of any payment previously recommended if, in Engineer's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests Engineer considers such refusal or nullification necessary to protect Buyer from loss because the Contract Price has been reduced, Goods are found to be non-conforming, or Seller has failed to furnish acceptable Special Services.

#### 10.03 *Amount and Timing of Progress Payments*

- A. Subject to Paragraph 10.02.A., the amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment with Engineer's recommendation pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30-day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

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

- A. Buyer may suspend or reduce the amount of progress payments, 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 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 Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
- B. If Buyer refuses to make payment of the full amount 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.

#### 10.05 *Final Application for Payment*

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

#### 10.06 *Final Payment*

- A. 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 Contract Documents, and that Seller's has fulfilled all other obligations under the Contract Documents, then Engineer will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of Paragraph 10.07 and present the Application to Buyer. Otherwise, Engineer will return the Application to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the Application for payment. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages to which Buyer is entitled.

#### 10.07 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens from non-conformities in the Goods or Special Services appearing after final payment, from Seller's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Seller against Buyer (other than those previously made in accordance with the requirements herein and listed by Seller as unsettled as required in Paragraph 10.05.A, and not resolved in writing).

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

#### 11.01 *Cancellation*

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

1. Buyer shall pay Seller for 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 Contract Price of such Goods.

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

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

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

- A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
  1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract; and,
  2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

#### 11.04 *Breach and Termination*

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

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:
  - a. wrongful rejection or revocation of Buyer's acceptance of the Goods,
  - b. failure to make payments in accordance with the Contract Documents, or
  - c. wrongful repudiation of the Contract.
2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
  - a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice

declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. *Seller's Breach:*

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:
  - a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
  - b. wrongful repudiation of the Contract, or
  - c. delivery or furnishing of non-conforming Goods and Special Services.
2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
  - a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
  - b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

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

### *12.01 Intellectual Property and License Fees*

- A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.
- B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

## ~~12.02 Seller's Infringement~~

- ~~A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, 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 United States or foreign patent or copyright by any of the Goods as delivered hereunder.~~
- ~~B. In the event of suit or threat of suit for intellectual property infringement, Buyer will promptly notify Seller of receiving notice thereof.~~
- ~~C. Seller shall promptly defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.~~
- ~~1. If Seller fails to defend such suit or claim after written 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 after written notice by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.~~
- ~~D. If a determination is made that Seller has infringed upon intellectual property rights of another, Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's own expense.~~

## ~~12.03 Buyer's Infringement~~

- ~~A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all 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 United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).~~
- ~~B. In the event of suit or threat of suit for intellectual property infringement, Seller must after receiving notice thereof promptly notify Buyer.~~
- ~~C. Upon written notice from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.~~

- ~~1. If Buyer fails to defend such suit or claim after written 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 after written notice by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.~~

#### 12.04 *Reuse of Documents*

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

#### 12.05 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, copies of data furnished by Buyer or Engineer to Seller, or by Seller to Buyer or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## ARTICLE 13 - DISPUTE RESOLUTION

### 13.01 *Dispute Resolution Method*

- A. ~~Either Buyer or Seller may initiate the mediation of any Claim decided in writing by Engineer under Paragraph 9.06.B or 9.06.C before such decision becomes final and binding. 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 Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the Engineer's decision from becoming final and binding.~~
- B. ~~Buyer and Seller shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.~~
- C. ~~If the mediation process does not result in resolution of the Claim, then Engineer's written decision under Paragraph 9.06.B or a denial pursuant to Paragraph 9.06.C shall become final and binding 30 days after termination of the mediation unless, within that time period, Buyer or Seller:~~
- ~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or~~
  - ~~2. agrees with the other party to submit the Claim to another dispute resolution process, or~~
  - ~~3. if no dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.~~

## ARTICLE 14 - MISCELLANEOUS

### 14.01 *Giving Notice*

- A. ~~Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if: 1) delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or 2) if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.~~

### 14.02 *Controlling Law*

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

- B. In the case of any conflict between the express terms of this 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 Contract shall apply.

14.03 *Computation of Time*

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

14.04 *Cumulative Remedies*

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

14.05 *Survival of Obligations*

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

14.06 *Entire Agreement*

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

## SUPPLEMENTARY CONDITIONS

### SCOPE

These Supplementary Conditions amend or supplement the Standard General Conditions for Procurement Contracts, EJCDC P-700 (2010 Edition), hereinafter referred to as "General Conditions". All provisions of the General Conditions that are not so amended or supplemented remain in full force and effect.

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

The address system used in these Supplementary Conditions conforms to the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01.A.37     Add a new definition immediately following Paragraph 1.01.A.36, that is to read as follows:

SC-1.01.A.37     *City:* City of Newburgh, City Hall, 83 Broadway, Newburgh, NY 12550 and its employees, elected officials, and duly authorized agents, each acting within the scope of the particular duties entrusted to them. The City's Water Department manages, operates, and maintains the City of Newburgh Filter Plant ("Water Treatment Plant"). References to "Owner", "Project Owner", and "Buyer" that are relative solely to matters regarding management, operation, and maintenance of the location where the Goods will be installed shall be construed as meaning the City.

SC-4.01           Add the following new paragraphs immediately after Paragraph 4.01.C:

D.     The City shall be as an additional obligee on the Performance Bond and the Payment Bond furnished by Seller. Seller shall furnish a dual-obligee rider to each bond as evidence of compliance with this requirement

SC-4.02           Add the following new paragraphs immediately after Paragraph 4.02.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 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

All insurance required by the Contract to be purchased and maintained by Seller shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Goods will be fabricated, manufactured, and assembled, and where the Goods will be installed, to issue insurance policies for the required limits and coverages. Unless a different standard is required by Laws or Regulations, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

Furnish insurance that provides coverage for:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (ii) by any other person for any other reason;
  5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- G. The policies of insurance so required by this Paragraph 4.02 to be purchased and maintained shall:
1. with respect to insurance required by Paragraphs SC-4.02.F.3 through SC-4.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, State of New York, City, and Engineer, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents,

and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary and non-contributory coverage for all claims covered thereby; "New York State Department of Environmental Conservation" shall be listed as the certificate holder; the policies shall include an endorsement whereby the insurance carrier waives its rights to subrogate against each of the additional insureds required in this paragraph (endorsement shall be on ISO Form number CG 24 04 or a similar form with same modification to the policy);

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 the Contract Documents.
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Buyer, State of New York, Engineer, City, and Seller and to each other additional insured identified in these Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Seller pursuant to Paragraph SC-4.02.I will so provide);
6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 8.03;
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); and
8. with respect to any delegation of professional design services to Seller pursuant to Paragraph 5.10 of the General Conditions, include professional liability coverage by endorsement or otherwise;

9. evidence of insurance furnished by Seller shall disclose any and all deductibles, self-insured retentions, aggregate limits, and exclusion to the policies that differs materially from the coverage required by the Contract Documents;
  10. applicable insurance policy number(s) indicated on the associated ACORD insurance certificate shall also be indicated on all supporting documentation requested by any entity required by the Contract Documents to be an additional insured, and furnished by the insurance carrier, including endorsements, declarations, and binders;
  11. when coverage is provided by a non-admitted insurance carrier, a copy of the declarations page along with the ELANY stamped certification wording affixed to the certificate of insurance shall be furnished to indicate that excess line insurance complies with requirements for a valid excess line transaction in accordance with Article 21 of the New York State Insurance Law;
  12. worker's compensation and disability benefits insurance certificates shall name the New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233, as the entity requesting proof of coverage;
- H. The limits of liability for the insurance required by Paragraph SC-4.02.F shall 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-4.02.F.1 and F.2:
    - a. State: Statutory
    - b. Applicable Federal  
(e.g., Longshoreman's): Statutory
    - c. Employer's Liability: Required
    - d. Comply with requirements of Paragraphs SC-4.02.N and SC-4.02.O of these Supplementary Conditions, which present additional requirements on workers' compensation insurance and disability benefits
  2. Seller's General Liability under Paragraphs SC-4.02.F.3 through F.6 which shall include completed operations and product

liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

- a. General Aggregate \$5,000,000
  - b. Each Occurrence: #3,000,000
  - c. Products - Completed
    - 1) Operations Aggregate \$5,000,000
  - d. Personal and Advertising
    - 1) Injury \$1,000,000 per occurrence
    - 2) Each Occurrence  
(Bodily Injury and  
Property Damage) \$3,000,000
    - 3) Medical Expenses (Each Occurrence): \$5,000
  - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
  - f. Damage to Rented Premises: \$50,000 per occurrence
  - g. The following ISO forms must be endorsed to the policy:
    - 1) CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors – to include all entities to be additional insureds as required by the Contract Documents.
  - h. Limits may be provided through a combination of primary and umbrella/excess liability policies. Commercial general liability insurance aggregate shall be endorsed to apply on a per project basis for construction contracts.
3. Automobile Liability under Paragraph SC-4.02.F.6:
- a. Bodily Injury:
    - 1) Each person \$3,000,000
    - 2) Each Accident \$3,00,000
  - b. Property Damage:
    - 1) Each Accident \$3,000,000
    - 2) Combined Single Limit of \$3,000,000
4. Owner's and Contractor's Protective Liability Insurance:
- a. Furnish a separate Owner's and Contractors Protective Liability (OCP) insurance policy as follows: For projects

not related to street, road, highway, or bridge work – Form CG 00 09, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor.

- b. Policy shall be written on a project basis for the benefit of (1) the People of the State of New York, (2) the New York State Department of Environmental Protection, its officers, agents, and employees, and (3) each other entity to be an additional insured on Seller-furnished commercial general liability insurance under the Contract Documents, with respect to all operations under this Contract by Seller and its subcontractors, including in such coverage any omissions and supervisory acts of the Buyer, its officers, agents, and employees.
- c. State of New York and the New York State Department of Environmental Conservation—Division of Environmental Remediation (625 Broadway, Albany, NY 12233), shall be the named insured in the OCP policy, which shall be promptly furnished to Buyer.
- d. OCP policy limits shall be not less than:
  - 1) Each Occurrence: \$3,000,000
  - 2) General Aggregate: \$5,00,000

5. Excess/Umbrella Liability:

- a. When the limits of Seller’s normal commercial general liability, automobile liability, or employers’ liability policies are insufficient to comply with the requirements of the Contract Documents, Seller shall furnish and maintain Commercial Excess/Umbrella Liability insurance policies with limits in excess of the primary policies required by the Contract Documents; provided, however, that the total amount of insurance coverage is equal to or greater than the required coveragers set forth in the Contract Documents. Such policies shall follow the same form as the primary policies.

- 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. Upon request of Buyer, Seller shall furnish to Buyer copies of Seller’s

insurance policies, with appropriate, proprietary information redacted as deemed necessary by Seller.

- J. If Buyer has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained on the basis of non-conformance with the Contract Documents, Buyer will notify Seller in writing within 15 days after receipt of the certificates or other evidence required by Paragraph SC-4.02.E. Seller shall furnish such additional information in respect to insurance as Buyer will reasonably request.
- K. The following in evidence of insurance furnished by Seller is unacceptable:
  - 1. removal or restriction of blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO commercial general liability insurance policy language) to limit coverage against claims that arise out of work; or
  - 2. removal or modification of the “insured contract” exception to the employers liability exclusion; or
  - 3. failure to cover the additional insured for claims involving injury to employees of the named insured or subcontractors.
- L. Should Seller fail to furnish and maintain in effect all insurance required by the Contract Documents, such failure will be cause for Buyer to terminate or cancel the Contract for cause. If at any time during while the Contract is in effect, insurance coverages do not comply with the requirements of the Contract Documents, or if Seller does not furnish proof such coverage to Buyer, Seller shall immediately cease its performance under the Contract. Such cessation shall not be grounds for a change in the Contract Price or the Contract Times. Seller shall not resume performance under the Contract until authorized to do so by Buyer. Should Seller fail to furnish or maintain any insurance required by the Contract Documents or furnish proof thereof to Buyer, then Buyer may withhold from Seller payments due Seller under the Contract, treat such failure as a breach or default of the Contract, and, after furnishing written notice to Seller, require Seller’s surety to secure appropriate coverage or purchase insurance complying with the Contract Documents and charge back to Seller cost of such expense.
- M. Should Seller engage a subcontractor to perform any part of Seller’s obligations under the Contract, Seller shall impose on such subcontractor the insurance requirements of the Contract Documents.

Seller shall determine the required insurance types and limits, commensurate with the work of the subcontractor. Seller shall retain a copy of the evidence of insurance (including not less than insurance certificates and endorsements) for all subcontractors retained by Seller for the Project.

- N. *Statutory Workers' Compensation Insurance*: Evidence of Workers' Compensation and Employers Liability coverage shall be furnished on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

<b>FORM #</b>	<b>FORM TITLE</b>
C-105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. Additional information can be obtained at the Workers' Compensation website:

<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

- O. *Statutory Disability Benefits*: For work and Special Services performed in New York State, Seller shall furnish and maintain coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the New York State Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

<b>FORM #</b>	<b>FORM TITLE</b>
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. ACORD forms are not acceptable proof of New York State Disability Benefits Insurance coverage. Additional information can be obtained at the Workers' Compensation website: <http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

SC-5.03. Add a new paragraph immediately after Paragraph 5.03.C that is to read as follows:

- D References to selected Laws and Regulations are included in the Contract Documents. The failure to include in in the Contract Documents reference to, or specific language from, any Law or Regulation applicable to the performance of the Contract does not diminish Seller's responsibility to comply with all Laws and Regulations applicable to the furnishing of the Goods and Special Services.

SC-5.05.B Add a new paragraph immediately after Paragraph 5.05.A, that is to read as follows:

- B. Provisions on Buyer's tax-exempt status is presented in Appendix B, Standard Clauses of NYSDEC Contracts, of the Contract Documents. Also refer to the Notice to Bidders provision entitled "Tax Law 5-A Amended April 26, 2006" and Attachment VI ("Tax Law Section 5-A Forms").

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.E of the General Conditions that are to read as follows:

- F Number of Submittals:
  - 1. Seller shall furnish required submittals with sufficient information and accuracy to obtain required approval or acceptance of submittal with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other submittals or items requiring approval or acceptance, and Seller shall reimburse Buyer for Engineer's charges for such time.
  - 2. Total number of Seller's submittals shall not exceed 25 percent above the total number of first-time submittals indicated in the Schedule of Submittals initially accepted by Engineer in

accordance with Section 01 33 00, Submittal Procedures. Engineer will record Engineer's time for reviewing submittals of Shop Drawings, Samples, and other submittals and items requiring approval or acceptance, beyond the quantity of first-time submittals indicated in the Schedule of Submittals initially accepted by Engineer, and Seller shall reimburse Buyer for Engineer's charges for such time.

G In the event that Seller requests a change of a previously approved item, Seller shall reimburse Buyer for Engineer's charges for its review time unless the need for such change is beyond the control of Seller.

SC-5.08.C.1 Supplement Paragraph 5.08.C.1 by adding, after the term, "Engineer", the words, "or City".

SC-5.09 Delete Paragraph 5.09 in its entirety; provisions on Seller's general indemnification and hold harmless obligations are set forth in Appendix B, Standard Clauses for NYSDEC Contracts. In addition to Buyer, the State of New York, Engineer, Engineer's consultants and subcontractors, and City (including City's employees, elected officials, contractors, and agents) shall also be included in all of Seller's indemnification, defense, and hold harmless obligations under the Contract Documents.

SC-7.02.C Delete Paragraph 7.02.C of the General Conditions in its entirety. Provisions on uncontrollable delays ("force majeure") are set forth in in Appendix B, Standard Clauses for NYSDEC Contracts.

SC-9.05.A In Paragraph 9.05.A of the General Conditions, delete the words, "Claims, disputes".

SC-9.06 Delete Paragraph 9.06 of the General Conditions in its entirety. Provisions setting forth procedures for Claims and disputes are in Appendix B, Standard Clauses for NYSDEC Contracts.

SC-10 Provisions on electronic payment are in the General Information document included in the Bidding Requirements.

SC-10.03.A Replace the entirety of the second sentence of Paragraph 10.03.A with the following: "Within the number of days stipulated in New York State Law after receipt of each Application for Payment with Engineer's recommendation, Buyer shall pay Seller the amount recommended. If the Contract is assigned by Buyer to an installing contractor, payment to Seller shall be made to Seller within the number of days stipulated in New York State Law after assignee has received payment from New York

State. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.”

SC-10.06.A Change the second sentence of Paragraph 10.06.A by replacing the words “Buyer shall, within 30 days after receipt thereof, pay Seller” with the words, “In accordance with applicable provisions of New York State Law, Buyer shall pay Seller, following Buyer’s receipt of Seller’s final Application for Payment with Engineer’s recommendation regarding payment,”. When the Contract is assigned to an installing contractor, final payment to Seller shall be through the installing contractor and made following assignees receipt of payment from the State of New York; such payment shall be made by assignee within the number of days stipulated in New York State Law.

SC-12 Delete Paragraphs 12.02 and 12.03 of the General Conditions in its entirety. Provisions on infringement (including inventions and discoveries, and patents and copyrights) are set forth in Appendix B, Standard Clauses for NYSDEC Contracts.

SC-12.05 Delete Paragraph 12.05 in its entirety and add the following in its place:

SC-12.05 *Electronic Data*

A. Files Covered by Specifications Section 01 31 26, Electronic Communication Protocols: Copies of electronic data furnished by Buyer, City, or Engineer to Seller or by Seller to Buyer, City, or Engineer that may be relied upon are limited to the documents, formats, uses, and conditions in Specifications Section 01 31 26, Electronic Communication Protocols.

B. Files Not Covered by Specifications Section 01 31 26, Electronic Communication Protocols:

1. Copies of electronic data furnished by Buyer, City, or Engineer to Seller or by Seller to Buyer, City, or Engineer that may be relied upon and are not covered in Specifications Section 01 31 26, Electronic Communication Protocols, are limited to printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

2. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files not covered in Specifications Section 01 31 26, Electronic Communication Protocols, agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
3. When transferring documents in electronic media format not covered in Specifications Section 01 31 26, Electronic Communication Protocols, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

SC-13.01 Delete Paragraph 13.01 of the General Conditions in its entirety. Dispute resolution procedures are set forth in Appendix B, Standard Clauses for NYSDEC Contracts.

SC-14 Delete Paragraphs 14.01 and 14.02 of the General Conditions in their entirety. Provisions on giving notice ("service of process") and controlling law ("governing law") are included in Appendix A, Standard Clauses for New York State Contracts.

+ + END OF SUPPLEMENTARY CONDITIONS + +

## SECTION 01 22 13

### MEASUREMENT AND PAYMENT (LUMP SUM)

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
1. Items listed starting in Article 1.4 of this Section refer to and are the same pay items listed in the Bid Form and constitute all pay items for furnishing the Goods and Special Services.
  2. No direct or separate payment will be made for furnishing accessory items, plant or facility services, testing, safety provisions and safety devices, submittals required by the Contract Documents, bonds and insurance, transport and delivery, storage by SELLER prior to the delivery window indicated in the Agreement (as may be modified by the parties), travel expenses, labor for SELLER's Special Services at the location where the Goods are delivered and installed, information technology (including hardware, software, and services) required during the performance of the Contract, or other requirements of the General Conditions, Supplementary Conditions, Division 01 Specifications, and other requirements of the Contract Documents.
  3. Compensation for all services, items, materials, and equipment shall be included in prices stipulated for lump sum and unit price (if any) pay items listed in this Section and included in the Contract.
- B. Each lump sum and unit price (if any), as bid, shall include an amount considered by SELLER to be adequate to cover SELLER's overhead and profit for each separately identified item.

##### 1.2 ENGINEER'S ESTIMATE OF QUANTITIES FOR UNIT PRICE ITEMS

- A. ENGINEER's estimated quantities for unit price items (if any), as included in the Contract, are approximate only and are included solely for purpose of comparing Bids and pricing. BUYER does not expressly or by implication agree that actual quantities of materials or equipment required will correspond with the quantities included in the Contract at the time of award and reserves the right to increase or decrease quantities, and to eliminate quantities, as BUYER may deem necessary.
- B. SELLER and BUYER will not be entitled to adjustment in unit prices (if any) as a result of change in estimated quantity and agree to accept the unit prices accepted in the Bid as complete and total compensation for additions or deletions caused by changes or alterations in the unit price Goods or Special Services directed by BUYER.

### 1.3 RELATED PROVISIONS

- A. Payments to SELLER: Refer to General Conditions, Supplementary Conditions, Agreement, General Information document that is part of the Bidding Requirements, and Section 01 29 76, Progress Payment Procedures.
- B. Changes in Contract Price: Refer to General Conditions, Supplementary Conditions, and Section 01 26 00, Contract Modification Procedures.
- C. Schedule of Values: Refer to General Conditions, Supplementary Conditions, and Section 01 29 73, Schedule of Values.

### 1.4 CONTRACT NO. 2 – GAC CONTACTOR EQUIPMENT PURCHASE CONTRACT

- A. Item 1 – Furnishing of Goods and Special Services:
  - 1. Measurement and Payment: Lump sum payment for Item 1 will be full compensation for furnishing all Goods and Special Services, as shown or indicated under Division 00 through Division 49.

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 26 00

### CONTRACT MODIFICATION PROCEDURES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope.
  - 1. This Section expands upon provisions of the General Conditions, as may be modified by the Supplementary Conditions, and includes:
    - a. Requests for interpretation.
    - b. Written clarifications.
    - c. Minor changes in the Goods and Special Services and Field Orders.
    - d. Work Change Directives.
    - e. Proposal Requests.
    - f. Change Proposals.
    - g. Change Orders.
- B. Submit Contract modification documents to ENGINEER, addressed to the contact person and contact information indicated in Section 01 33 00, Submittal Procedures, and in accordance with Section 01 31 26, Electronic Communication Protocols.
- C. Retain at SELLER's office and at the location where the Special Services are performed (when SELLER has personnel at the site where the Goods are installed) complete copy of each Contract modification document and related documents, and ENGINEER's response.

##### 1.2 REQUESTS FOR INTERPRETATION

- A. General.
  - 1. Transmit written requests for interpretation to ENGINEER. SELLER and BUYER may prepare and transmit requests for interpretation.
  - 2. Prepare and transmit request for interpretation to obtain clarifications or interpretations of the Contract Documents. Report conflicts, errors, ambiguities, and discrepancies in the Contract Documents by requesting an interpretation.
  - 3. Do not transmit request for interpretation when other form of communication is appropriate, such as SELLER's submittals, notices, ordinary correspondence, or other form of communication. Improperly prepared or inappropriate requests for interpretation will be returned without response or action by ENGINEER.
  - 4. Do not submit request for interpretation or clarification when:

- a. answer may be obtained by observations at location where the Goods are fabricated or where the Goods are installed; or
  - b. required information is clearly indicated in the Contract Documents; or
  - c. required information is included in industry standards referenced in the Contract Documents or supplier's instructions that are consistent with the Contract Documents; or
  - d. are reasonably inferable from any of foregoing.
5. SELLER shall have sole financial responsibility for requests for interpretations or clarifications that are submitted late, out of sequence, or that are unnecessary.

B. Procedure.

1. Transmit requests for interpretation in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Include with each request for interpretation a separate letter of transmittal.
2. ENGINEER will provide timely review of requests for interpretation. Allow sufficient time for review and response.
3. ENGINEER will maintain log of requests for interpretation. Upon request, copy of log will be transmitted to requestor.
4. ENGINEER's response to requests for interpretation will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Each response to a request for interpretation will include a separate letter of transmittal.
5. ENGINEER's written response to each request for interpretation will be distributed to:
  - a. SELLER.
  - b. BUYER.
  - c. Project owner (if different from BUYER).
  - d. City.
  - e. Resident Project Representative (RPR).
  - f. ENGINEER.
6. If ENGINEER requests additional information to make an interpretation, entity requesting the interpretation shall transmit the information requested within ten days, unless ENGINEER allows additional time, via correspondence referring to request for interpretation number.
7. Interpretations that One or Both Parties Believes Entails a Change to the Contract:
  - a. If SELLER or BUYER believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of ENGINEER's interpretation, so advise ENGINEER in writing before proceeding with the Goods and Special Services associated with the request for interpretation.
  - b. If, after this initial communication, either BUYER or SELLER believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.

C. Preparation of Requests for Interpretation:

1. Prepare each request for interpretation on the "Request for Interpretation" form included with this Section, or other form acceptable to ENGINEER.
2. Number each request for interpretation as follows: Numbering system shall be the Contract number and designation followed by a hyphen and three-digit sequential number. Example: First request for interpretation on the purchase contract for project titled, "Contract A15" would be, "RFI No. A15-PUR-001".
3. In space provided on form, describe the interpretation requested. Provide additional sheets as necessary. Include text and sketches as required in sufficient detail to describe the need for an interpretation.
4. When applicable, request for interpretation shall include SELLER's recommended resolution.

1.3 WRITTEN CLARIFICATIONS

A. General:

1. Written clarifications, when required, will be initiated and issued by ENGINEER.
2. Written clarifications do not change the Contract Price or Contract Times, and do not alter the Contract Documents.
3. Written clarifications will be issued as correspondence or using clarification notice form, with additional information as required.

B. Procedure.

1. ENGINEER's written clarifications will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section.
2. Each written clarification will be distributed to:
  - a. SELLER.
  - b. BUYER.
  - c. Project owner (if different from BUYER).
  - d. City.
  - e. Resident Project Representative (RPR).
  - f. ENGINEER.
3. Written Clarifications that One or Both Parties Believes Entails a Change to the Contract:
  - a. If SELLER or BUYER believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of ENGINEER's written clarification, so advise ENGINEER in writing before proceeding with the Goods and Special Services associated with the written clarification.
  - b. If, after this initial communication, either BUYER or SELLER believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.

4. If ENGINEER's written clarification is unclear, prepare and transmit a request for interpretation.

#### 1.4 MINOR CHANGES IN THE GOODS AND SPECIAL SERVICES AND FIELD ORDERS

##### A. General:

1. Field Orders, when required, will be initiated and issued by ENGINEER.
2. Field Orders authorize minor variations in the Goods or Special Services but do not change the Contract Price or Contract Times.
3. Field Orders will be in the form of Engineers Joint Contract Documents Committee document EJCDC® C-942, "Field Order".
4. ENGINEER will maintain a log of Field Orders issued.

##### B. Procedure.

1. Field Orders will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Each Field Order will include a separate letter of transmittal.
2. Each Field Order will be distributed to:
  - a. SELLER.
  - b. BUYER.
  - c. Project owner (if different from BUYER).
  - d. City.
  - e. Resident Project Representative (RPR).
  - f. ENGINEER.
3. Field Orders that One or Both Parties Believes Entails a Change to the Contract Price or Contract Times:
  - a. If SELLER or BUYER believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of a Field Order, so advise ENGINEER in writing before proceeding with the Goods and Special Services associated with the Field Order.
  - b. If, after this initial communication, SELLER believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.
4. If the Field Order is unclear, submit request for interpretation.

#### 1.5 WORK CHANGE DIRECTIVES

##### A. General:

1. Work Change Directives, when required, order additions, deletions, or revisions to the Goods or Special Services, or both.
2. Work Change Directives do not change the Contract Price or Contract Times but are evidence that the parties to the Contract expect that the change ordered or documented by the Work Change Directive will be incorporated in subsequently issued Change Order following agreement by the parties as to the Work Change Directive's effect, if any, on the Contract Price or Contract Times..

3. Work Change Directives will be in the form of EJCDC® C-940, “Work Change Directive”, unless other form is required by Project owner.
- B. Procedure.
1. Work Change Directives signed by BUYER and ENGINEER will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Each Work Change Directive will include a separate letter of transmittal. SELLER shall print three originals of Work Change Directive for SELLER’s signature.
  2. SELLER shall promptly sign each original Work Change Directive and, within five days of receipt, return all originals to ENGINEER.
  3. Original, signed Work Change Directives will be distributed as follows:
    - a. SELLER: One original.
    - b. BUYER: One original.
    - c. Project owner (if different from BUYER): One original.
  4. One copy of each Work Change Directive will be distributed to:
    - a. City.
    - b. ENGINEER.
    - c. Resident Project Representative (RPR).
  5. Documentation of Costs:
    - a. When basis of payment for Goods or Special Services ordered under a Work Change Directive will be paid on the basis of time-and-materials, or when otherwise required by ENGINEER, document for the Goods and Special Services performed under each separate Work Change Directive, for each day, the following:
      - 1) Number and labor classifications of workers employed and hours worked.
      - 2) Equipment used including manufacturer, model, and year of manufacture, and number of hours such equipment was onsite and used for the Work under the Work Change Directive.
      - 3) Consumables and similar materials used.
      - 4) Receipts, bills, or invoices for and descriptions of materials and equipment incorporated into the Work.
      - 5) Invoices and labor and equipment breakdowns for subcontractors and suppliers.
      - 6) Other information required by BUYER or ENGINEER,
    - b. Submit such information in a format acceptable to ENGINEER.
    - c. Transmit such documentation to ENGINEER as a Change Proposal.

## 1.6 PROPOSAL REQUESTS

- A. General:
1. Proposal Requests may be initiated by ENGINEER or BUYER.
  2. Proposal Requests are for requesting the effect on the Contract Price and the Contract Times and other information relative to contemplated changes in the Goods or Special Services. Proposal Requests do not authorize changes or

variations in the Goods and Special Services, and do not change the Contract Price or Contract Times or terms of the Contract.

3. Proposal Requests will be furnished using the "Proposal Request" form included with this Section.

B. Procedure.

1. Proposal Requests will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Each Proposal Request will include a separate letter of transmittal.
2. Each signed Proposal Request will be transmitted to:
  - a. SELLER.
  - b. BUYER.
  - c. Project owner (if different from BUYER).
  - d. City.
  - e. Resident Project Representative (RPR).
  - f. ENGINEER.
3. Transmit request for interpretation to clarify conflicts, errors, ambiguities, and discrepancies in Proposal Request.
4. Upon receipt of Proposal Request, SELLER shall prepare and transmit to ENGINEER a Change Proposal, in accordance with the Contract Documents, for the proposed Goods and Special Services described in the Proposal Request.

## 1.7 CHANGE PROPOSALS

A. General.

1. Prepare and transmit written Change Proposal to ENGINEER in response to each Proposal Request; or when SELLER believes a change in the Contract Price or Contract Times or other change to the terms of the Contract is required; or to appeal an initial decision by ENGINEER concerning the requirements of the Contract Documents or relating to the acceptability of the Goods and Special Services furnished under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract.
2. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

B. Procedure.

1. SELLER shall submit each Change Proposal to ENGINEER promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. SELLER shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to ENGINEER, and BUYER within 15 days after the submittal of the Change Proposal. Supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price

adjustment is the entire adjustment to which SELLER believes it is entitled as a result of said event. ENGINEER will advise BUYER regarding the Change Proposal, and consider any comments or response from BUYER regarding the Change Proposal. If the Contract is assigned to an installing construction contractor, submit Change Proposals through the installing construction contractor.

2. Transmit Change Proposals in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Include with each Change Proposal all required supporting documentation and a separate letter of transmittal.
3. ENGINEER's Review and Requests for Additional Information:
  - a. ENGINEER will review each Change Proposal and, within 30 days after receipt of SELLER's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to BUYER, SELLER, and others indicated below. If ENGINEER does not take action on the Change Proposal within 30 days, then either BUYER or SELLER may at any time thereafter submit a letter to the other party indicating that as a result of ENGINEER's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial via the Claims procedure set forth in the Contract Documents..
  - b. When, ENGINEER requests additional information to render a decision, submit required information within five days of receipt of ENGINEER's request, unless ENGINEER allows more time. Submit the required information via correspondence that refers to the specific Change Proposal number.
  - c. BUYER shall transmit to ENGINEER such comments, if any, that BUYER has on the Change Proposal, within 10 days of BUYER's receipt of the Change Proposal.
  - d. ENGINEER will render a written decision on the Change Proposal.
  - e. ENGINEER's response to Change Proposals will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section, the General Conditions, and the Supplementary Conditions.
  - f. ENGINEER's decision will be final and binding upon BUYER and SELLER, unless BUYER or SELLER appeals the decision by filing a Claim in accordance with the Claims procedure in the Contract Documents.
4. ENGINEER's response to each Change Proposal will be distributed to:
  - a. SELLER.
  - b. BUYER.
  - c. Project owner (if different from BUYER).
  - d. Resident Project Representative (RPR).
  - e. ENGINEER.
5. If Change Proposal is recommended for approval by ENGINEER and is approved by BUYER, a Change Order will be issued or, when applicable, an

appropriate use of contingency allowance (if any) will be authorized by BUYER.

6. If parties do not agree on terms for the change, BUYER or SELLER may file a Claim against the other, in accordance with the General Conditions, as may be modified by the Supplementary Conditions.
- C. Preparation of Change Proposals:
1. Each Change Proposal shall be submitted on the “Change Proposal” form included with this Section, or other form acceptable to ENGINEER.
  2. Number each Change Proposal as follows: Numbering system shall be the Contract number and designation followed by a hyphen and three-digit sequential number. Example: First Change Proposal for the purchase contract for project named “Contract A15” would be, “Change Proposal No. A15-PUR-001”.
  3. In space provided on Change Proposal form:
    - a. Describe scope of each proposed change. Include text and sketches on additional sheets as required to provide detail sufficient for ENGINEER’s review and response. If a change item is submitted in response to Proposal Request, write in as scope, “In accordance with Proposal Request No.” followed by the Proposal Request number. Submit written clarifications, if any, to scope of change.
    - b. Submit justification for each proposed change. If change is in response to proposal request, write in as justification, “In accordance with Proposal Request No.” followed by the proposal request number.
    - c. List the total change in the Contract Price and Contract Times for each separate change item included in the Change Proposal.
  4. Unless otherwise directed by ENGINEER, attach to the Change Proposal detailed breakdowns of pricing (cost of the change and SELLER’s overhead and profit markup) including:
    - a. List of tasks to accomplish the change.
    - b. For each task, labor cost breakdown including labor classification, total hours per labor classification, and hourly cost rate for each labor classification.
    - b. Equipment and machinery to be used, including manufacturer, model, and year of manufacture, and number of hours for each.
    - c. Detailed breakdown of cost of materials and equipment to be incorporated into the Goods and used in performing the Special Services, including quantities, unit costs, and total cost, with supplier’s written quotations.
    - d. Breakdowns of the costs Work and overhead and profit markups for subcontractors, including labor, equipment and machinery, and materials and equipment incorporated into the Goods or used in performing the Special Services, other costs, and subcontractor overhead and profit markups.
    - e. Other information required by ENGINEER.

- f. SELLER's overhead and profit markups applied to SELLER costs and eligible subcontractors' and suppliers' costs.

## 1.8 CHANGE ORDERS

### A. General:

1. Change Orders will be recommended by ENGINEER, and will be signed by BUYER and SELLER, to authorize additions, deletions, or revisions to the Goods or Special Services, or changes to the Contract Price or Contract Times.
2. Change Orders will be in the form of EJCDC® C-941, "Change Order" or other form required by BUYER.

### B. Procedure.

1. Change Orders for signature by SELLER will be transmitted in accordance with Section 01 31 26, Electronic Communication Protocols, and requirements of this Section. Each Change Order will include a separate letter of transmittal. SELLER shall print three originals of Change Order for SELLER's signature.
2. SELLER shall promptly sign each original Change Order and, within five days of receipt, return all originals to ENGINEER.
3. ENGINEER will sign each original Change Order and forward them to BUYER.
4. After approval and signature by BUYER, original Change Orders will be distributed as indicated below.
5. Original, signed Change Orders will be distributed as follows:
  - a. SELLER: One original.
  - b. BUYER: One original.
  - c. Project owner (if different from BUYER): One original.
6. One copy of each Change Order will be distributed to:
  - a. City.
  - b. ENGINEER.
  - c. Resident Project Representative (RPR).

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 ATTACHMENTS

- A. The forms listed below, following this Section's "End of Section" designation, are part of this Specifications Section:
  1. Request for Interpretation form (one page).
  2. Proposal Request form (one page).
  3. Change Proposal form (one page).

++ END OF SECTION ++

## **REQUEST FOR INTERPRETATION**

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

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

Seller: \_\_\_\_\_ RFI No. \_\_\_\_\_

Date Transmitted: \_\_\_\_\_ Date Received: \_\_\_\_\_

Date Response Requested: \_\_\_\_\_ Date Response Transmitted: \_\_\_\_\_

Subject: \_\_\_\_\_

Specification Section and Paragraph: \_\_\_\_\_

Drawing References: \_\_\_\_\_

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### **INTERPRETATION REQUESTED:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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### **ENGINEER'S RESPONSE:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## PROPOSAL REQUEST

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

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

Proposal Request No.: \_\_\_\_\_ Date: \_\_\_\_\_

Contract Name and No.: \_\_\_\_\_

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

Other Contracts Involved in Proposed Change: \_\_\_\_\_

TO SELLER: Please submit a complete Change Proposal for the proposed modifications described below. If the associated Change Proposal is approved, a Change Order or allowance authorization will be issued to authorize adjustment so the Goods or Special Services. This Proposal Request is not a Change Order, Work Change Directive, Field Order, or an authorization to proceed with the proposed changes described below.

### **SCOPE OF PROPOSED CHANGES:**

1. *Item:*
2. *Item:*
3. *Item:*

Proposal requested by: \_\_\_\_\_

Signature of Requestor: \_\_\_\_\_

## CHANGE PROPOSAL

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

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

Change Proposal No.: \_\_\_\_\_ Date: \_\_\_\_\_

Submitted in Response to Proposal Request No.: \_\_\_\_\_

Contract Name and No.: \_\_\_\_\_

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

Subject: \_\_\_\_\_

The following changes to the Contract are proposed:

**SCOPE OF CHANGES:** *(attach and list supporting information as required)*

1. *Item:*

**JUSTIFICATION:**

1. *Item:*

**CHANGES IN CONTRACT PRICE AND CONTRACT TIMES:**

We propose that the Contract Price and Contract Times be changed as follows:

*For Contract Price, attach detailed cost breakdowns for Seller and subcontractors, supplier quotations, and other information required.*

*For the Contract Times, state increase, decrease, or no change to Contract Times for delivery of the Goods, starting and completing Special Services, and other milestones, if any. If increase or decrease, state specific number of days for changes to the Contract Times.*

Description	Amount	Contract Times (days)	
		Delivery of Goods	Compl. Services
1. Item	\$0.00	0	0
2. Item	\$0.00	0	0
<b>Total This Change Proposal</b>	<b>\$0.00</b>	<b>0</b>	<b>0</b>

Changes to other Contract Times, if any: \_\_\_\_\_

Seller represents that supporting data attached to this Change Proposal are accurate and complete. The requested time or price adjustment indicated in this Change Proposal is the entire adjustment to which Seller believes it is entitled as a result of the proposed change(s) indicated herein.

Change Proposal by: \_\_\_\_\_

Signature of Proposer: \_\_\_\_\_

## SECTION 01 29 73

### SCHEDULE OF VALUES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

A. Scope:

A. Scope:

1. Submit to ENGINEER for acceptance a Schedule of Values that allocates cost to each item of the Goods and Special Services. Schedule of Value list of line items shall correspond to each aspect of the Goods and Special Services, establishing in detail the portion of the Contract Price allocated to each major component of the Goods and Special Services.
2. Upon request of ENGINEER, support values with data that substantiate their correctness.
3. Acceptance of Schedule of Values by ENGINEER does not alter or modify the schedule of provisional payments in the Contract Documents. Amount assigned by SELLER to the items in the Schedule of Values shall correspond with the schedule of provisional payments in the Contract Documents.
3. Submit preliminary Schedule of Values to ENGINEER for initial review. SELLER shall incorporate ENGINEER's comments into the Schedule of Values and resubmit to ENGINEER. ENGINEER may require corrections and re-submittals until Schedule of Values is acceptable.
4. Schedule of Values shall be basis for preparing each Application for Payment in which payment is requested for shipment of a portion of the Goods (less than all the Goods required under the Contract), or for a portion of the Special Services. Schedule of Values may be used as a basis for negotiating price of changes, if any, in the Goods and Special Services.

B. Definitions:

1. "Schedule of Values": A schedule, prepared and maintained by SELLER, allocating portions of the Contract Price to various portions of the Goods and Special Services and used as the basis for reviewing SELLER's Applications for Payment, when partial payments are proposed by SELLER's and are acceptable to BUYER.

##### 1.2 SUBMITTALS

A. Informational Submittals: Submit the following:

1. Submit to ENGINEER Schedule of Values in the form and quantity required in Section 01 33 00, Submittal Procedures, and in accordance with Section 01 31 26, Electronic Communication Protocols.

2. Content of Schedule of Values submittals shall be in accordance with Article 1.3 of this Section.
3. Timing of Submittals:
  - a. Submit preliminary Schedule of Values within 15 days after the Contract Times commence running.
  - b. Submittal of the Schedule of Values for acceptance by ENGINEER shall be in accordance with the General Conditions. ENGINEER will not accept Applications for Payment without an acceptable Schedule of Values. Schedule of Values will be acceptable to ENGINEER when it presents a reasonable allocation of costs among the bid/pay items of the Contract, organized as required by this Section, in sufficient detail as required by ENGINEER.
  - c. When required by ENGINEER, promptly submit updated Schedule of Values to include cost breakdowns for changes in the Contract Price.

### 1.3 SCHEDULE OF VALUES FORMAT AND CONTENT

- A. Organization and Major Elements of Schedule of Values
  1. Prepare Schedule of Values on the “progress estimate” or “continuation sheets”, as applicable, of the Application for Payment form indicated in Section 01 29 76, Progress Payment Procedures.
  2. Schedule of Values shall show division of Goods and Special Services between Seller and subcontractors, if any. Line items for Goods and Special Services to be furnished by subcontractor shall include the word, “(SUBCONTRACTED)”.
  3. Schedule of Values shall include breakdown of costs for Goods (based on anticipated partial shipments, if any), Special Services, and other costs used in preparing SELLER’s quoted price accepted by BUYER and each subcontractor. List purchase and delivery costs for Goods for which SELLER may apply for payment as stored materials.
  3. Include separate amounts for each Specification Section in the Contract Documents by structure, building, and installation area.
  4. Identify each line item with number corresponding to the associated Specification Section number. List sub-items of major products or systems, as appropriate or when requested by BUYER or ENGINEER.
  5. Sum of individual values shown on the Schedule of Values shall equal the total of associated bid/pay item and the total of each provisional payment indicated in the Contract Documents. Sum of payment item totals in the Schedule of Values shall equal the Contract Price.
  6. Include in each line item a directly proportional amount of SELLER’s overhead and profit. Do not include overhead and profit as separate item(s).
  7. Include separate line item for each allowance (if any), and for each unit price item (if any).
  8. Include line item for bonds (if any) and insurance in the first provisional payment, as applicable, in amount not exceeding 3.0 percent of the Contract Price.

9. Include items for the contractual requirements set forth in Appendices A through C (inclusive), permits (when applicable), Progress Schedule, and other items required by ENGINEER.
10. Costs for submittals, operations and maintenance manuals, field testing, and training of operations and maintenance personnel shall be indicated, and shall be allocated to the appropriate provisional payment request.
11. Submit Schedule of Values on 8.5-inch by 11-inch white paper, using the continuation sheets of the Application for Payment form specified in Section 01 29 76, Progress Payment Procedures.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 29 76

### PROGRESS PAYMENT PROCEDURES

#### PART 1 – GENERAL

##### 1.1 PROGRESS PAYMENTS

- A. Scope:
1. SELLER's requests for payment shall be in accordance with the Agreement, General Conditions and Supplementary Conditions, and the Specifications.
  2. Form: Applications for Payment shall be in the form of Engineers Joint Contract Documents Committee (EJCDC) document EJCDC® C-620, "Contractor's Application for Payment", 2013 edition or later.
- B. Procedure:
1. Review with ENGINEER quantities and the Goods and Special Services proposed for inclusion in each provisional payment. Application for Payment shall cover only the Goods and Special Services eligible for payment in accordance with the Contract Documents and, in the case of the second and third provisional payments, the Goods and Special Services furnished and agreed upon by ENGINEER.
  2. Submit to ENGINEER three printed originals, each with SELLER's original, "wet" signature, of each complete Application for Payment and other documents to accompany the Application for Payment.
  4. ENGINEER will act on request for payment in accordance with the General Conditions and Supplementary Conditions.
- C. Each request for a provisional payment shall include:
1. Completed Application for Payment form, including summary/signature page, progress estimate sheets, and stored materials summary. Progress estimate sheets shall have the same level of detail as the Schedule of Values.
  2. Documentation for Stored Materials and Equipment:
    - a. For Goods not delivered to the Point of Destination but suitably stored at a location acceptable to Project owner and BUYER, submit a bill of sale, invoice, or other documentation warranting that Project owner has received the Goods free and clear of all Liens, and evidence that the Goods are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Project owner's interest therein, all of which must be satisfactory to Project owner.
    - b. Legibly indicate on invoice or bill of sale the specific materials or equipment included in the payment request and corresponding bid/payment item number for each.
  3. Listing of Subcontractors and Suppliers:

- a. Submit with each Application for Payment and not less-often than monthly updated listing of all subcontractors and suppliers known to SELLER, whether or not such entities have a contract directly with SELLER.
- b. Submit complete information using the form attached to this Section.
4. Partial Release or Reduction of Retainage:
  - a. For each Application for Payment where SELLER requests payment in excessive of 90 percent of the Contract Price (other than request for final payment), submit with associated Application for Payment consent of surety to partial release or reduction of retainage, duly completed by SELLER and surety.
  - b. Acceptable form includes AIA® G707A™, “Consent of Surety to Reduction in or Partial Release of Retainage”, 1994 or later edition, or other form acceptable to Project owner.
- D. Second Provisional Payment (delivery of the Goods):
  1. Payment for Goods delivered in accordance with the Contract Documents will be eligible upon completion of the actions indicated in Paragraph 8.01.B of the General Conditions. In the event of partial deliveries of the Goods, separate inspection of each delivery in accordance with Paragraph 8.01.B of the General Conditions is required. SELLER shall have its factory-trained representative at the Point of Destination to assist with inspecting each delivery of the Goods.
  2. Application for Payment shall be accompanied by the documents required by Paragraph 10.01.A.2 of the General Conditions.
- E. Final Payment:
  1. SELLER will not be eligible for final payment until all contractual requirements have been complied with and the final inspection required by Paragraph 8.01.C of the General Conditions has been successfully completed.
  2. Requirements for request for final payment are in the General Conditions, as may be modified by the Supplementary Conditions, and Section 01 77 19, Closeout Requirements.

## 1.2 PAYMENT FOR STORED MATERIALS AND EQUIPMENT

- A. Observation of Stored Materials and Equipment Prior to Application for Payment:
  1. General:
    - a. Prior to Goods suitably stored but not yet delivered to the Point of Destination be eligible for payment, ENGINEER or its Resident Project Representative (RPR) shall visit the storage location and verify the extent, condition, and storage environment of the stored items, accompanied by SELLER’s factory-trained representative, in accordance with Paragraph 8.01.B of the General Conditions.
    - b. When the same material or equipment item is stored for more than two months, such visits to storage location shall be not less than once every two months.

2. Cost Responsibility for Observations:
  - a. When storage location is less than 20 miles from the Point of Destination or less than 20 miles from ENGINEER's office, SELLER is not responsible for reimbursing BUYER for cost of ENGINEER's time and expenses for observing stored materials and equipment.
  - b. When storage location is more than 20 miles from the Point of Destination and more than 20 miles from ENGINEER's office, SELLER shall reimburse BUYER, via a set-off under the Contract Documents, for cost of ENGINEER's time and expenses, including travel time, to visit the storage location and observe the stored materials and equipment.
3. When the Goods are stored in a bonded warehouse, the initial inspection required by Paragraph 8.01.B of the General Conditions is still required. If Goods are stored for longer than two months, SELLER may submit affidavit of signed by warehouse operator and SELLER) in lieu of ENGINEER's or RPR's second (and later) visits to the storage location. Affidavit shall specifically indicate the following relative to the stored Goods:
  - a. Extent and quantity of stored Goods.
  - b. Condition of stored items and packaging (if Goods are stored in wrap or crates).
  - c. Conditions of storage environment.

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 ATTACHMENTS

- A. The forms listed below, following this Section's "End of Section" designation, are part of this Specification Section:
  1. List of Subcontractors and Suppliers form (two pages).

++ END OF SECTION ++

## LIST OF SUBCONTRACTORS AND SUPPLIERS

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

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

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

Contract Designation: \_\_\_\_\_

*Indicate below complete information for each subcontractor and supplier known to Seller, regardless of whether the firm has a direct contract with Seller. Include all lower-tier subcontractors and associated suppliers. Copy and paste the paragraphs below as required to indicate all subcontractors and suppliers.*

---

### SUBCONTRACTORS

**1. Subcontractor Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Work Under Specifications Section Nos.:*
- *Brief Description of Work:*
- *Current Subcontract Price:*
- *Approximate Subcontract Start Date:*
- *Approximate Subcontract End Date:*

**2. Subcontractor Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Work Under Specifications Section Nos.:*
- *Brief Description of Work:*
- *Current Subcontract Price:*
- *Approximate Subcontract Start Date:*
- *Approximate Subcontract End Date:*

**3. Subcontractor Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Work Under Specifications Section Nos.:*
- *Brief Description of Work:*
- *Current Subcontract Price:*
- *Approximate Subcontract Start Date:*
- *Approximate Subcontract End Date:*

**Total of Subcontract Prices for all subcontracts equals approximately \_\_\_ percent of the Contract Price** (*Contractor to fill in blank monthly*)

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## **SUPPLIERS**

**1. Supplier Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Furnishing Items Under Specifications Section Nos.:*
- *Brief Description of Items:*
- *Current Purchase Order Amount:*
- *Approximate Purchase Order Date:*
- *Approximate Purchase Order End Date:*

**2. Supplier Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Furnishing Items Under Specifications Section Nos.:*
- *Brief Description of Items:*
- *Current Purchase Order Amount:*
- *Approximate Purchase Order Date:*
- *Approximate Purchase Order End Date:*

**3. Supplier Name:**

- *Address:*
- *Contact Person:*
- *Telephone No.:*
- *E-mail Address:*
- *Furnishing Items Under Specifications Section Nos.:*
- *Brief Description of Items:*
- *Current Purchase Order Amount:*
- *Approximate Purchase Order Date:*
- *Approximate Purchase Order End Date:*

## SECTION 01 31 19.13

### PRELIMINARY CONFERENCE

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
  - 1. A preliminary conference will be held for the Project.
  - 2. SELLER shall attend the conference prepared to discuss all items on the preliminary conference agenda.
  - 3. ENGINEER will distribute an agenda, preside at conference, and prepare and distribute minutes to all conference participants and others as requested.
  
- B. Purpose of Preliminary Conference:
  - 1. Purpose of conference is to designate responsible personnel, establish working relationships, discuss preliminary schedules submitted by SELLER, and review administrative and procedural requirements for the Project.
  - 2. Matters requiring coordination will be discussed and procedures for handling such matters will be established.

##### 1.2 PREPARATION FOR PRELIMINARY CONFERENCE

- A. Date, Time, and Location:
  - 1. Conference will be held after execution of the Contract and before Shop Drawings are submitted.
  - 2. ENGINEER will establish the date, time, and location of conference and notify the interested and involved entities.
  
- B. Submittals Required Prior to Preliminary Conference:
  - 1. Not less than three days prior to preliminary conference, submit the following preliminary schedules in accordance with the General Conditions and other requirements of the Contract Documents:
    - a. Preliminary Progress Schedule.
    - b. Preliminary Schedule of Submittals.
    - c. Preliminary Schedule of Values.
    - d. Listing of identity and general scope of work or supply (as applicable) of planned subcontractors and suppliers. Indicate extent of each Subcontract proposed and overall percentage of Contract Price to be subcontracted.
  
- C. SELLER shall furnish information required and contribute appropriate items for discussion at the preliminary conference.

- D. Handouts for Preliminary Conference:
1. SELLER shall bring to the conference the following, with sufficient number of copies for each attendee:
    - a. Preliminary Progress Schedule, as submitted to ENGINEER.
    - b. Preliminary Schedule of Submittals, as submitted to ENGINEER.
    - c. Preliminary Schedule of Values, as submitted to ENGINEER.
    - d. Listing of identity and general scope of work or supply of planned subcontractors and suppliers.
    - e. List of emergency contact information, in accordance with Article 1.5 of Section 01 35 23, Safety Requirements.

### 1.3 REQUIRED ATTENDEES

- A. Representative of each entity attending the conference shall be authorized to act on that entity's behalf.
- B. SELLER Attendance: Conference shall be attended by SELLER's:
1. Project manager.
  2. Principal technician expected to perform the Special Services.
- C. Other attendees will be representatives of:
1. BUYER.
  2. City (if available).
  3. ENGINEER.
  4. Resident Project Representative (RPR), if available.
  5. Others as requested by BUYER, SELLER, or ENGINEER.

### 1.4 AGENDA

- A. Preliminary Agenda: Be prepared to discuss in detail the topics listed below. Revisions to this agenda, if any, will be furnished to SELLER prior to conference.
1. Procedural and Administrative:
    - a. Personnel and Teams:
      - 1) Designation of roles and personnel.
      - 2) Limitations of authority of personnel, including personnel who will sign Contract modifications and make binding decisions.
      - 3) Lists of proposed subcontractors and manufacturers (where applicable).
      - 4) Authorities having jurisdiction.
    - b. Procedures for communications and correspondence.
    - c. Copies of the Contract Documents and availability.
    - d. Subcontractors (if any).
    - e. Goods and Special Services, and Scheduling:
      - 1) Scope of the Goods and Special Services.
      - 2) Contract Times, including Milestones.
      - 3) Preliminary Progress Schedule.

- 4) Critical path activities.
- f. Safety:
  - 1) Responsibility for safety.
  - 2) Emergency procedures and accident reporting.
  - 3) Emergency contact information.
- g. Review of insurance requirements and insurance claims.
- h. Coordination:
  - 1) Assignment of purchase Contract.
  - 2) Project coordination, and coordination among SELLER and installing construction contractor(s).
  - 3) Coordination with City's operations.
- i. Products and Submittals:
  - 1) Preliminary Schedule of Submittals.
  - 2) Shop Drawings, samples, and other submittals.
  - 3) Product options and "or equals" (no substitutions allowed).
- j. Contract Modification Procedures
  - 1) Requests for interpretation
  - 2) Clarification notices
  - 3) Field Orders
  - 4) Proposal requests
  - 5) Change proposals
  - 6) Change Orders.
  - 7) Procedure for filing Claims.
- k. Payment:
  - 1) BUYER's Project financing and funding, as applicable.
  - 2) BUYER's tax-exempt status.
  - 3) Preliminary Schedule of Values and procedures for determining partial provisional payment amounts, if any.
  - 4) Provisional payment procedures.
  - 5) Inspection and documentation required upon delivery of the Goods.
- l. Testing, including notification requirements for shop testing and field testing.
- m. Preliminary Discussion of Contract Closeout:
  - 1) Contract closeout requirements.
  - 2) Correction period.
  - 3) Duration of bonds and insurance.
- 2. Site Issues:
  - a. Working hours at the location where the Goods will be installed.
  - b. Access to the Point of Destination and location where the Goods will be installed, and parking for SELLER vehicles.
  - c. Use of premises.
  - d. Storage of materials and equipment.
- 3. General discussion and questions.
- 4. Visit to location where the Goods will be installed, if required.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 31 26

### ELECTRONIC COMMUNICATION PROTOCOLS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
1. This Section establishes the procedures with which the parties will comply regarding transmission or exchange of electronic data for the Project.
  2. SELLER shall provide labor, materials, tools, equipment, services, utilities, and incidentals shown, specified, and required for complying with this Section throughout the Project.
  3. In addition to the requirements of this Section, comply with requirements for exchange of electronic data in the following:
    - a. Section 01 33 00, Submittal Procedures.
    - b. Section 01 78 23, Operations and Maintenance Data.
- B. Coordination:
1. SELLER shall require all its subcontractors and suppliers of any tier to comply with the electronic communication protocols established in this Section.
- C. Related Sections:
1. Section 01 33 00, Submittal Procedures.
  2. Section 01 78 23, Operations and Maintenance Data.

##### 1.2 TERMINOLOGY

- A. The following words or terms are not defined but, when used in this Section, have the following meaning:
1. “Electronic data” means information, communications, drawings, or designs created or stored for the Project in electronic or digital form.
  2. “Confidential information” means electronic data that the transmitting party has designated as confidential and clearly marked with an indication such as “Confidential”, “Business Proprietary”, or similar designation.
  3. “Written” or “in writing” means any and all communications, including without limitation a notice, consent, or interpretation, prepared and sent to an address provided in the Contract Documents or otherwise agreed upon by the parties and design engineer using a transmission method set forth in this Section that allows the recipient to print or store the communication. Communications transmitted electronically are presumed received when sent in conformance with this Paragraph 1.2.A.3.

### .3 TRANSMISSION OF ELECTRONIC DATA

- A. Transmission of electronic data constitutes a warrant by the transmitting party to the receiving party that the transmitting party is one or more of the following:
  - 1. The copyright owner of the electronic data.
  - 2. Has permission from the copyright owner to transmit the electronic data for its use on the Project.
  - 3. Is authorized to transmit confidential information.
  
- B. Receiving party agrees to keep confidential information confidential and not to disclose it to another person except to (1) its employees, (2) those who need to know the content of the confidential information to perform services or construction solely and exclusively for the Project, or (3) its consultants, contractors, subcontractors, and suppliers whose contracts include similar restrictions on the use of electronic data and confidential information.
  
- C. Transmitting party does not convey any right in the electronic data or in the software used to generate or transmit such data. Receiving party may not use electronic data unless permission to do so is provided in the Contract Documents, or in a separate license.
  
- D. Unless otherwise granted in a separate license, receiving party's use, modification, or further transmission of electronic data, as provided the Contract Documents, is specifically limited to the design and construction of the Project in accordance with this Section, and nothing contained in this Section conveys any other right to use the electronic data for any other purpose.
  
- E. To the fullest extent permitted by Laws and Regulations, receiving party shall indemnify and defend the transmitting party from and against all claims arising from or related to receiving party's modification to, or unlicensed use of, electronic data.
  
- F. Means of Transmitting Electronic Data: Unless otherwise indicated in Table 01 31 26-A of this Section or elsewhere in the Contract Documents, transmission of electronic data for the Project will generally be via:
  - 1. Project's Internet-based website.
    - a. Software Platform: Orion/Program Management Information System (PMIS) by Arcadis.
    - b. Website hosting will be by ENGINEER.
    - c. Website address will be furnished to SELLER within five days after the Effective Date of the Agreement.
    - d. To access the Project website, SELLER shall acquire and maintain throughout the Project high-speed Internet service suitable for transferring electronic data and Internet browsing software such as Microsoft Internet Explorer 9.0 or equal.
    - d. Upon request of one or both parties, ENGINEER will provide one-time training for requesting party for up to two hours (one time) via web-based

meeting interface such as Skype or in person at requesting party's place of business. ENGINEER will provide additional training upon requesting party's request; requesting party shall compensate ENGINEER for cost of such additional training.

**1.4 ELECTRONIC DATA PROTOCOLS**

- A. Comply with the data formats, transmission methods, and permitted uses set forth in Table 01 31 23-A, Electronic Data Protocol Table, below, when transmitting or using electronic data on the Project. Where a row in the table has no indicated means of transmitting electronic data, use for such documents only printed copies transmitted to the receiving party via appropriate delivery method.

**TABLE 01 31 23-A  
ELECTRONIC DATA PROTOCOL TABLE (WEBSITE)**

<b>Electronic Data</b>	<b>Data Format</b>	<b>Transmitting Party</b>	<b>Transmission Method</b>	<b>Receiving Party</b>	<b>Permitted Uses</b>	<b>Notes</b>
1.4.A.1. Project communications						
General communications & correspondence	EM, PDF	N, O, C, S, E	EM, EMA	N, O, C, S, E	R (5)	
Meeting notices and agendas	EM, PDF	N, C, E	PW	N, O, C, S, E	R (5)	
Meeting minutes	PDF	B	PW	N, O, S	R (5)	
1.4.A.2. Seller's submittals to Engineer						
Shop Drawings	PDF	S	PW	E, C	M (1) (5)	(1)
Product data	PDF	S	PW	E, C	M (1) (5)	(1)
Informational and closeout submittals:	PDF	S	PW	E, C	M (1) (5)	(1) (6)
Documentation of delivery of maintenance materials submittals	PDF	S	PW	E, C	M (1) (5)	
1.4.A.3. Engineer's return of reviewed submittals to Seller						
Shop Drawings	PDF	E	PW	N, O, C, S	R (5)	
Product data	PDF	E	PW	N, O, C, S	R (5)	
Informational and closeout submittals:	PDF	E	PW	N, O, C, S	R (5)	(6)
Documentation of delivery of maintenance materials submittals	PDF	E	PW	N, O, C, S	R (5)	
1.4.A.4. Contract Modifications Documents						
Requests for interpretation to Engineer	PDF	S	PW	N, O, C, E	M (1) (5)	(1)
Engineer's interpretations (RFI responses)	PDF	E	PW	N, O, C, S	R (5)	
Engineer's clarifications to Seller	EM, PDF	E	PW	N, O, C, S	R (5)	
Engineer's issuance of Field Orders	PDF	E	PW	N, O, C, S	R (5)	
Proposal Requests	PDF	E, C	PW	N, O, C, S, E	R (5)	
Change Proposals – submitted to Engineer	PDF	S	PW	E, C	S (5)	
Change Proposals – Engineer's response	PDF	B	PW	N, C, E		
Change Orders (for Seller signature)	PDF	E	PW	S, C	R (5)	(2)
1.4.A.5. Applications for Payment	S			E		(3)
1.4.A.6. Claims and other notices	S, N		N, C, S, E			(4)
1.4.A.7. Closeout Documents						
Contract closeout documents	S		N, O, C, E			

B. Key to Electronic Data Protocol Table:

Data Format:

EM .msg, .htm, .txt, .rtf, e-mail text  
W .docx, Microsoft® Word 2013 or later  
EX .xlsx, Microsoft® Excel 2013 or later  
PDF .pdf, Portable Document Format  
DWG .dwg, Autodesk AutoCAD 2013 drawing.

Transmitting Party:

N NYSDEC (initial BUYER, prior to assignment)  
O City (e.g., facility owner)  
C Installing construction contractor to whom Contract is assigned (e.g., the BUYER after assignment is effective)  
S SELLER  
E ENGINEER

Transmission Method:

EM Via e-mail  
EMA As an attachment to an e-mail transmission  
CD Delivered via compact disc  
PW Posted to Project website  
FTP FTP transfer to receiving FTP server

Receiving Party:

N NYSDEC (initial BUYER, prior to assignment)  
O City (e.g., facility owner)  
C Installing construction contractor to whom Contract is assigned (e.g., the BUYER after assignment is effective)  
S SELLER  
E ENGINEER

Permitted Uses:

S Store and view only  
R Reproduce and distribute  
I Integrate (incorporate additional electronic data without modifying data received)  
M Modify as required to fulfill obligations for the Project

Notes:

- (1) Modifications by BUYER or ENGINEER to SELLER's submittals and requests for interpretations are limited to printing out, marking-up, and adding comment sheets.
- (2) May be distributed only to affected subcontractors and suppliers. Print out, sign document, and return executed printed copy originals to ENGINEER (prior to assignment) or BUYER (e.g., installing construction contractor, following assignment).
- (3) Submit printed Applications for Payment with original ("wet") signatures.
- (4) Submit notices, including Claims, in accordance with the notice provisions of the General Conditions.
- (5) After assignment is effective, BUYER (e.g., installing construction contractor) may share copies of files, including submittals, RFIs, clarification notices, Contract modifications, and other documents with BUYER's construction subcontractors and with other prime contractors retained by Project owner for constructing the Project.
- (6) For operation and maintenance data, also submit printed copies as required by Section 01 78 23, Operations and Maintenance Data.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 32 16

### PROGRESS SCHEDULE

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. Prepare and submit Progress Schedules in accordance with the General Conditions (as may be modified by the Supplementary Conditions) and this Section, unless otherwise accepted by ENGINEER.
2. Maintain and update Progress Schedules. Submit updated Progress Schedules as specified in this Section unless otherwise directed by ENGINEER.
3. ENGINEER's acceptance of the Progress Schedule, and comments or opinions concerning the activities in the Progress Schedule shall not control SELLER's independent judgment relative to means, methods, techniques, sequences, and procedures associated with furnishing the Goods and Special Services. SELLER is solely responsible for complying with the Contract Times.

###### B. Definitions:

1. "Progress Schedule": A schedule prepared and maintained by SELLER, describing the sequence and duration of the activities comprising the SELLER's plan to furnish the Goods and Special Services within the Contract Times.

##### 1.2 SUBMITTALS

###### A. Informational Submittals: Submit the following:

1. Progress Schedules:
  - a. Submit preliminary Progress Schedule in accordance with Paragraph 2.06 of the General Conditions. Submit in accordance with Section 01 33 00, Submittal Procedures and Section 01 31 26, Electronic Communication Protocols.
  - b. After making revisions in accordance with ENGINEER's comments on the preliminary Progress Schedule, submit the Progress Schedule in accordance with Paragraph 2.06 of the General Conditions. Submit in accordance with Section 01 33 00, Submittal Procedures and Section 01 31 26, Electronic Communication Protocols.
  - c. Submit updated Progress Schedule monthly. If a Progress Schedule remains unchanged from one month to the next, submit a written statement to that effect. For monthly Progress Schedule submittals, formally submit in accordance with Section 01 33 00, Submittal Procedures and Section 01 31 26, Electronic Communication Protocols.

- d. Furnish each Progress Schedule submittal with letter of transmittal complying with requirements of Section 01 33 00, Submittal Procedures, and specifically indicating the following:
  - 1) Listing of activities and dates that have changed since the previous Progress Schedule submittal.
  - 2) Discussion of problems causing delays, anticipated duration of delays, and proposed countermeasures.
2. Recovery Schedules: Submit in accordance with this Section, and other provisions of the Contract Documents.

### 1.3 PROGRESS SCHEDULE FORMAT AND CONTENT

#### A. Format:

1. Type:
  - a. Gantt chart prepared using software such as Microsoft Project 2013 or later edition, Oracle Primavera P6, Oracle Primavera Project Planner – P3, or similar software.
2. Sheet Size: 11 inches by 17 inches, unless otherwise accepted by ENGINEER.
3. Time Scale: Indicate first date of each work week.
4. Organization:
  - a. Indicate on the separate Schedule of Submittals dates for submitting and reviewing Shop Drawings, Samples, and other submittals.
  - b. Group deliveries of materials and equipment into a separate sub-schedule that is part of the Progress Schedule.
  - c. Group Special Services into a separate sub-schedule (that is part of the Progress Schedule) by activity.
  - d. Group critical activities that dictate the rate of progress (the “critical path”) into a separate sub-schedule that is part of the Progress Schedule. Clearly indicate the critical path on the Progress Schedule.
  - e. Organize each sub-schedule by Specification Section number.
5. Activity Designations: Indicate title and related Specification Section number.

#### B. Content: Progress Schedules shall indicate the following:

1. Dates for shop-testing.
2. Delivery dates for the Goods.
3. Dates for beginning and completing each phase of Special Services.
4. Dates for start-up and check-out, field-testing, and instruction of operations and maintenance personnel.
5. Date proposed for final inspection required by Paragraph 8.01.C of the General Conditions.
6. Dates corresponding to the Contract Times, and planned completion date associated with each Milestone (if any), Substantial Completion, and readiness for final payment.

#### C. Coordinate the Progress Schedule with the Schedule of Submittals.

#### 1.4 RECOVERY SCHEDULES

A. Recovery Schedules – General:

1. When updated Progress Schedule indicates that the ability to comply with the Contract Times falls 15 or more days behind schedule, and the delay is within the control of SELLER, and there is no corresponding Change Order or Work Change Directive to support an extension of the Contract Times, SELLER shall prepare and submit a Progress Schedule demonstrating SELLER's plan to accelerate the furnishing of the Goods and Special Services to achieve compliance with the Contract Times ("recovery schedule") for ENGINEER's acceptance.
2. Submit recovery schedule within 10 days after submittal of updated Progress Schedule where need for recovery schedule is indicated.

B. Implementation of Recovery Schedule:

1. At no additional cost to BUYER, do one or more of the following: furnish additional resources (additional workers, additional equipment or facilities, increased work hours or additional shifts, and other resources), provide suitable materials, expedite procurement of materials and equipment to be incorporated into the Goods, and other measures necessary to complete furnishing the Goods and Special Services within the Contract Times.
2. Upon acceptance of recovery schedule by ENGINEER, incorporate recovery schedule into the next Progress Schedule update.

C. Lack of Action:

1. SELLER's refusal, failure, or neglect to take appropriate recovery action, or to submit a recovery schedule, shall constitute reasonable evidence that SELLER is not prosecuting its performance of its Contract obligations with the diligence that will ensure completion within the Contract Times. Such lack of action shall constitute sufficient basis for BUYER to exercise remedies available to BUYER under the Contract Documents.

#### PART 2 – PRODUCTS (NOT USED)

#### PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 33 00

### SUBMITTAL PROCEDURES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. SELLER shall prepare and furnish submittals in accordance with the General Conditions, as may be modified by the Supplementary Conditions, and this Section.
2. Provide submittals well in advance of need for the material or equipment, or procedure (as applicable), in the Project owner's construction at the location where the Goods are to be installed and with ample time required for delivery of the Goods and to implement procedures following ENGINEER's approval or acceptance of the associated submittal. Goods and Special Services covered by a submittal required by the Contract Documents will not be included in provisional payments until approval or acceptance of related submittals has been obtained in accordance with the Contract Documents.
3. SELLER, in coordination with the installing construction contractor(s) retained by Project owner, is responsible for dimensions to be confirmed and corrected at the location where the Goods will be installed; quantities; information pertaining solely to fabrication processes; means, methods, sequences, procedures, and techniques of fabrication and delivery; safety precautions and programs incident thereto relative to SELLER's operations and employees; and for coordinating the Goods and Special Services furnished by SELLER's subcontractors and suppliers.
4. SELLER's signature of submittal's stamp and letter of transmittal shall be SELLER's representation that SELLER has complied with his obligations under the Contract Documents relative to that submittal. ENGINEER and BUYER shall be entitled to rely on such representations by SELLER.
5. Provisions of the General Conditions, as may be modified by the Supplementary Conditions, apply to all SELLER-furnished submittals required by the Contract Documents, regardless of whether such submittals are other than Shop Drawings or Samples.

###### B. Definitions:

1. "Schedule of Submittals": A schedule, prepared and maintained by SELLER, of required submittals.

###### C. Restrictions on Quantity of Submittals and Compensation of BUYER:

1. SELLER shall furnish required submittals with sufficient information and accuracy to obtain required approval or acceptance of submittal by ENGINEER

- with not more than the number of resubmittals indicated in the Supplementary Conditions.
2. BUYER may impose set-offs against SELLER for the costs for which SELLER is to reimburse or compensate BUYER, in accordance with the Supplementary Conditions.

## 1.2 TYPES OF SUBMITTALS

- A. Submittal types are classified as follows: 1) Action Submittals, 2) Informational Submittals, 3) Closeout Submittals, and 4) Maintenance Material submittals. Type of each required submittal is designated in the respective Specifications Sections; when type of submittal is not designated in the associated Specification Section, submittal will be classified as follows:
  1. Action Submittals include:
    - a. Shop Drawings.
    - b. Product data.
    - c. Delegated design submittals, which include documents prepared, sealed, and signed by a design professional retained by SELLER, Subcontractor, or Supplier for materials and equipment to be incorporated into the completed Work. Delegated design submittals do not include submittals related to temporary construction unless specified otherwise in the related Specifications Section. Delegated design submittals include: design drawings, design data including calculations, specifications, certifications, and other submittals prepared by such design professional.
    - d. Samples.
    - e. Testing plans, procedures, and testing limitations.
  2. Informational Submittals include:
    - a. Certificates.
    - b. Design data not sealed and signed by a design professional retained by SELLER, subcontractor, or supplier.
    - c. Pre-fabrication test and evaluation reports.
    - d. SELLER's and suppliers' instructions, including installation data, and instructions for handling, starting-up, and troubleshooting.
    - e. Source quality control submittals (other than testing plans, procedures, and testing limitations), including results of shop testing.
    - f. Field or Site quality control submittals (other than testing plans, procedures, and testing limitations), including results of operating and acceptability tests at the Site.
    - g. SELLER's and suppliers' reports.
    - h. Special procedure submittals, including plans for shutdowns and tie-ins and other procedural submittals.
    - i. Qualifications statements.
    - j. Administrative submittals including:
      - 1) Progress Schedules.
      - 2) Schedules of Submittals.

- 3) Schedules of Values.
  - 4) Copies of permits obtained by SELLER.
  - 3. Closeout Submittals include:
    - a. Maintenance contracts.
    - b. Operations and maintenance data.
    - c. Bonds, such as special maintenance bonds and bonds for a specific material, equipment item, or system.
    - d. Warranty documentation.
    - e. Record documentation.
    - f. Software.
  - 4. Maintenance Material Submittals include:
    - a. Spare parts.
    - b. Extra stock materials.
    - c. Tools.
  - 5. When type of submittal is not specified and is not included in the list above, request an interpretation from ENGINEER and ENGINEER will determine the type of submittal.
- B. Not Included in this Section: Administrative and procedural requirements for following are covered elsewhere in the Contract Documents:
- 1. Requests for interpretations of the Contract Documents.
  - 2. Change Orders, Work Change Directives, and Field Orders.
  - 3. Applications for Payment
  - 4. Reports, documentation, and permit applications required to be furnished by SELLER to authorities having jurisdiction.

### 1.3 QUALITY ASSURANCE

- A. Pre-submittal Conference
- 1. Schedule and conduct pre-submittal conference for the Goods, including instrumentation and control systems, within 10 days after the date the Contract Times commence running.
  - 2. Required attendance for pre-submittal conference: SELLER's project manager, SELLER's submittal coordinator, instrumentation and controls supplier or subcontractor (if any), BUYER (if available), and ENGINEER. Pre-submittal conference will be eight hours duration. Conference will be held at ENGINEER's office at 855 Route 146, Suite 210, Clifton Park, NY 12065, unless otherwise acceptable to the entities attending.
  - 3. Purpose of pre-submittal conference is to review manner in which SELLER intends to comply with requirements of the Contract Documents relative to preparation of Shop Drawings and other submittals required by the Contract Documents.
  - 4. Prepare items listed below for presentation at pre-submittal conference. Submit information to ENGINEER seven days prior to pre-submittal conference.
    - a. Preliminary Schedule of Submittals, listing all Shop Drawing submittals required by the Contract Documents.

- b. List of materials and equipment required, including instrumentation and control systems, and brand and model proposed for each item.
- c. List of proposed exceptions to the Contract Documents along with brief explanation of each.
- d. Sample of each type of submittal required in the Specifications. These may be submittals prepared for other projects.
- e. Flow chart showing steps to be taken in preparing and coordinating submittals, including source or origin of submittals.
- f. General outlines of types of tests to be performed to verify that all sensors and transducers, instruments, and digital processing equipment are functioning properly.

#### 1.4 REQUIREMENTS FOR SCHEDULE OF SUBMITTALS

- A. Informational Submittals: Submit the following:
  - 1. Documents to be submitted prior to pre-submittal conference, in accordance with Article 1.3 of this Specifications section.
  - 2. Schedule of Submittals:
    - a. Timing:
      - 1) Furnish preliminary Schedule of Submittals in the time frame indicated in Article 1.3 of this Section. Submit Schedule of Submittals acceptable to ENGINEER within 10 days following the pre-submittal conference indicated in Article 1.3 of this Section.
      - 2) Submit updated Schedule of Submittals with each submittal of the updated Progress Schedule.
    - b. Content: In accordance with the General Conditions, as may be modified by the Supplementary Conditions, and this Section. Requirements for content of preliminary Schedule of Submittals and subsequent submittals of the Schedule of Submittals are identical. Identify on Schedule of Submittals all submittals required in the Contract Documents. Updates of Schedule of Submittals shall show scheduled dates and actual dates for completed tasks. Indicate submittals that are on the Project's critical path. Indicate the following for each submittal:
      - 1) Date by which submittal will be received by ENGINEER.
      - 2) Whether submittal will be for an "or-equal". Procedures for requesting approval of "or-equals" are specified in the General Conditions, and Section 01 62 00, Product Options (for "or-equals").
      - 3) Date by which ENGINEER's response is required. Not less than 14 days shall be allowed for ENGINEER's review, starting upon ENGINEER's actual receipt of each submittal. Allow increased time for large or complex submittals.
      - 4) Contract Times for the Shop Drawings and other submittals, as appropriate, required prior to the start of fabrication of the Goods.
      - 5) Date by which fabrication or SELLER's procurement of items required for the Goods will commence.

- c. Prepare Schedule of Submittals using same software, and in same format, specified for Progress Schedules in Section 01 32 16, Progress Schedule.
- d. Coordinate Schedule of Submittals with the Progress Schedule.
- e. Schedule of Submittals that is not compatible with the Progress Schedule, or that does not indicate submittals on the Project’s critical path, or that that places extraordinary demands on ENGINEER for time and resources, is unacceptable. Do not include submittals not required by the Contract Documents.
- f. In preparing Schedule of Submittals:
  - 1) Considering the nature and complexity of each submittal, allow sufficient time for review and revision.
  - 2) Reasonable time shall be allowed for: ENGINEER’s review and processing of submittals, for submittals to be revised and resubmitted, and for returning submittals to SELLER.
  - 3) Identify and accordingly schedule submittals that are expected to have long anticipated review times.

**1.5 PROCEDURE FOR SUBMITTALS**

- A. Submittal Identification System: Use the following submittal identification system, consisting of submittal number and review cycle number.
  - 1. Submittal Number: Shall be separate and unique number correlating to each individual submittal required. Assign submittal numbers as follows:
    - a. First part of submittal number shall be the applicable Specifications Section number, followed by a hyphen.
    - b. Second part of submittal number shall be a three-digit number (sequentially numbered from 001 through 999) assigned to each separate and unique submittal furnished under the associated Specifications Section.
    - c. Typical submittal number for the third submittal furnished for Section 46 61 21, GAS Pressure Contactors, would be “46 61 21-003”.
  - 2. Review Cycle Number: Shall be a letter designation indicating the initial submittal or re-submittal associated with each submittal number:
    - a. “A” = Initial (first) submittal.
    - b. “B” = Second submittal (e.g., first re-submittal).
    - c. “C” = Third submittal (e.g., second re-submittal).
  - 3. Examples:

Example Description	Submittal Identification	
	Submittal No.	Review Cycle
Initial (first) review cycle of the third submittal provided under Section 46 61 21, GAC Pressure Contactors	46 61 21-003-	A
Second review cycle (first re-submittal) of third submittal provided under Section 46 61 21, GAC Pressure Contactors	46 61 21-003-	B

- B. Letter of Transmittal for Submittals:
1. Furnish separate letter of transmittal with each submittal. Each submittal shall be for one Specifications Section.
  2. At beginning of each letter of transmittal, include a reference heading indicating: SELLER's name, BUYER's name, Project name, Contract designation, transmittal number, and submittal number.
  3. For submittals with proposed deviations from requirements of the Contract Documents, letter of transmittal shall specifically describe each proposed variation.
- C. Seller's Review and Stamp:
1. Seller's Review: Before transmitting submittals to ENGINEER, review submittals to:
    - a. ensure proper coordination of the Goods and Special Services;
    - b. determine that each submittal is in accordance with SELLER's desires;
    - c. verify that submittal contains sufficient information for ENGINEER to determine compliance with the Contract Documents.
  2. Incomplete or inadequate submittals will be returned without review.
  3. Seller's Stamp and Signature:
    - a. Each submittal furnished shall bear SELLER's stamp of approval and signature, as evidence that submittal has been reviewed by SELLER and verified as complete and in accordance with the Contract Documents.
    - b. Submittals without SELLER's stamp and signature will be returned without review. Signatures that appear to be computer-generated will be regarded as unsigned and the associated submittal will be returned without review.
    - c. SELLER's stamp shall contain the following:

"Project Name: \_\_\_\_\_

Seller's Name: \_\_\_\_\_

Contract Designation: \_\_\_\_\_

Date: \_\_\_\_\_

----- *Reference* -----

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

Specifications:

Section: \_\_\_\_\_

Page No.: \_\_\_\_\_

Paragraph No.: \_\_\_\_\_

Drawing No.: \_\_\_\_\_ of \_\_\_\_\_

Location of Item: \_\_\_\_\_

Submittal No. and Review Cycle: \_\_\_\_\_

Coordinated by Seller with Submittal Nos.: \_\_\_\_\_

I hereby certify that the Seller has satisfied Seller’s obligations under the Contract Documents relative to Seller’s review and approval of this submittal.

Approved for Seller by: \_\_\_\_\_”

**D. Submittal Marking and Organization:**

1. Mark on each page of submittal and each individual component submitted with submittal number and applicable Specifications paragraph.
2. Arrange submittal information in same order as requirements are written in the associated Specifications Section.
3. Each Shop Drawing sheet shall have title block with complete identifying information satisfactory to ENGINEER.
4. Package together submittals for the same Specifications Section. Do not furnish required information piecemeal.

**E. Format of Submittal and Recipients:**

1. Action Submittals and Informational Submittals: Furnish in accordance with Table 01 33 00-A, except that submittals of Samples shall be as specified elsewhere in this Section:

**TABLE 01 33 00-A: SUBMITTAL CONTACTS  
AND REQUIRED FORMAT**

	<b>Address for Deliveries</b>	<b>Contact Person</b>	<b>E-mail Address</b>	<b>Format*</b>	<b>No. of Printed Copies</b>
a.	Engineer: Arcadis CE, Inc., 855 Route 146, Suite 210, Clifton Park, NY 12065	TBD	“TBD”@arcadis.com	E	Zero
b.	Resident Project Representative: At the location where the Goods will be installed.	TBD	“TDB”@arcadis.com	E & P	One
c.	Installing construction contractors (addresses TBD)	TBD	TBD	E	Zero
* <b>Format:</b> E = Electronic files; P = Printed copies. TBD = To Be Determined					

**2. Samples:**

- a. Securely label or tag Samples with submittal identification number. Label or tag shall include clear space at least four inches by four inches in size for affixing ENGINEER’s review stamp. Label or tag shall not cover, conceal, or alter appearance or features of Sample. Label or tag shall not be separated from the Sample.
- b. Submit quantity of Samples required in Specifications. If quantity of Samples is not indicated in the associated Specifications Section, furnish not less than four identical Samples of each item required for

ENGINEER's approval. Samples will not be returned to SELLER. If SELLER requires Sample(s) for SELLER's use, so advise ENGINEER in writing and furnish additional Sample(s). SELLER is responsible for furnishing, shipping, and transporting additional Samples.

- c. Deliver one Sample to ENGINEER's field office at the location where the Goods will be installed. Deliver balance of Samples to ENGINEER at address indicated in Table 01 33 00-A, unless otherwise directed by ENGINEER.

3. Closeout Submittals:

- a. Furnish the following Closeout Submittals in accordance with Table 01 33 00-A: maintenance contracts; bonds for specific materials, equipment, or systems; warranty documentation; and sustainable design closeout documentation. On documents such as maintenance contracts and bonds, include on each document furnished original ("wet") signature of entity issuing said document. When original "wet" signatures are required, furnish such submittals in printed form and electronic form to ENGINEER, and to other entities furnish as indicated in Table 01 33 00-A.
- b. Operations and Maintenance Data: Submit in accordance with Section 01 78 23, Operation and Maintenance Data.
- c. Software: Submit number of copies required in Specifications Section where the software is specified. If number of copies is not specified, provide two copies on compact disc in addition to software loaded on City's computer(s) or microprocessor(s).

- 4. Maintenance Material Submittals: For spare parts, extra stock materials, and tools, furnish quantity of items specified in associated Specifications Section. Furnish in accordance with Section 01 78 43, Spare Parts and Extra Materials.

F. Electronic Submittals:

- 1. Format: Electronic files shall be in "portable document format" (.PDF). Files shall be electronically searchable.
- 2. Organization and Content:
  - a. Each electronic submittal shall be one file; do not divide individual submittals into multiple files each.
  - b. When submittal is large or contains multiple parts, furnish PDF file with bookmark for each section of submittal.
  - c. Content shall be identical to printed submittal. First page of electronic submittal shall be SELLER's letter of transmittal.
- 3. Quality and Legibility: Electronic submittal files shall be made from the original and shall be clear and legible. Do not submit scans of faxed copies. Electronic file shall be full size of original, printed documents. Properly orient all pages for reading on a computer screen.
- 4. Provide sufficient Internet service and e-mail capability for SELLER's use in transferring electronic submittals, receiving responses to electronic submittals, and associated electronic correspondence. Check not less than once per day for

distribution of electronic submittals, electronic responses to submittal, and electronic correspondence related to submittals.

5. Submitting Electronic Files:
  - a. Transmit electronic files in accordance with Section 01 31 26, Electronic Communication Protocols.

G. Distribution:

1. Distribution of Engineer's Response via Electronic Files: Upon completion of ENGINEER's review, electronic submittal response will be distributed by ENGINEER to:
  - a. SELLER.
  - b. Installing construction contractors.
  - c. Project owner.
  - d. City.
  - e. Resident Project Representative (RPR).
  - f. ENGINEER's file.

- H. Resubmittals: Refer to the General Conditions for requirements regarding resubmitting required submittals.

## 1.6 ENGINEER'S REVIEW

- A. Timing: ENGINEER's review will conform with timing indicated in the Schedule of Submittals accepted by ENGINEER.
- B. Submittals not required by the Contract Documents will not be reviewed by ENGINEER and will not be recorded in ENGINEER's submittal log. All printed copies of such submittals will be returned to SELLER. Electronic copies of such submittals, if any, will not be retained by ENGINEER.
- C. Action Submittals, Results of Engineer's Review: Each submittal will be given one of the following dispositions by ENGINEER:
  1. Approved: Upon return of submittal marked "Approved", order, ship, or fabricate materials and equipment included in the submittal (pending ENGINEER's approval or acceptance, as applicable, of source quality control submittals) or otherwise proceed with furnishing the Goods and Special Services in accordance with the associated submittal and the Contract Documents.
  2. Approved as Corrected: Upon return of submittal marked "Approved as Corrected", order, ship, or fabricate materials and equipment included in the submittal (pending ENGINEER's approval or acceptance, as applicable, of source quality control submittals) or otherwise proceed with furnishing the Goods and Special Services in accordance with the associated submittal and the Contract Documents, and in accordance with the corrections indicated in the ENGINEER's submittal response.

3. Approved as Corrected – Resubmit: Upon return of submittal marked “Approved as Corrected – Resubmit”, order, ship, or fabricate materials and equipment included in the submittal (pending ENGINEER’s approval or acceptance, as applicable, of source quality control submittals) or otherwise proceed with furnishing the Goods and Special Services in accordance with the associated submittal and the Contract Documents, and in accordance with corrections indicated in ENGINEER’s submittal response. Furnish to ENGINEER record re-submittal with all corrections made. Receipt of corrected re-submittal is required before materials or equipment covered in the submittal will be eligible for payment.
4. Revise and Resubmit: Upon return of submittal marked “Revise and Resubmit”, make the corrections indicated and re-submit to ENGINEER for approval.
5. Not Approved: This disposition indicates material or equipment that cannot be approved. “Not Approved” disposition may also be applied to submittals that are incomplete. Upon return of submittal marked “Not Approved”, repeat initial submittal procedure utilizing approvable material or equipment, with a complete submittal clearly indicating all information required.

D. Informational Submittals, Results of ENGINEER’s Review:

1. Each submittal will be given one of the following dispositions:
  - a. Accepted: Information included in submittal complies with the applicable requirements of the Contract Documents, and is acceptable. No further action by SELLER is required relative to this submittal, and the Goods and Special Services covered by the submittal may proceed, and materials and equipment with submittals with this disposition may be shipped or operated, as applicable.
  - b. Not Accepted: Submittal does not indicate compliance with applicable requirements of the Contract Documents and is not acceptable. Revise submittal and re-submit to indicate acceptability and compliance with the Contract Documents.
2. The following types of Informational Submittals, when acceptable to ENGINEER, will not receive a written response from ENGINEER. Disposition as “accepted” will be recorded in ENGINEER’s submittal log. When submittals of the following are not acceptable, ENGINEER will provide written response to SELLER
  - a. Safety data sheets (formerly MSDS).
  - b. Manufacturer’s instructions.
  - c. SELLER’s or suppliers’ reports of visits to the location where the Goods are installed.

E. Closeout Submittals, Results of ENGINEER’s Review: Dispositions and meanings are the same as specified for Informational Submittals. When acceptable, Closeout Submittals will not receive a written response from ENGINEER. Disposition as “accepted” will be recorded in ENGINEER’s submittal log. When Closeout Submittal is not acceptable, ENGINEER will provide written response to SELLER.

- F. Maintenance Material Submittals, Results of ENGINEER's Review: Dispositions and meanings are the same as specified for Informational Submittals. When acceptable, Maintenance Material Submittals will not receive a written response from ENGINEER. Disposition as "accepted" will be recorded in ENGINEER's submittal log. When Maintenance Material Submittal is not acceptable, ENGINEER will provide written response to SELLER, and SELLER is responsible for costs associated with transporting and handling of maintenance materials until compliance with the Contract Documents is achieved.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 35 23

### SAFETY REQUIREMENTS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. This Section presents basic requirements for the SELLER's compliance with safety requirements during performance of Special Services at the City's facility.
2. SELLER shall provide labor, materials, tools, equipment, training, certifications, protective measures, and incidentals necessary for its personnel to comply with Seller's obligations under the Contract for safety and protection of personnel and property.
3. The following City safety programs are applicable to the Special Services performed at the location where the Goods are to be installed:
  - a. (None).
4. While furnishing Special Services, comply with the installing construction contractor's site-specific health and safety plan (HASP).
5. In the event of accident or illness to SELLER's employees during furnishing of Special Services at the location where the Goods will be installed, SELLER shall promptly advise BUYER and City of such illness or accident and promptly furnish a written accident report to BUYER and City.

###### B. Coordination:

1. Regarding coordination of SELLER's safety program for Special Services performed at the City's property, SELLER shall coordinate with the installing construction contractor to which the purchase Contract will be assigned, and direct its safety-related communications through such entity. Installing construction contractor to whom the purchase Contract is assigned will be responsible for coordinating safety programs with other prime contractors working at the same site and with City and Project owner.

##### 1.2 QUALITY ASSURANCE

###### A. Regulatory Requirements:

1. SELLER shall comply fully with, and require its subcontractors to comply with, all applicable provisions of the Occupational Safety and Health Act of 1970 (Public Law 91-596 of the United States, 29 USC Sec. 651 et. seq.) as it amended; orders, directives, Laws, and Regulations applicable to health and safety; and occupational safety and health standards issued under such Act or amendments; and all standards legally incorporated by

reference in such Laws and Regulations; provided however, that in event a New York State plan for the development of occupational safety and health standards has the approval of the United States Secretary of Labor in accordance with such Act or amendments thereto, then Seller and its subcontractors shall also comply with such New York State occupational safety and health standards, and with all applicable New York State Laws and Regulations.

### 1.3 SUBMITTALS

- A. Informational Submittals: Submit the following:
1. Emergency contact information, in accordance with Article 1.4 of this Section.
  2. Safety Data Sheets (SDS; formerly “MSDS”): Submit to BUYER for each item or substance brought by SELLER to the location where the Goods are installed and Special Services are furnished.
  3. Monthly log of reports of accidents and illnesses in SELLER’s employees incurred at the location where the Special Services are performed, using “OSHA No. 300” log or other form acceptable to BUYER and City. Also include with the report information on the specific individuals furnishing Special Services at City’s facility and the total number of labor-hours worked each month per person.
  4. When requested, submit to the installing construction contractor to which the purchase Contract is assigned SELLER’s site-specific health and safety plan. Do not submit such document to ENGINEER.
  5. Citations:
    - a. Copies of safety citations from authorities having jurisdiction and insurance companies, submitted within 24 hours of SELLER’s receipt of such citations.

### 1.4 EMERGENCY CONTACT INFORMATION

- A. SELLER shall submit list of emergency contact information for 24-hour use throughout the Project. Emergency contact information shall be updated and kept current throughout the Project. If personnel or contact information change, promptly furnish updated emergency contact information to installing construction contractor.
- B. SELLER’s list of emergency contact information shall include:
1. SELLER’s project manager’s office, field office, cellular, and home telephone numbers.
  2. SELLER’s field technician’s office, field office, cellular, and home telephone numbers.
  3. Major subcontractors’ office, cellular, and home telephone numbers of project manager and foreman (when applicable).

## PART 2 – PRODUCTS

### 2.1 PERSONAL PROTECTIVE EQUIPMENT

- A. Protective helmets (“hard hats”) for personnel shall comply with ANSI 289.1 and with the requirements of installing construction contractor and safety program requirements indicated in Article 1.1 of this Section.
- B. Personal safety goggles shall comply with ANSI Z97.1 the standards and the requirements of installing construction contractor and safety program requirements indicated in Article 1.1 of this Section.
- C. Footwear worn in construction work areas shall comply with ASTM F2413 and the requirements of installing construction contractor and safety program requirements indicated in Article 1.1 of this Section.

## PART 3 – EXECUTION

### 3.1 GENERAL

- A. SELLER’s personnel at the location where the Special Services are performed shall furnish and wear protective helmets, safety goggles, required footwear, and other personal protective equipment required by installing construction contractor and safety program requirements indicated in Article 1.1 of this Section.
- B. title 1.1 of this Section.

++ END OF SECTION ++

## SECTION 01 42 00

### REFERENCES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
1. Section includes the following:
    - a. Definitions and terminology in general use in the Contract Documents.
    - b. Applicable codes.
    - c. BUYER's referenced specifications, where applicable.
    - d. Abbreviations in general use throughout the Contract Documents.
    - e. General requirements regarding reference standards, including a listing of standard-issuing organizations (and their acronyms) used in the Contract Documents.

##### 1.2 DEFINITIONS AND TERMINOLOGY

- A. Definitions and terminology applicable to all the Contract Documents are included in the General Conditions and Supplementary Conditions.
- B. Additional terminology used in the Contract Documents includes the following:
1. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use
  3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  2. "Indicated" refers to graphic representations, notes, or schedules on the Drawings, or to other paragraphs, provisions, tables, or schedules in the Specifications and similar locations in the other Contract Documents. Terminology such as "shown", "noted", "scheduled", and "specified" are used to help the user locate the reference without limitation on the location.
  3. "Installer", "applicator", or "erector" is the construction contract retained by BUYER or another person or entity engaged by Buyer, either as an employee or as BUYER's subcontractor, to perform a particular construction activity, including installation, erection, application, or similar work. Installers will be experienced in the work that installer is engaged to perform.
- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

### 1.3 APPLICABLE CODES

- A. References in the Contract Documents to local code(s) shall mean the following, including amendments and revisions thereto:
1. New York State Uniform Fire Prevention and Building Code.
  2. New York State Energy Conservation Construction Code.
  3. Version of National Electric Code in effect in New York State.
  4. NFPA 101, Life Safety Code.

### 1.4 BUYER'S REFERENCED SPECIFICATIONS

- A. (Not used).

### 1.5 ABBREVIATIONS

- A. Common abbreviations that may be found in the Contract Documents are indicated below, alphabetically by their written-out meaning:

alternating current	a-c
ampere	A
antemeridian	a.m.
Architectural Barriers Act	ABA
Americans with Disabilities Act	ADA
Americans with Disabilities Act Accessibility Guidelines	ADAAG
ante meridian	a.m.
average	avg
biochemical oxygen demand	BOD
five-day biochemical oxygen demand	BOD <sub>5</sub>
brake horsepower	bhp
British thermal unit	Btu
building information model	BIM
carbonaceous biochemical oxygen demand	CBOD
five-day carbonaceous biochemical oxygen demand	CBOD <sub>5</sub>
chemical oxygen demand	COD
Centigrade (or Celsius)	C
chlorinated polyvinyl chloride	CPVC
chlorofluorocarbons	CFC
Code of Federal Regulations	CFR

computer-aided drafting and design		CADD, or CAD
cubic inch		cu in
cubic foot		cu ft
cubic yard		cu yd, or CY
cubic feet per minute		cfm
cubic feet per second		cfs
decibel		db
degree Centigrade (or Celsius)	(Write)	degrees C, °C, or deg C
degrees Fahrenheit		degrees F, °F, or deg F
diameter		dia
direct current		d-c
dollars		\$
each		ea
efficiency		eff
Fahrenheit		F
feet		ft
feet per hour		fph, or ft/hr
feet per minute		fpm
feet per second		fps, or ft/min
figure		fig
flange		flg
foot-pound		ft-lb
gallon		gal
gallons per hour		gph, or gal/hr
gallons per minute		gpm
gallons per second		gps
gram		g
grams per liter		g/L
Hertz		Hz
horsepower		hp or HP
hour		hr
human-machine interface		HMI
inch		in.
inches of mercury		in. Hg
inches water gage		in. w.g.
inch-pound		in.-lb

inside diameter	ID
iron pipe size	IPS
thousand pounds	kips
thousand pounds per square inch	ksi
kilovolt-ampere	kva
kilowatt	kw
kilowatt-hour	kwhr or kwh
linear foot	lin ft or LF
liter	L
Leadership in Energy and Environmental Design (USGBC)	LEED
maximum	max
mercury	Hg
milligram	mg
milligrams per liter	mg/l or mg/L
milliliter	ml
millimeter	mm
million gallons per day	mgd or MGD
million gallon	MG
minimum	min
national pipe threads	NPT
net positive suction head	NPSH
net positive suction head available	NPSHA
net positive suction head required	NPSHR
nitrogen oxide (total concentration of mono-nitrogen oxides such as nitric oxide (NO) and nitrogen dioxide (NO <sub>2</sub> ))	NO <sub>x</sub>
nominal pipe size	NPS
number	no.
operator interface terminal	OIT
ounce	oz
ounce-force	ozf
outside diameter	OD
parts per hundred	pph
parts per million	ppm
parts per billion	ppb
polyvinyl chloride	PVC
post meridian	p.m.

pound	lb
pounds per square inch	psi
pounds per square inch absolute	psia
pounds per square inch gauge	psig
pounds per square foot	psf
process control system	PCS
programmable logic controller	PLC
revolutions per minute	rpm
second	sec
specific gravity	sp gr, or SG
square	sq
square foot	sq ft, sf, or ft <sup>2</sup>
square inch	sq in., or in <sup>2</sup>
square yard	sq yd, or SY
standard	std
standard cubic feet per minute	scfm
total dynamic head	TDH
totally-enclosed fan-cooled	TEFC
volt	V
volts alternating current	vac
volts direct current	vdc
volatile organic compounds	VOC

## 1.6 REFERENCE STANDARDS

- A. Refer to Article 3 of the General Conditions, as may be modified by the Supplementary Conditions, relative to reference standards and resolving discrepancies between reference standards and the Contract Documents. Provisions of reference standards are in effect in accordance with the Specifications.
- B. Copies of Standards: Each entity engaged in furnishing the Goods and Special Services shall be familiar with reference standards applicable to its Goods and activities. Copies of applicable reference standards are not bound with the Contract Documents. Where reference standards are needed for an activity under the Contract, obtain copies of standards from the publication source.
- C. Abbreviations and Names: Where reference standards, specifications, codes, manuals, Laws or Regulations, or other published data of international, national, regional or local organizations are referred to in the Contract Documents, the organization issuing the standard may be referred to by their acronym or abbreviation

only. The following acronyms or abbreviations that may appear in the Contract Documents shall have the meanings indicated below. Listing is alphabetical by acronym.

AA	Aluminum Association
AABC	Associated Air Balance Council
AAMA	American Architectural Manufacturers Association
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACS	American Chemical Society
ADSC- IAFD	International Association of Foundation Drilling.
AEIC	Association of Edison Illuminating Companies
AF&PA	American Forest and Paper Association
ABMA	American Bearing Manufacturers Association (formerly Anti-Friction Bearing Manufacturers Association (AFBMA))
AGMA	American Gear Manufacturers Association
AI	Asphalt Institute
AIA	American Institute of Architects
AIChE	American Institute of Chemical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standards Committee
AMA	Acoustical Materials Association
AMCA	Air Movement and Control Association
AMP	National Association of Architectural Metal Manufacturers, Architectural Metal Products Division
ANSI	American National Standards Institute
APA	The Engineered Wood Association
APHA	American Public Health Association
API	American Petroleum Institute
AREA	American Railway Engineering Association
ARI	Air Conditioning and Refrigeration Institute
ASAE	American Society of Agricultural Engineers
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers

ASME	American Society of Mechanical Engineers
ASNT	American Society for Non-Destructive Testing
ASQ	American Society for Quality
ASSE	American Society of Safety Engineers
ASTM	American Society for Testing and Materials
AWCI	Association of the Wall and Ceiling Industry
AWI	Architectural Woodwork Institute
AWPA	American Wood Protection Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BAAQMD	Bay Area Air Quality Management District
BHMA	Builders Hardware Manufacturers Association
BIA	Brick Industry Association
CBMA	Certified Ballast Manufacturers Association
CDA	Copper Development Association
CEMA	Conveyor Equipment Manufacturers Association
CGA	Compressed Gas Association
CISCA	Ceilings and Interior Systems Construction Association
CISPI	Cast Iron Soil Pipe Institute
CLFMI	Chain Link Fence Manufacturers Institute
CMAA	Crane Manufacturers Association of America
CRSI	Concrete Reinforcing Steel Institute
CSI	Construction Specifications Institute
DIN	Deutsches Institut für Normung eV (German Institute for Standardization)
DIPRA	Ductile Iron Pipe Research Association
EJCDC	Engineers Joint Contract Documents Committee
EJMA	Expansion Joint Manufacturers Association, Inc.
ETL	Intertek Testing Services, Inc. (formerly ETL Testing Laboratories, Inc.)
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Factory Mutual (FM Global)
FRPI	Fiberglass Reinforced Plastics Institute
FS	Federal Specification
GA	Gypsum Association

GANA	Glass Association of North America
HEW	United States Department of Health, Education and Welfare
HI	Hydraulic Institute
HMI	Hoist Manufacturers Institute
HUD	United States Department of Housing and Urban Development
IBC	International Building Code
ICC	International Code Council
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America
IFI	Industrial Fasteners Institute
IRI	Industrial Risk Insurers
ISA	Instrumentation, Systems, and Automation Society (formerly Instrument Society of America)
ISO	Insurance Services Office
ISO	International Organization for Standardization
LPI	Lightning Protection Institute
MIA	Marble Institute of America
ML/SFA	Metal Lath/Steel Framing Association
MS	Military Specifications
MSS	Manufacturers' Standardization Society
MMA	Monorail Manufacturers Association
NAAMM	National Association of Architectural Metal Manufacturers
NACE	National Association of Corrosion Engineers
NAPF	National Association of Pipe Fabricators, Inc.
NARUC	National Association of Regulatory Utilities Commissioners
NBHA	National Builders Hardware Association
NBS	United States Department of Commerce, National Bureau of Standards
NCMA	National Concrete Masonry Association
NEC	National Electric Code
NELMA	Northeastern Lumber Manufacturers' Association
NEMA	National Electrical Manufacturers Association
NESC	National Electrical Safety Code
NETA	International Electrical Testing Association
NFPA	National Fire Protection Association
NFRC	National Fenestration Rating Council
NGA	National Glass Association

NHLA	National Hardwood Lumber Association
NHPMA	Northern Hardwood and Pine Manufacturers Association
NIST	United States Department of Commerce, National Institute of Standards and Technology
NLGA	National Lumber Grades Authority
NRCA	National Roofing Contractors Association
NRMCA	National Ready Mixed Concrete Association
NSF	National Sanitation Foundation
NSSGA	National Stone, Sand, and Gravel Association
NTMA	National Terrazzo and Mosaic Association
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
PCI	Precast/Prestressed Concrete Institute
PEI	Porcelain Enamel Institute
PFI	Pipe Fabrication Institute
PPI	Plastics Pipe Institute
PGMC	Primary Glass Manufacturers Council
PS	Product Standards Section, United States Department of Commerce
RCSC	Research Council on Structural Connections (part of AISC)
RMA	Rubber Manufacturers Association
SAE	Society of Automotive Engineers
SCAQMD	Southern California Air Quality Management District
SCPRF	Structural Clay Products Research Foundation
SCTE	Society of Cable Telecommunications Engineers
SDI	Steel Deck Institute
SDI	Steel Door Institute
SIGMA	Sealed Insulating Glass Manufacturing Association
SJI	Steel Joist Institute
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SPI	Society of the Plastics Industry
SPIB	Southern Pine Inspection Bureau
SSPC	Society for Protective Coatings
SWI	Steel Window Institute
TCNA	Tile Council of North America
TEMA	Tubular Exchanger Manufacturers Association
TIA/EIA	Telecommunications Industry Association/Electronic Industries Alliance

UL	Underwriters Laboratories, Inc.
USAB	United States Access Board
USDOE	United States Department of Energy
USEPA	United States Environmental Protection Agency
USGBC	United States Green Building Council
USGS	United States Geological Survey
USPHS	United States Public Health Service
WCLIB	West Coast Lumber Inspection Bureau
WCMA	Window Covering Manufacturers Association
WCMA	Wood Component Manufacturers Association
WDMA	Window and Door Manufacturers Association
WEF	Water Environment Federation
WWEMA	Water and Wastewater Equipment Manufacturers Association
WWPA	Western Wood Products Association

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 61 00

### COMMON PRODUCT REQUIREMENTS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
  - 1. This Section includes:
    - a. Common requirements for materials and equipment.
    - b. Compatibility of materials and equipment.

##### 1.2 REQUIREMENTS FOR MATERIALS AND EQUIPMENT

- A. Unless otherwise indicated in the Contract Documents, furnish materials and equipment that:
  - 1. have not been previously been incorporated into another project or facility; and
  - 2. have not changed ownership after initial shipment from the manufacturer's factory or facility; and
  - 3. if stored since their manufacture or fabrication, have, while in storage, been properly maintained and serviced in accordance with the manufacturer's recommendations for long-term storage; submit documentation as required by ENGINEER that such maintenance and service has been performed; and
  - 4. that the item(s) have not been subject to degradation or deterioration since manufacture; and
  - 5. are the current model(s) or type(s) furnished by the Supplier.
- B. To the extent possible, furnish from a single source those materials and equipment that are of the same generic kind.
- C. Furnish materials and equipment complete with accessories, trim, finish, fasteners, and other items shown, indicated, or required for a complete installation for the indicated use and performance.
- D. Standard Items: When available, and unless custom or nonstandard options are specified or indicated, furnish standard materials and equipment of types that have been produced and used successfully in similar situations on other projects.
- E. Visual Matching: Where required in the Contract Documents, furnish materials and equipment that match (as determined by ENGINEER) referenced existing construction, and mock-ups and Sample(s) approved by ENGINEER.

- F. Where the Contract Documents include the phrase “as selected” for color of materials or equipment, finish pattern, option, or similar phrase, provide materials and equipment selected by ENGINEER as follows:
1. Standard Range: Where the Contract Documents include the phrase “standard range of colors, patterns, textures” or similar wording, provide color, pattern, density, or texture selected by ENGINEER from manufacturer’s product line that does not include premium items.
  2. Full Range: Where the Contract Documents include the phrase “full range of colors, patterns, textures” or similar wording, ENGINEER will select color, pattern, density, or texture from manufacturer’s entire product line, including standard and premium items.

### 1.3 COMPATIBILITY

- A. Similar materials and equipment by the same supplier shall be compatible with each other, unless otherwise indicated in the Contract Documents or approved by ENGINEER.
- B. Furnish materials and equipment compatible with items previously selected or installed on the Project.

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION (NOT USED)

+ + END OF SECTION + +

## SECTION 01 62 00

### PRODUCT OPTIONS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
  - 1. This Section includes:
    - a. SELLER's options for selecting materials and equipment.
    - b. Requirements for consideration of "or-equal" materials and equipment.

##### 1.2 PRODUCT OPTIONS

- A. For materials and equipment specified only by reference standard or description, without reference to supplier, furnish materials and equipment complying with such standard, by a supplier or from a source that complies with the Contract Documents.
- B. For materials and equipment specified by naming one or more items or suppliers, furnish the named materials and equipment that comply with the Contract Documents, unless an "or-equal" or substitute item is approved by ENGINEER.
- C. For materials and equipment specified by naming one or more items or suppliers and the term, "or-equal", when SELLER proposes a material or equipment item or supplier as an "or-equal", submit to ENGINEER a request for approval of an "or-equal" item or supplier.
- D. For materials and equipment specified by naming only one item or manufacturer and followed by words indicating that no substitution is allowed, there is no option and no "or-equals" will be allowed or approved.
- E. Substitute items are prohibited on this Contract.

##### 1.3 "OR-EQUAL" ITEMS

- A. Procedure:
  - 1. For proposed materials and equipment not named in the Contract Documents and considered as an "or-equal" in accordance with the General Conditions, SELLER shall request in writing ENGINEER's approval of the "or-equal".
  - 2. Request for approval of an "or-equal" item shall accompany the Shop Drawing or product data submittal for the proposed item
- B. Requests for approval of "or-equals" shall include:

1. SELLER's written request that the proposed item be considered as an "or-equal" in accordance with the General Conditions, accompanied by SELLER's certifications required in the General Conditions.
2. Documentation adequate to demonstrate to ENGINEER that proposed item does not require extensive revisions to the Contract Documents, that proposed item is consistent with the Contract Documents, and that proposed item will produce results and performance required in the Contract Documents, and that proposed item is compatible with other portions of the Work.
3. Detailed comparison of significant qualities of proposed item with the materials and equipment and manufacturers named in the Contract Documents. Significant qualities include attributes such as performance, weight, size, durability, visual effect, and specific features and requirements shown or indicated.
4. Evidence that proposed item's manufacturer will furnish warranty equal to or better than that specified, if any.
5. List of similar installations for completed projects with project names and addresses, and names and address of design professionals and owners, when requested.
6. Samples, when requested by ENGINEER.
7. Other information requested by ENGINEER.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 65 00

### PRODUCT DELIVERY REQUIREMENTS

#### PART 1 - GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. This Section includes general requirements for preparing for shipping, delivering, and handling materials and equipment that are part of the Goods.
2. SELLER shall make all arrangements for transporting, delivering, and handling of materials and equipment required to fulfill SELLER's obligations under the Contract.
3. When required for SELLER's benefit, move stored materials and equipment without changes to the Contract Price or Contract Times.

##### 1.2 SUBMITTALS

- ###### A. Refer to individual Specifications Sections for submittal requirements relative to delivering and handling materials and equipment.

##### 1.3 PREPARING FOR SHIPMENT

- ###### A. When practical, factory-assemble materials and equipment. Mark or tag separate parts and assemblies to facilitate field-assembly. Cover machined and unpainted parts that may be damaged by the elements or climate with strippable, protective coating.
- ###### B. Package materials and equipment to facilitate handling, and protect materials and equipment from damage during shipping, handling, and storage. Mark or tag outside of each package and crate to indicate the associated purchase order number, bill of lading number, contents by name, BUYER's contract designation, SELLER name, equipment number, and approximate weight. Include complete packing lists and bills of materials with each shipment.
- ###### C. Protect materials and equipment from exposure to the elements and damage by climate, and keep thoroughly dry and dust-free at all times. Protect painted surfaces against impact, abrasion, discoloration, and other damage. Lubricate bearings and other items requiring lubrication in accordance with manufacturer's instructions.
- ###### D. Advance Notification of Shipments:

1. Keep installing construction contractor (if different from BUYER), and ENGINEER informed of delivery of all materials and equipment furnished under the Contract.
  2. Upon receipt of SELLER's advance notice of shipment, not less than seven days prior to delivery of materials and equipment, advise installing construction contractor and ENGINEER in writing of anticipated date(s) and place of arrival of the following:
    - a. GAC pressure contactors and media and associated Goods.
- E. Do not ship materials and equipment until:
1. Related Shop Drawings, Samples, and other submittals required by the Contract Documents have been approved or accepted (as applicable) by ENGINEER, including, but not necessarily limited to, all Action Submittals associated with the materials and equipment being delivered.
  2. Manufacturer's instructions for handling, storing, and installing the associated materials and equipment have been submitted to and accepted by ENGINEER in accordance with the Specifications.
  3. Results of source quality control testing (factory testing), when required by the Contract Documents for the associated materials or equipment, have been submitted to and accepted by ENGINEER.
  4. Facilities required for handling materials and equipment in accordance with the associated construction contract and manufacturer's instructions are in place and available at the Point of Destination.
  5. Required storage facilities have been provided.

#### 1.4 DELIVERY

- A. Scheduling and Timing of Deliveries:
1. Arrange deliveries of materials and equipment in accordance with the Progress Schedule accepted by ENGINEER, schedule of the installing construction contractor, and in ample time to facilitate inspection and observation prior to installation.
  2. Schedule deliveries to minimize space required for and duration of storage of materials and equipment at the Point of Destination or other delivery location, as applicable. Coordinate with the installing construction contractor that will offload the Goods upon delivery.
  3. Coordinate deliveries to avoid conflicting with ongoing construction and conditions at Point of Destination, and to accommodate the following:
    - a. Work of other construction contractors and City.
    - b. Storage space limitations.
    - c. Availability of equipment and personnel for handling materials and equipment.
    - d. City's use of premises.
  4. Deliver materials and equipment to the Point of Destination during regular working hours.

5. Deliver materials and equipment to avoid delaying the progress of the construction and the Project, including work of other contractors retained for constructing elements of the Project, as applicable.

B. Deliveries:

1. Shipments shall be delivered with SELLER's name installing contractor's name, subcontractor's name (if applicable), name of the Point of Destination, Project name, and contract designation (example: "XYZ Equipment Supply, ABC Construction Co., City of Happy Beach, Idaho, Wastewater Treatment Plant Primary Clarifier Improvements, Contract 25, General Construction") clearly marked.
2. Point of Destination may be listed as the "ship to" or "delivery" address; but list neither City nor Project owner as recipient of shipment unless otherwise directed in writing by ENGINEER.
3. Provide SELLER's and installing construction contractor's telephone numbers to shipper; do not provide City's or Project owner's telephone numbers.
4. Arrange for deliveries while personnel of installing construction contractor are at the Point of Destination. Installing construction contractor will receive and coordinate shipments upon delivery. Shipments delivered to the Point of Destination when installing construction contractor is not present will be refused by City, and SELLER shall be responsible for the associated delays and additional costs, if incurred.

C. Containers and Marking:

1. Have materials and equipment delivered in manufacturer's original, unopened, labeled containers.
2. Clearly mark partial deliveries of component parts of materials and equipment to identify materials and equipment, to allow easy accumulation of parts, and to facilitate assembly.
3. Truthfully and accurately label containers and packaging.

D. Inspection of Deliveries:

1. Immediately upon delivery, inspect shipment to verify that:
  - a. Materials and equipment comply with the Contract Documents and approved or accepted (as applicable) submittals.
  - b. Quantities are correct.
  - c. Materials and equipment are undamaged and of the required quality.
  - d. Containers and packages are intact and labels are legible.
  - e. Materials and equipment are properly protected.
2. The foregoing augments SELLER's obligations under Paragraph 8.01.B of the General Conditions.
3. Promptly remove damaged materials and equipment from the Point of Destination and expedite delivery of new, undamaged materials and equipment, and remedy incomplete or lost materials and equipment. Furnish materials and equipment in accordance with the Contract Documents, to

avoid delaying progress of the associated construction by contractors hired by Project owner and City.

3. Advise installing construction contractor and ENGINEER in writing when damaged, incomplete, or non-conforming materials or equipment are delivered, and advise installing construction contractor and ENGINEER of the associated impact on SELLER's Progress Schedule.

#### 1.5 HANDLING OF MATERIALS AND EQUIPMENT

- A. This Article 1.5 is regarding handling of materials and equipment while the Goods are in SELLER's care and custody. Project owner's installing construction contractor is responsible for handling the Goods at the Point of Destination, including unloading from SELLER's delivery vehicles.
- B. When the Goods are in SELLER's care and custody, provide equipment and personnel necessary to handle materials and equipment by methods that prevent soiling or damaging materials and equipment and packaging.
- C. When the Goods are in SELLER's care and custody, provide additional protection during handling as necessary to prevent scraping, marring, and otherwise damaging materials and equipment and surrounding surfaces.
- D. Handle materials and equipment by methods that prevent bending and overstressing.
- E. Lift heavy components only at designated lifting points.
- F. Handle materials and equipment in safe manner and as recommended by the manufacturer to prevent damage. Do not drop, roll, or skid materials and equipment off delivery vehicles or at other times during handling. Hand-carry or use suitable handling equipment.

#### PART 2 – PRODUCTS (NOT USED)

#### PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 66 00

### PRODUCT STORAGE AND HANDLING REQUIREMENTS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. This Section includes general requirements for storing and protecting materials and equipment while the Goods, or part(s) thereof, are in SELLER's care or custody. Upon delivery of the Goods at the Point of Destination, storage and handling of the Goods will be the responsibility of the installing construction contractor retained by Project owner.
2. When the Goods are in SELLER's care or custody, provide all labor, materials, tools, equipment, and incidentals to store and handle materials and equipment furnished under the Contract.
3. At any time that the Goods are in SELLER's care or custody, Project owner, installing construction contractor, ENGINEER, or Resident Project Representative (RPR) shall have the right to visit the storage location and inspect the Goods. Cost of such visits and inspections are not SELLER's responsibility unless otherwise expressly indicated in the Contract Documents.

##### 1.2 STORAGE

###### A. Store and protect materials and equipment in accordance with manufacturer's recommendations and the Contract Documents.

###### B. General:

1. When the Goods are in SELLER's care and custody, SELLER shall make all arrangements and provisions necessary for, and pay all costs for, storing materials and equipment.
2. Store materials and equipment neatly and compactly in locations that cause minimum inconvenience.
3. Arrange storage in manner to allow easy access for inspection by Project owner, installing construction contractor, ENGINEER, or Resident Project Representative (RPR).

###### C. Storage Location:

###### 1. Restrictions:

- a. Do not store materials or equipment in structures being constructed unless approved by ENGINEER in writing.
- b. Do not use lawns or other private property for storage without written permission of the owner or other person in possession or control of such

premises.

D. Protection of Stored Materials:

1. Store the Goods to ensure preservation of quality and fitness of the Goods, including proper protection against damage by freezing, moisture, and with outdoor ambient air high temperatures as high as 100 degrees F; temperature and humidity inside crates, containers, storage sheds, and packaging may be significantly higher than the outdoor ambient air temperature.
2. Store in indoor, climate-controlled storage areas all materials and equipment subject to damage by moisture, humidity, heat, cold, and other elements, unless otherwise acceptable to ENGINEER.
3. When placing orders to suppliers for equipment and controls containing computer chips, electronics, and solid-state devices, SELLER shall obtain, coordinate, and comply with specific temperature and humidity limitations on materials and equipment, because temperature inside cabinets and components stored in warm temperatures can approach 200 degrees F.
4. When the Goods are in SELLER's care or custody, SELLER shall be fully responsible for loss or damage (including theft) to stored materials and equipment.
5. Do not open manufacturer's containers until time of installation, unless recommended by the manufacturer or otherwise specified in the Contract Documents.
6. Comply with requirements of Article 1.3 of this Section.

1.3 PROTECTION – GENERAL

- A. The Goods shall be boxed, crated, or otherwise completely enclosed and protected during shipping, handling, and storage, in accordance with Section 01 65 00, Product Delivery Requirements.
- B. Store all materials and equipment off the ground (or floor) on raised supports such as skids or pallets.
- C. Protect painted surfaces against impact, abrasion, discoloration, and other damage. Painted equipment surfaces that are damaged or marred shall be repainted in their entirety in accordance with equipment manufacturer and paint manufacturer requirements, to the satisfaction of ENGINEER.
- D. Protect electrical equipment, controls, and instrumentation against moisture, water damage, humidity, heat, cold, and dust. Space heaters provided in equipment shall be connected and operating at all times until care and custody of the Goods is transferred to the installing construction contractor retained by Project owner.

1.4 UNCOVERED STORAGE

- A. The following types of materials may be stored outdoors without cover on supports

so there is no contact with the ground:

1. Structural steel (if included in the Goods).
2. Metal stairs (if included in the Goods).
3. Handrails and railings (if included in the Goods).
4. Grating (if included in the Goods).
5. Checker plate (if included in the Goods).

#### 1.5 COVERED STORAGE

- A. The following materials and equipment may be stored outdoors on supports and completely covered with covering impervious to water:
  1. (None).
- B. Tie down covers with rope, and install covering properly sloped to prevent accumulation of water.

#### 1.6 FULLY PROTECTED STORAGE

- A. Store all material and equipment not indicated in Articles 1.4 and 1.5 of this Section on supports in buildings or trailers that have concrete or wooden flooring, roof, and fully-closed walls on all sides. Covering with visquine plastic sheeting or similar material in space without floor, roof, and walls is unacceptable. Comply with the following:
  1. Provide heated storage for materials and equipment that could be damaged by low temperatures or freezing.
  2. Provide air-conditioned storage for materials and equipment that could be damaged by high temperatures or humidity.
  3. Protect mechanical and electrical equipment from being contaminated by dust, dirt, and moisture.
  4. Maintain humidity at levels recommended by manufacturers for electrical and electronic equipment.
- B. Storage of Major Equipment:
  1. Storage of the equipment indicated below shall comply with this Paragraph 1.6.A of this Section:
    - a. GAC pressure filters.
  2. Storage of Goods that are transferred to Project owner or installing construction contractor shall be in third-party owned, bonded, insured, climate-controlled warehouse located within 15 miles of 493 Little Britain Road, Newburgh, NY 12550.

#### 1.7 MAINTENANCE OF STORAGE

- A. On a scheduled basis, periodically inspect stored materials and equipment to ensure that:

1. Condition and status of storage facilities is adequate to provide required storage conditions.
  2. Required environmental conditions are maintained on continuing basis.
  3. Materials and equipment exposed to elements are not adversely affected.
- B. Mechanical and Electrical Equipment in Long-Term Storage:
1. Mechanical and electrical equipment requiring long-term storage shall have complete manufacturer's instructions for servicing each item, with notice of enclosed instructions shown on exterior of container or packaging.
  2. Comply with manufacturer's instructions on scheduled basis.
  3. Space heaters that are part of electrical equipment shall be connected and operated continuously until equipment is placed in service and permanently connected.
  4. Affidavits:
    1. Submit to ENGINEER and installing construction contractor affidavit for each time that maintenance and inspection was performed on materials and equipment in long-term storage. Affidavit shall be signed by SELLER and entity performing the inspection and maintenance on the stored items.
    2. Affidavit shall indicate the date of the inspection, personnel and employer of each involved, specific stored items inspected, equipment condition, problems observed, problems corrected, maintenance tasks performed, conditions of storage environment, and other pertinent information.
    3. Affidavit shall include signed statement by the manufacturer of the item(s) indicating whether the storage conditions and tasks performed are suitable for continued compliance with manufacturer's warranties.

#### 1.8 MICROPROCESSORS, PANELS, AND INSTRUMENTATION STORAGE

- A. Store control panels, microprocessor-based equipment, electronics, and other devices subject to damage or decreased useful life because of temperatures below 40 degrees F or above 100 degrees F, relative humidity above 90 percent, or exposure to rain or exposure to blowing dust in climate-controlled storage space.
- B. General:
1. Storage shall comply with Paragraph 1.6.B of this Section.
  2. Place inside each control panel or device a desiccant, volatile corrosion inhibitor blocks (VCI), moisture indicator, and maximum-minimum indicating thermometer.
  3. Check panels and equipment not less than once per month. Replace desiccant, VCI, and moisture indicator as often as required, or every six months, whichever occurs first.
  4. Certified record of daily maximum and minimum temperature and humidity in storage facility shall be available for inspection by Project owner, installing construction contractor, ENGINEER, or RPR. Certified record of monthly inspection, noting maximum and minimum temperature for month, condition of

desiccant, VCI, and moisture indicator, shall be made available to Project owner, installing construction contractor, and ENGINEER upon request.

- C. Prior to the transfer of the Goods to Project owner or installing construction contractor's care and custody, costs for storing climate-sensitive materials and equipment shall be paid by SELLER. Replace panels and devices damaged during storage, or for which storage temperatures or humidity range has been exceeded, at no additional cost to Project owner or installing construction contractor. Delays resulting from such replacement are causes within SELLER's control.
- D. Do not ship control panels and equipment to the Point of Destination until conditions at the location where the Goods will be installed are suitable for installation, including slabs and floors, walls, roofs, and environmental controls. Coordinate such arrangements with installing construction contractor.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 75 11

### CHECKOUT AND STARTUP PROCEDURES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. SELLER shall furnish services of qualified, factory-trained representatives experienced in the Goods furnished and experienced in field startups. SELLER shall assist the construction SELLERs retained by Buyer in initially starting up and placing the Goods into successful operation, in accordance with the Contract Documents, equipment manufacturer's written instructions, and as instructed by manufacturer's startup representative at the location where the Goods are installed.
2. Provide labor required to assist the installing contractors with completing equipment checkout and startup.
3. General Activities Include:
  - a. Assisting installing contractor(s) with flushing and replacing lubricants, where required by manufacturer of the item.
  - b. Assisting installing contractor(s) with lubrication.
  - c. Assisting installing contractor(s) with checking shaft and coupling alignments.
  - d. Assisting installing contractor(s) with checking and setting motor, pump, and other equipment rotation, safety interlocks, and belt tensions.
  - e. Assisting installing contractor(s) with checking and advising on correcting (if necessary) leveling plates, grout, bearing plates, anchorage devices, fasteners, and alignment of piping, conduits, and ducts that may place stress on the connected materials and equipment.
  - f. Assisting installing contractor(s) and design engineer with equipment device settings, including those for items furnished by Seller as part of the Goods and equipment furnished by others that is associated with the installed Goods as a functioning system. This item includes electrical, instrumentation, and controls, including variable frequency drives furnished with the Goods.
  - g. Advising installing contractor(s) on adjustments required.

###### B. Coordination:

1. Coordinate checkout and startup with installing contractor(s), as necessary.
2. Do not start up system or subsystem for continuous operation until all components of that system or subsystem, including instrumentation and controls, have been tested to the extent practicable and proven to be operable as

intended by the Contract Documents and the construction contract documents of the associated installing construction contract(s).

3. City and BUYER will provide sufficient personnel to assist installing contractor(s) and SELLER in starting up equipment, but responsibility for proper operation resides with installing contractor(s) and SELLER.
  4. SELLER and SELLER's suppliers' representatives shall be present during checkout, start-up, and initial operation, unless otherwise acceptable to BUYER and ENGINEER.
  5. Do not start up system, unit process, or equipment without submitting acceptable preliminary operations and maintenance manuals in accordance with Section 01 78 23, Operations and Maintenance Data.
- C. City's Assumption of Responsibility for the Goods:
1. City will assume operational responsibility for the installed Goods when the Goods are placed into continuous, successful operation.
  2. Installing construction contractor shall be responsible for maintaining the Goods with advice and assistance of SELLER, between acceptance of the Goods at the Point of Destination and the time the Goods are placed into continuous operation.
  3. Prior to turning over to City responsibility for operating the Goods:
    - a. Provide training of operations and maintenance personnel in accordance with Section 01 79 23, Instruction of Operations and Maintenance Personnel.
    - b. Complete system field quality control testing in accordance with the Contract Documents.
    - c. Submit acceptable final operations and maintenance manuals in accordance with Section 01 78 23, Operations and Maintenance Data.
    - d. Obtain ENGINEER's and BUYER's written concurrence of the date on which the Goods were placed into successful, continuous operation in accordance with Section 01 77 19, Closeout Requirements.
  4. After turning over to City responsibility for operating the Goods:
    - a. Complete furnishing of Special Services in accordance with the Contract Documents, and in coordination with the installing construction contractor(s).

## 1.2 SUBMITTALS

- A. Closeout Submittals: Submit the following:
1. Certifications:
    - a. SELLER's certification of installation in accordance with Paragraph 3.1.B of this Section.

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 SERVICES OF SELLER

- A. When specified, furnish services of competent, qualified representatives of material and equipment manufacturers, including supervising installation, adjusting, checkout, startup, and testing of materials and equipment.
- B. Certification:
  - 1. When services by SELLER are required at the location where the Goods are installed, within 10 days after first test operation of equipment, submit to ENGINEER and installing construction contractor a letter from SELLER, on SELLER's letterhead, stating that the Goods are installed in accordance with SELLER's requirements and installation instructions, and in accordance with the Contract Documents. Letter shall include not less than the information required on the form enclosed with this Section.
  - 2. In lieu of SELLER letter, submit completed form attached to this Section.
  - 3. Include in the final operations and maintenance manual for the associated equipment a copy of the letter or completed form, as applicable.

### 3.2 MINIMUM STARTUP REQUIREMENTS

- A. Bearings and Shafting:
  - 1. Inspect for cleanliness, and clean and remove foreign matter.
  - 2. Verify alignment.
  - 3. Replace defective bearings and those that operate in a rough or noisy manner.
  - 4. Instruct installing construction contractor in greasing as necessary, in accordance with manufacturer's recommendations.
- B. Drives:
  - 1. Adjust tension in V-belt drives and adjust vari-pitch sheaves and drives for proper equipment speed.
  - 2. Adjust drives for alignment of sheaves and V-belts.
  - 3. Instruct installing construction contractor in cleaning and removing foreign matter before starting operation.
- C. Motors:
  - 1. Check each motor for comparison to amperage nameplate value.
  - 2. Assist installing construction contractor with correcting conditions that produce excessive current flow and conditions that exist due to equipment malfunction.
- D. Pumps:
  - 1. Check glands and seals for cleanliness and adjustment before running pump.
  - 2. Inspect shaft sleeves for scoring.
  - 3. Inspect mechanical faces, chambers, and seal rings, and replace if defective.
  - 4. Verify that piping system is free of dirt and scale before circulating liquid through pump.

- E. Valves furnished by Seller:
  - 1. Inspect manual and automatic control valves, and clean bonnets and stems.
  - 2. Tighten packing glands to ensure no leakage, but allow valve stems to operate without galling.
  - 3. Replace packing in valves to retain maximum adjustment after system is determined to be complete.
  - 4. Replace packing on valves that continue to leak.
  - 5. Remove, correct, and replace bonnets that leak.
  
- F. Verify that control valve seats furnished by SELLER are free of foreign matter and are properly positioned for intended service.
  
- G. Check each electrical control circuit to verify that operation complies with the Contract Documents.
  
- H. Inspect each pressure gauge, thermometer, and other instruments furnished by SELLER for calibration. Replace items that are defaced, broken, or that read incorrectly.

### 3.3 ATTACHMENTS

- A. The attachment listed below, following this Section's "End of Section" designation, is a part of this Specification Section.
  - 1. Seller's Installation Certification Form (one page).

+ + END OF SECTION + +

## SELLER'S INSTALLATION CERTIFICATION

Contract No. and Name: \_\_\_\_\_

Equipment Specification Section: \_\_\_\_\_

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

General Contractor: \_\_\_\_\_

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

Manufacturer of Equipment: \_\_\_\_\_

The undersigned Seller of the equipment or system described above hereby certifies that Seller has checked the installation of the equipment or system and that the equipment or system, as specified in the Contract Documents, has been provided in accordance with the manufacturer's recommendations and the Contract Documents, and that the trial operation of the equipment or system has been satisfactory.

Comments: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supplier Name (print)

\_\_\_\_\_  
Signature of Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller Name (print)

\_\_\_\_\_  
Signature of General Contractor

## SECTION 01 77 19

### CLOSEOUT REQUIREMENTS

#### PART 1 – GENERAL

##### 1.1 GENERAL

- A. Scope:
  - 1. Section Includes.
    - a. Procedures required before placing the Goods into continuous operation.
    - b. Final inspection.
    - c. Request for final payment and acceptance of the Goods and Special Services.
  
- B. Visual Inspection of the Goods Upon Delivery:
  - 1. Perform in accordance with Paragraph 8.01.B of the General Conditions and Section 01 65 00, Product Delivery Requirements.

##### 1.2 BEFORE PLACING THE GOODS INTO CONTINUOUS OPERATION

- A. General:
  - 1. Prior to placing each item of equipment into continuous operation, perform the following for the associated Goods:
    - a. Materials and equipment to be placed into continuous service shall be fully ready for their intended use, including full operating and monitoring capability in automatic and manual modes.
    - b. In conjunction with the installing construction contractor(s), complete field quality control testing, including testing at the location where the Goods are installed, as indicated in Specifications Sections for individual materials and equipment items. Submit results of, and obtain BUYER's and ENGINEER's acceptance of, field quality control tests required by the Contract Documents.
    - b. Startup and checkout shall be completed in accordance with: (1) Section 01 75 11, Startup and Checkout Procedures; (2) requirements of the Specifications for the various materials and equipment to be placed into continuous operation; and (3) equipment manufacturer's checkout and startup instructions and recommendations.
    - c. Installing construction contractor(s) shall perform "cleaning for substantial completion" as indicated in their respective construction contract(s). SELLER shall complete cleanup of debris and rubbish (if any) generated by SELLER's Special Services.
    - d. Spare parts, extra materials, and tools shall be delivered and accepted in accordance with Section 01 78 43, Spare Parts and Extra Materials, and

the Specifications for the various materials and equipment (condition precedent to qualifying for payment for the delivery of the Goods to the Point of Destination).

- e. Training of City's operations and maintenance personnel shall be completed in accordance with Section 01 79 23, Instruction of Operations and Maintenance Personnel. (Condition precedent to completion of Special Services associated with the first GAC pressure contactor unit.)
- f. Submit and obtain BUYER's and ENGINEER's acceptance of final operations and maintenance manuals. (Condition precedent to completion of Special Services associated with the first GAS pressure contactor unit.)
- g. Installing construction contractor(s) shall obtain and submit to ENGINEER all required permits, inspections, and approvals of authorities having jurisdiction for the equipment and systems to be placed into continuous operation.

### 1.3 FINAL INSPECTION

#### A. Final Inspection – General:

- 1. Prior to requesting final inspection, verify that all of the Contract requirements for all the Goods and Special Services are fully complied with and that Seller is ready for final payment. Partial checklist for this purpose is attached to this Specifications Section.
- 2. Sample letter for Seller to request final inspection is attached to this Specifications Section. Use the model language of the sample letter, modified to suit the Project.

#### B. Final Inspection: The following augments the requirements of Paragraph 8.01.C of the General Conditions:

- 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 indicated, and BUYER's and ENGINEER's receipt of a letter from SELLER requesting final inspection, Project owner, City, installing construction contractor, and ENGINEER will promptly make a final inspection.
- 2. If, on the basis of the final inspection, the Goods and Special Services comply with the Contract Documents, ENGINEER will issue written notice thereof to Project owner, installing construction contractor, and City, which will constitute ENGINEER's acceptance of the Goods and Special Services.
- 3. If, on the basis of the final inspection, the Goods or Special Services are non-conforming, ENGINEER will identify to BUYER the non-conformity in writing, BUYER shall forward such notice to SELLER, and SELLER shall promptly remedy the non-conformity.

### 1.4 REQUEST FOR FINAL PAYMENT AND ACCEPTANCE OF THE GOODS AND SPECIAL SERVICES

- A. Procedure:
1. Submit request for final payment in accordance with the Agreement and General Conditions, as may be modified by the Supplementary Conditions, and using procedure specified in Section 01 29 76, Progress Payment Procedures, and this Section.
  2. Acceptance of the Goods and Special Services:
    - a. Through BUYER, ENGINEER will issue a notice of acceptability of the Goods and Special Services in accordance with Paragraph 8.01.C of the General Conditions and Paragraph 1.3.B.3 of this Section.
    - b. Nothing other than receipt of such notice of acceptability from ENGINEER (through BUYER) constitutes acceptance of the Goods and Special Services.
    - c. Unless decided otherwise by Project owner and ENGINEER, form of acceptance will be EJCDC® C-626, "Notice of Acceptability of Work", (2014 edition).
- B. Request for final payment shall include:
1. Documents required for progress payments in Section 01 29 76, Progress Payment Procedures.
  2. Documents required in the General Conditions, as may be modified by the Supplementary Conditions.
  3. List of all disputes that SELLER believes are unsettled.
  4. Consent of Surety to Final Payment:
    - a. Acceptable form includes AIA® G707™, "Consent of Surety to Final Payment" (1994 or later edition), or other form acceptable to Project owner and BUYER.
  5. Releases or Waivers of Lien Rights:
    - a. When submitting releases or waivers of Lien rights, furnish release or waiver by CONTRACTOR and each Subcontractor and Supplier that provided SELLER, subcontractor, and supplier with labor, material, or equipment totaling \$1,000 or more for the Contract.
    - b. Furnish final list of subcontractors and suppliers, using the form included in Section 01 29 76, Progress Payment Procedures, indicating final amount of the associated subcontract or purchase order for each. Include on the list all lower-tier subcontractors and suppliers retained by subcontractors and suppliers with direct subcontract or purchase order with SELLER.
    - c. Each release or waiver of Lien shall be signed by an authorized representative of the entity submitting release or waiver of Lien, and shall include SELLER's, subcontractor's, or supplier's (as applicable) corporate seal, when applicable.
    - d. Release or waiver of Lien may be conditional upon receipt of final payment.
  6. Affidavits:
    - a. In lieu of the release or waiver of Liens, SELLER may submit the following, for SELLER and each subcontractor and supplier that provided

- SELLER, subcontractor, or supplier with labor, material, or equipment totaling \$1,000 or more, to Project owner's and BUYER's satisfaction:
- 1) Affidavit of payment of debts and claims. Acceptable form includes AIA® G706™, "Contractor's Affidavit of Payment of Debts and Claims" (1994 or later edition), or other form acceptable to Project owner and BUYER, and;
  - 2) Affidavit of release of Liens. Acceptable form includes AIA® G706A™, "Affidavit of Release of Liens" (1994 or later edition), or other form acceptable to Project owner and BUYER.
- b. Affidavits and supporting documents furnished under this Paragraph 1.4.B.6 shall comply with the requirements of the General Conditions, as may be modified by the Supplementary Conditions.
  - c. Each affidavit furnished shall be signed by an authorized representative of the entity furnishing the affidavit, and shall include SELLER's, subcontractor's, or supplier's (as applicable) corporate seal, when applicable.
7. Evidence satisfactory to Project owner and BUYER that all title issues have been resolved such that title to all Goods has passed to Project owner free and clear of Liens or other title defects, or will so pass upon final payment (unless such title has been furnished with the Application for Payment submitted following delivery of the Goods, as required by the General Conditions). Furnish such title for all Goods delivered following the initial delivery of the Goods, including materials and equipment furnished to remedy defective or non-conforming Goods.

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 ATTACHMENTS

- A. The documents listed below, following this Section's "End of Section" designation, are part of this Specifications Section:
1. Sample partial checklist to identify readiness for final inspection (four pages).
  2. Sample letter for Seller's use in requesting final inspection (one page).
- B. In the model language of the attached sample letter for SELLER to request final inspection, italicized language in brackets, e.g., "[*insert date*]" indicates instructions to the drafter of the letter and often indicates specific information to be inserted by SELLER; do not include bracketed, italicized text in the final version of the letter prepared for the Project. Non-italicized language in brackets is optional language; use the appropriate language to complete the actual letter for the Project and edit where required to suit the specific circumstances.

+ + END OF SECTION + +

## SAMPLE PARTIAL CHECKLIST TO IDENTIFY READINESS FOR FINAL INSPECTION

**Project:** \_\_\_\_\_

**Contract:** \_\_\_\_\_

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

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
1. All Shop Drawings, Samples, and Submittals approved by Engineer and Buyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
2. Final services completed by Seller's suppliers, including submittal of "Seller's Installation Certification" in Section 01 75 11, Checkout and Startup Procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
3. Final work completed by Seller's subcontractors (if any)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
4. Permits closed out and regulatory compliance transitioned from construction to operations (as applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
5. All outstanding change issues are addressed and all Change Proposals submitted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
6. All Claims and disputes are resolved and Seller's statement to such effect is prepared and submitted to Buyer and Engineer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
7. All non-conforming Goods and Special Services of which Seller is aware has been corrected in accordance with the Contract Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
8. Issues related to constituents of concern and potential hazardous environmental condition for which Seller is responsible (if any) have been fully addressed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
9. All spare parts, tools, and extra materials have been furnished in accordance with the Contract Documents, and documentation thereof submitted to Buyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
<i>Remarks:</i>						
10. All final operations & maintenance manuals have been submitted and accepted by Buyer and Engineer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
11. Manufacturer warranties and software license(s) furnished	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
12. Instruction and training of operations and maintenance personnel is complete and records of training submitted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
13. EEO documents and MBE/WBE/DBE utilization report(s) submitted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
14. Seller is fully demobilized from the location where the Goods are installed and where the Special Services were performed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<i>Remarks:</i>						
15. Final cleaning is complete for	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
which Seller is responsible at the location where the Goods are installed						
<i>Remarks:</i>						
16. Lien waivers or affidavits of payment obtained from Seller's subcontractors and suppliers	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Remarks:</i>						
17. Evidence of Seller's liability insurance furnished for correction period	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Remarks:</i>						
18. All other required Contract closeout documents obtained	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Remarks:</i>						

**SAMPLE LETTER FOR CONTRACTOR’S USE IN REQUESTING  
FINAL INSPECTION**

**SENT VIA E-MAIL AND U.S. CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

[Date]

[Name of Engineer’s contact person]

ARCADIS CE, Inc.

[Street address]

[City, state, postal code]

Subject:

[Project name, Contract designation]

Request for Final Inspection

Dear [addressee]:

In our opinion, all of the Goods and Special Services under the above-referenced Contract are complete and ready for final payment as of [*insert month, day, year on which final completion was achieved*]. In accordance with Paragraph 8.01.C of the General Conditions and Article 1.3 of Section 01 77 19, Closeout Requirements, we hereby request that the Buyer and Engineer schedule and perform the final inspection as soon as possible. Upon successful completion of the final inspection, we will submit our final Application for Payment accompanied by the required Contract closeout documentation in accordance with the Contract Documents.

Should you have questions or comments regarding this notice, please contact [the undersigned] [or] [*insert other contact person’s name*], at [*insert telephone number and e-mail address*].

Sincerely,

[Seller’s company name]

[Signatory name]

[Signatory’s title]

Attachments:

None

Copies:

[Buyer’s project manager]

SECTION 01 78 23

OPERATIONS AND MAINTENANCE DATA

PART 1 – GENERAL

1.1 DESCRIPTION

A. Scope:

1. This Section includes requirements for manufacturers' operations and maintenance manuals and related data to be furnished by SELLER.
2. SELLER shall submit operation and maintenance data, in accordance with this Section and in accordance with requirements elsewhere in the Contract Documents, as instructional and reference manuals by operations and maintenance personnel at the location where the Goods are installed.
3. Required operation and maintenance data groupings are listed in table(s) in Article 1.2 of this Section. At minimum, submit operation and maintenance data for:
  - a. All equipment and systems furnished by SELLER.
  - b. Valves, actuators, and related accessories furnished by SELLER.
  - c. Instrumentation and control devices furnished by SELLER.
4. For each operation and maintenance manual, submit the following:
  - a. Preliminary Submittal: Printed and bound copies of entire operation and maintenance manual, except for test data, service reports by SELLER, and submit electronic copies.
  - b. Final Submittal: Printed and bound copies of complete operations and maintenance manual, including test data and service reports by SELLER, and submit electronic copies.

1.2 SUBMITTALS

A. Closeout Submittals: Submit the following:

1. Operation and Maintenance Data:
  - a. Submit the operations and maintenance data indicated in the Contract Documents, grouped into submittals as indicated in Table 01 78 23-A:

**TABLE 01 78 23-A, REQUIRED OPERATIONS AND MAINTENANCE DATA**

<b>Name of O&amp;M Manual/Data</b>	<b>For Materials or Equipment Specified in Section(s)</b>
Granular Activated Carbon Pressure Contactors	Section 46 61 21, GAC Pressure Contactors

B. Quantity Required and Timing of Submittals:

1. Preliminary Submittal:
  - a. Printed Copies: Six copies, exclusive of copies required by SELLER.

- b. Electronic Copies: In accordance with Section 01 31 26, Electronic Communication Protocols.
  - c. Submit to ENGINEER by the earlier of: 90 days following approval of Shop Drawings and product data submittals, or 10 days prior to starting training of operations and maintenance personnel, or 10 days prior to field quality control testing at the location where the Goods are installed.
2. Final Submittal: Furnish final submittal prior to placing the first unit of the Goods into continuous operation.
- a. Printed Copies: Four copies.
  - b. Electronic Copies: In accordance with Section 01 31 26, Electronic Communication Protocols.

### 1.3 FORMAT OF PRINTED COPIES

#### A. Binding and Cover:

1. Bind each operation and maintenance manual in durable, permanent, stiff-cover binder(s), comprising one or more volumes per copy as required. Binders shall be not less than one inch wide and maximum of three inches wide. Binders for each copy of each volume shall be identical.
2. Binders shall be locking three-ring/"D"-ring type, or three-post type. Three-ring binders shall be riveted to back cover and include plastic sheet lifter (page guard) at front of each volume.
3. Do not overfill binders.
4. Covers shall be oil-, moisture-, and wear-resistant, including identifying information on cover and spine of each volume.
5. Provide the following information on cover of each volume:
  - a. Title: "OPERATING AND MAINTENANCE INSTRUCTIONS".
  - b. Name or type of material or equipment covered in the manual.
  - c. Volume number, if more than one volume is required, listed as "Volume \_\_\_ of \_\_\_", with appropriate volume-designating numbers filled in.
  - d. Name of Project and, if applicable, Contract name and number.
  - e. Name of building or structure, as applicable.
6. Provide the following information on spine of each volume:
  - a. Title: "OPERATING AND MAINTENANCE INSTRUCTIONS".
  - b. Name or type of material or equipment covered in the manual.
  - c. Volume number, if more than one volume is required, listed as "Volume \_\_\_ of \_\_\_", with appropriate volume-designating numbers filled in.
  - d. Project name and building or structure name.

#### B. Pages:

1. Print pages in operations and maintenance manual on 30-pound (minimum) paper, 8.5 inches by 11 inches in size.
2. Reinforce binding holes in each individual sheet with plastic, cloth, or metal. When published, separately-bound booklets or pamphlets are part of the manual, reinforcing of pages within booklet or pamphlet is not required.
3. Furnish each page with binding margin not less than one inch wide. Punch

each page with holes suitable for the associated binding.

C. Drawings:

1. Bind into the operation and maintenance manual drawings, diagrams, and illustrations up to and including 11 inches by 17 inches in size, with reinforcing specified for pages.
2. Documents larger than 11 inches by 17 inches shall be folded and inserted into clear plastic pockets bound into the manual. Mark pockets with printed text indicating content and drawing numbers. Include not more than three drawing sheets per pocket.

D. Copy Quality and Document Clarity:

1. Contents shall be original-quality copies. Documents in the operations and maintenance manual shall be either original manufacturer-printed documents or first-generation photocopies indistinguishable from originals. If original is in color, copies shall be in color. Manuals that contain copies that are unclear, not completely legible, off-center, skewed, or where text or drawings are cut by binding holes, are unacceptable. Pages that contain approval or date stamps, comments, or other markings that cover text or drawing are unacceptable. Faxed copies are unacceptable.
2. Clearly mark in ink to indicate all components of materials and equipment on catalog pages for ease of identification. In standard or pre-printed documents, indicate options furnished or cross out inapplicable content. Using highlighters to so indicate options furnished is unacceptable.

E. Organization:

1. Table of Contents:
  - a. Provide table of contents in each volume of each operations and maintenance manual.
  - b. In table of contents and not less than once in each chapter or section, identify materials and equipment by their functional names. Thereafter, abbreviations and acronyms may be used if their meaning is clearly indicated in a table bound at or near beginning of each volume. Using material or equipment model or catalog designations for identification is unacceptable.
3. Use dividers and indexed tabs between major categories of information, such as operating instructions, preventive maintenance instructions, and other major subdivisions of data in each manual.

#### 1.4 FORMAT OF ELECTRONIC COPIES

A. Electronic Copies of Operation and Maintenance Manuals:

1. Each electronic copy shall include all information included in the corresponding printed copy.
2. Submit electronic copies in accordance with Section 01 31 26, Electronic Communications Protocols.

3. File Format:
  - a. Files shall be in “portable document format” (PDF). Files shall be electronically searchable.
  - b. Submit separate file for each separate document in the printed copy.
  - c. Within each file, provide bookmarks for the following:
    - 1) Each chapter and subsection listed in the corresponding printed copy document’s table of contents.
    - 2) Each figure.
    - 3) Each table.
    - 4) Each appendix.
  
- B. Copies of Programming and Configuration Files:
  1. Furnish on CD or portable USB “thumb drive” copy of all software programming, such as programmable logic controller programs, prepared specifically for the Project. Third-party, licensed, commercially available software is excluded from requirements of this Article; submit copies of commercially-available, licensed, third-party software, where required, in accordance with the Contract Documents.
  2. Submit on CD or portable USB “thumb drive” copies of system configuration prepared specifically for the Project, such as plant monitoring system and SCADA display configurations.
  3. Submit programming and configuration files concurrently with electronic copies of operation and maintenance data.

## 1.5 CONTENT

- A. General:
  1. Prepare each operations and maintenance manual specifically for the Project. Include in each manual all pertinent instructions, as-built drawings as applicable, bills of materials, technical bulletins, installation and handling requirements, maintenance and repair instructions, and other information required for complete, accurate, and comprehensive data for safe and proper operation, maintenance, and repair of materials and equipment furnished for the Project. Include in manuals specific information required in the Specification Section for the material or equipment, data required by Laws and Regulations, and data required by authorities having jurisdiction.
  2. Completeness and Accuracy:
    - a. Operation and maintenance manuals that include language stating or implying that the manual’s content may be insufficient or stating that the manual’s content is not guaranteed to be complete and accurate are unacceptable.
    - b. Operations and maintenance manuals shall be complete and accurate.
    - c. Operation and maintenance manuals shall indicate the specific alternatives and features furnished, and the specific operation and maintenance provisions for the material or equipment furnished.
  3. Submit complete, detailed written operating instructions for each material or

equipment item including: function; operating characteristics; limiting conditions; operating instructions for start-up, normal and emergency conditions; regulation and control; operational troubleshooting; and shutdown. Also include, as applicable, written descriptions of alarms generated by equipment and proper responses to such alarm conditions.

- B. Submit written explanations of safety considerations relating to operation and maintenance procedures.
- C. Submit complete, detailed, written preventive maintenance instructions including all information and instructions to keep materials, equipment, and systems properly lubricated, adjusted, and maintained so that materials, equipment, and systems function economically throughout their expected service life. Instructions shall include:
  - 1. Written explanations with illustrations for each preventive maintenance task such as inspection, adjustment, lubrication, calibration, and cleaning. Include pre-startup checklists for each equipment item and maintenance requirements for long-term shutdowns.
  - 2. Recommended schedule for each preventive maintenance task.
  - 3. Lubrication charts indicating recommended types of lubricants, frequency of application or change, and where each lubricant is to be used or applied.
  - 4. Table of alternative lubricants.
  - 5. Troubleshooting instructions.
  - 6. List of required maintenance tools and equipment.
- D. Submit complete bills of material or parts lists for materials and equipment furnished. Lists or bills of material may be furnished on a per-drawing or per-equipment assembly basis. Bills of material shall indicate:
  - 1. Manufacturer's name, address, telephone number, fax number, and Internet website address.
  - 2. Manufacturer's local service representative's or local parts supplier's name, address, telephone number, fax number, Internet website address, and e-mail addresses, when applicable.
  - 3. Manufacturer's shop order and serial number(s) for materials, equipment or assembly furnished.
  - 4. For each part or piece include the following information:
    - a. Parts cross-reference number. Cross-reference number shall be used to identify the part on assembly drawings, Shop Drawings, or other type of graphic illustration where the part is clearly shown or indicated.
    - b. Part name or description.
    - c. Manufacturer's part number.
    - d. Quantity of each part used in each assembly.
    - e. Current unit price of the part at the time the operations and maintenance manual is submitted. Price list shall be dated.
- E. Submit complete instructions for ordering replaceable parts, including reference

numbers (such as shop order number or serial number) that will expedite the ordering process.

- F. Submit manufacturer's recommended inventory levels for spare parts, extra stock materials, and consumable supplies for the initial two years of operation. Consumable supplies are items consumed or worn by operation of materials or equipment, and items used in maintaining the operation of material or equipment, including items such as lubricants, seals, reagents, and testing chemicals used for calibrating or operating the equipment. Include estimated delivery times, shelf life limitations, and special storage requirements.
- G. Submit manufacturer's installation and operation bulletins, diagrams, schematics, and equipment cutaways. Avoid submitting catalog excerpts unless they are the only document available showing identification or description of particular component of the equipment. Where materials pertain to multiple models or types, mark the literature to indicate specific material or equipment supplied. Marking may be in the form of checking, arrows, or underlining to indicate pertinent information, or by crossing out or other means of obliterating information that does not apply to the materials and equipment furnished.
- H. Submit original-quality copies of each approved and accepted Shop Drawing, product data, and other submittal, updated to indicate as-installed condition. Reduced drawings are acceptable only if reduction is to not less than one-half original size and all lines, dimensions, lettering, and text are completely legible on the reduction.
- I. Submit complete electrical schematics and wiring diagrams, including complete point-to-point wiring and wiring numbers or colors between all terminal points.
- J. Submit copy of warranty bond and service contract as applicable.
- K. When copyrighted material is used in operations and maintenance manuals, obtain copyright holder's written permission to use such material in the operation and maintenance manual.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 78 36

### WARRANTIES

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. This section describes general requirements for warranties required in the various Specifications.
2. Provisions on the Contract's correction period, SELLER's general warranties and guarantees, and SELLER's warranty of title are in the General Conditions, as may be modified by the Supplementary Conditions.
2. This section includes general requirements for:
  - a. Manufacturer's standard warranties.
  - b. Manufacturer's special warranties (where required).
  - c. Implied warranties.
  - d. Commencement and duration of warranties.

##### 1.2 SUBMITTALS

###### A. General:

1. For each item of equipment furnished under the Contract, submit manufacturer's standard warranty, regardless of whether such warranty or submittal thereof is required by the associated Specifications for that item. Submit such warranties for materials where such submittal is required in the Specifications for the material.
2. For each item of material or equipment where manufacturer's special (or extended) warranty is required by the Contract Documents, submit appropriate special warranty that complies with the Contract Documents.
3. Manufacturer's warranties shall be specifically endorsed solely to City by the entity issuing such warranty.
4. Submit manufacturers' standard warranties and special warranties as submittals in accordance with Schedule of Submittals accepted by ENGINEER.

##### 1.3 MANUFACTURERS' WARRANTIES FOR MATERIALS AND EQUIPMENT

###### A. Warranty Types:

1. Required by the General Conditions:
  - a. Warranties specified for materials and equipment shall be in addition to, and run concurrent with, SELLER's general warranties and guarantees (required by the General Conditions) and requirements for the Contract's correction period.

- b. Disclaimers and limitations in specific materials and equipment warranties do not limit SELLER's general warranties and guarantees as set forth in the General Conditions, nor does such affect or limit SELLER's performance obligations under the correction period set forth in the General Conditions (as may be modified by the Supplementary Conditions).
  2. Material or equipment manufacturer's standard warranty is pre-printed, written warranty published by item's manufacturer and specifically endorsed by manufacturer to City.
  3. Special warranty is written warranty that either extends the duration of material or equipment manufacturer's standard warranty or provides other, increased rights to City. Where the Contract Documents indicate specific requirements for warranties that differ from the manufacturer's standard warranty for that item, special warranty is implied.
- B. Requirements for Special Warranties:
1. Submit written special warranty document that contains appropriate provisions and identification, ready for execution by material or equipment manufacturer and City. Submit draft warranty with submittals required prior to fabrication and shipment of the item from the manufacturer's facility.
  2. Manufacturer's Standard Form: Modified to include Project-specific information and properly executed by product manufacturer and other entities as appropriate.
  3. Specified Form: When specified forms for special warranties are included in the Contract Documents, prepare written document, properly executed by item manufacturer and City, using the required form.
  4. Refer to the Specifications for content and requirements for submitting special warranties.

#### 1.4 IMPLIED WARRANTIES

- A. Warranty of Title and Intellectual Property Rights:
1. Except as may be otherwise indicated in the Contract Documents, implied warranty of title required by Laws and Regulations is applicable to the Goods and to materials and equipment incorporated therein.
  2. Provisions on intellectual property rights, including patent fees and royalties, are in the General Conditions, as may be modified by the Supplementary Conditions.
- B. Warranty of Merchantability:
1. Notwithstanding any other provision of the Contract to the contrary, implied warranties of merchantability required by Laws and Regulations apply to the Goods, including the materials and equipment incorporated therein.
- C. Warranty of Fitness-for-Purpose:

1. Implied warranty of fitness-for-purpose for materials and equipment to be incorporated into the Goods is hereby disclaimed by Project owner, City, and SELLER.
2. When manufacturer is aware of, or has reason to be aware of, specified materials or features of the Goods that are contrary to the intended use, purpose, service, application, or environment in which the material or equipment item will be used, submit request for interpretation in accordance with Section 01 26 00, Contract Modification Procedures. Where appropriate, such request for interpretation shall indicate the apparent discrepancy and propose appropriate, alternative materials or equipment.

#### 1.5 COMMENCEMENT AND DURATION OF WARRANTIES

##### A. Commencement of Warranties:

1. Contract correction period and SELLER's general warranties commence on the date that the Goods are placed into continuous, successful operation in accordance with the Contract Documents
2. Manufacturers' general warranties and special warranties commence running on the date that the associated item is placed into continuous, successful operation in accordance with the Contract Documents, as acceptable to ENGINEER, Project owner, and City. In no event shall special warranties commence running prior to ENGINEER's review and acceptance of special warranty submittal for the item.
3. Implied warranties commence in accordance with Laws and Regulations.

##### C. Duration of Warranties:

1. Duration of correction period is in accordance with the General Conditions, as may be modified by the Supplementary Conditions.
2. Duration of SELLER's general warranties and guarantees is in accordance with Laws and Regulations.
3. Duration of manufacturers' general warranties is in accordance with the applicable standard warranty document accepted by ENGINEER.
4. Duration of required manufacturers' special warranties shall be in accordance with the requirements of the Contract Documents for the subject item.
5. Duration of implied warranties shall be in accordance with Laws and Regulations.

#### PART 2 – PRODUCTS (NOT USED)

#### PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 78 43

### SPARE PARTS AND EXTRA MATERIALS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. This Section includes administrative and procedural requirements for furnishing spare parts, extra materials, maintenance supplies, and special tools required for maintenance (collectively, “spare parts and extra materials”) required by the Contract Documents.
2. SELLER shall furnish spare parts, extra materials, and associated information, for materials and equipment furnished in accordance with the Contract Documents. Furnish such items in accordance with the requirements of this Section and the Specifications sections in which such items are indicated.
3. SELLER shall be responsible for loss and damage to spare parts and extra materials until such items are received by City at the Point of Destination. Coordinate with installing construction contractor responsible for unloading the Goods from SELLER’s delivery vehicles for handling of spare parts and extra materials at the Point of Destination and delivery of same to City’s storage facility for spare parts and extra materials. City will not have responsibility for care and custody of such items until the items are delivered to the City’s storage facility and documentation of such delivery is furnished in acceptable form.
4. Promptly replace spare parts and extra materials furnished by City to SELLER or installing construction contractor for use in remedying defective or non-conforming Goods.

###### B. List of Spare Parts and Extra Materials:

1. With the Shop Drawings and product data submittals for each Specifications section, submit a complete listing of spare parts and extra materials required for maintenance for two years of operation, together with unit prices in current United States funds, and source(s) of supply for each.
2. Also include listing of spare parts and extra materials, with pricing and sources, in the operations and maintenance data submitted in accordance with Section 01 78 23, Operations and Maintenance Data.

##### 1.2 SUBMITTALS

###### A. Maintenance Material Submittals: Submit the following:

1. Spare Parts and Extra Materials:

- a. Furnish to City in accordance with requirements of this Section, and the Specifications section in which the spare parts and extra materials are specified.
- 2. Transfer Documentation: For each delivery of spare parts and extra materials, submit to ENGINEER the following:
  - a. Submit, on SELLER's letterhead, a letter of transmittal for spare parts and extra materials furnished under each Specifications section. Letter of transmittal shall accompany spare parts and extra materials. Do not furnish letter of transmittal separate from associated spare parts and extra materials.
  - b. Furnish three original, identical, signed letters of transmittal for each delivery of spare parts and extra materials furnished under each Specifications section. Upon delivery of specified quantities and types of spare parts and extra materials to City at the Point of Destination, designated person from City will countersign each original letter of transmittal indicating City's receipt of spare parts and extra materials in the quantity, type, and quality required by the Contract Documents. City will retain one fully-signed original, installing construction contractor to whom the Contract is assigned will retain one fully-signed original; and SELLER shall retain one fully-signed original for SELLER's records.. Submit one fully-signed copy to ENGINEER in accordance with requirements of Section 01 31 26, Electronic Communication Protocols.
  - c. Letter of transmittal shall include the following:
    - 1) Information required for letters of transmittal in Section 01 33 00, Submittal Procedures.
    - 2) Transmittal shall list spare parts and extra materials furnished under each Specifications Section. List each individual part, material, equipment item, tool, and product and the associated quantity furnished.
    - 3) Include space for countersignature by City as follows: space for signature, space for printed name, and date.

### 1.3 DELIVERY, STORAGE, AND HANDLING

- A. Packaging and Labeling of Spare Parts and Extra Materials:
  - 1. Furnish spare parts and extra materials in manufacturer's unopened cartons, boxes, crates, or other original, protective covering suitable for preventing corrosion and deterioration for maximum length of storage normally anticipated by manufacturer.
  - 2. Packaging of spare parts and extra materials shall be clearly marked and identified with name of manufacturer, applicable material or equipment, part number, part description, and part location in the equipment or system.
  - 3. Protect and package spare parts and extra materials for maximum shelf life normally anticipated by manufacturer.
- B. Storage Prior to Delivery to City at Point of Destination:

1. Prior to furnishing spare parts and extra materials to City, store spare parts and extra materials in accordance with the Contract Documents and manufacturers' recommendations.

C. Procedure for Delivery to City:

1. Deliver spare parts and extra materials to City's permanent storage rooms at the Point of Destination or area(s) at the Point of Destination designated by City. Installing construction contractor to whom Contract is assigned will assist SELLER by offloading spare parts and extra materials from SELLER's delivery vehicles and, under SELLER's direction, transporting items to City's storage facility at the Point of Destination.
2. When spare parts and extra materials are delivered, SELLER and City will mutually inventory the spare parts and extra materials delivered to verify compliance with the Contract Documents regarding quantity, part numbers, and quality.
3. Additional procedures for delivering spare parts and extra materials to City, if required, will be developed by ENGINEER and complied with by SELLER and installing construction contractor to which the Contract is assigned.
4. SELLER shall reimburse City, Project owner, and installing construction contractor for all costs and expenses incurred by City, Project owner, and installing construction contractor, including professional services, for delivery of inadequate, incorrect, defective, or non-conforming spare parts and extra materials. Project owner and BUYER may withhold such amounts from payments due SELLER via set-offs in accordance with the Contract Documents.

D. Delivery Time and Eligibility for Payment:

1. Deliver to City spare parts and extra materials at the time the other Goods are furnished at the Point of Destination. In the event of partial shipments of the Goods, proportionately deliver spare parts and extra materials with each delivery of the Goods, to provide for adequate inventory of spare parts and extra materials at City's facility when each delivery of equipment is placed into continuous operation.
2. Spare parts and extra materials for a given item of equipment shall be furnished in accordance with the Contract Documents prior to such item of equipment being eligible to be placed into continuous operation.
3. Spare parts and extra materials are not eligible for payment until delivered to City at the Point of Destination and SELLER's receipt of City's countersignature on letter of transmittal documenting delivery and acceptance of the associated spare parts and extra materials.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

++ END OF SECTION ++

## SECTION 01 79 23

### INSTRUCTION OF OPERATIONS AND MAINTENANCE PERSONNEL

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. Scope:
1. SELLER shall furnish services of SELLER's operation and maintenance training specialists to instruct City's personnel in recommended operating and maintenance procedures for materials and equipment furnished, in accordance with the Contract Documents.
  2. Furnish a combination of classroom and field training at the location where the Goods are installed, unless otherwise required elsewhere in the Contract Documents.
  3. City reserves the right to record training sessions on video for City's later use in instructing City's personnel.
- B. Scheduling of Training Sessions:
1. General:
    - a. SELLER shall coordinate with installing construction contractor to which the Contract is assigned the required training, together with start-up and initial operation of systems and equipment on days and times, and in manner, acceptable to City, in accordance with the Contract Documents.
    - b. Training may be required outside of normal business hours to accommodate schedules of operations and maintenance personnel. Furnish training services at the required days and times at no additional cost to BUYER.
  2. Prerequisites to Training:
    - a. Training of facility operations and maintenance personnel shall commence after preliminary operation and maintenance data has been submitted and accepted by ENGINEER, and services required in Section 01 75 11, Checkout and Startup Procedures, is complete.
    - b. At option of City or ENGINEER, training may be allowed to take place before, during, or after equipment startup.
  3. Training Schedule Submittal:
    - a. Training Schedule Required: SELLER shall prepare and submit proposed training schedule for review and acceptance by ENGINEER and City. Proposed training schedule shall show and indicate all training required in the Contract Documents, and shall demonstrate compliance with specified training requirements relative to number of hours of training for various elements of the Project, number of training sessions, and scheduling.

- b. Training Schedule Coordination: When Project has multiple prime contracts, installing construction contractors will be required to comply with requirements similar to those of this Section. All installing construction contractors will coordinate with the SELLER, through the general contractor (installing construction contractor to which the Contract will be assigned) in developing a single training schedule submittal for the entire Project, to be submitted by the general contractor. SELLER and installing construction contractors shall implement training in accordance with the approved training schedule.
- c. Timing of Training Schedule Submittal: Submit information for general contractor's use in preparing the initial training schedule not less than 60 days before scheduled start of first training session. Submit information for final training schedule, incorporating revisions in accordance with comments of BUYER, City, and ENGINEER, not later than 40 days prior to starting the first training session.
- d. City reserved the right to modify personnel availability for training in accordance with process or emergency needs at the facility.

## 1.2 QUALITY ASSURANCE

### A. Qualifications:

- 1. Manufacturer's Instructors:
  - a. Shall be factory-trained by manufacturer of material or equipment.
  - b. Manufacturer's instructors shall be proficient and experienced in performing training of the type required.
  - c. Instructors shall be proficient in spoken and written English language.
  - d. Qualifications of instructors are subject to acceptance by ENGINEER. If ENGINEER does not accept qualifications of proposed instructor, furnish services of replacement instructor with acceptable qualifications.

## 1.3 SUBMITTALS

### A. Action Submittals: Submit the following:

- 1. Information for Training Schedule: Detailed schedule of training sessions, demonstrating compliance with number of training sessions, hours required in the Contract Documents, and complying with the Contract Times. Submit training schedule information to BUYER submittals in accordance with time frames specified in this Section.

### B. Informational Submittals: Submit the following:

- 1. Lesson Plan: Acceptable lesson plan for training on each material or equipment item, in accordance with Table 01 79 23-A and the Contract Documents. Lesson plan shall comply with requirements of this Section as may be supplemented by Specifications Sections where materials and equipment are specified. Include with lesson plan copy of handouts that will be used during

training sessions. Furnish lesson plan submittals in accordance with time frames specified in this Section.

2. Qualifications:
  - a. Credentials of manufacturer's proposed operations and maintenance instructor(s). Credentials shall demonstrate compliance with requirements of this Section and shall include brief resume' and specific details of instructor's operating, maintenance, and training experience relative to the specific material and equipment for which instructor will provide training.
  
- C. Closeout Submittals: Submit the following:
  1. Trainee sign-in sheets for each training session. Submit to City's training coordinator with copy to ENGINEER.

#### 1.4 LESSON PLAN

- A. SELLER's lesson plan shall describe specific instruction topics, system components for which training will be furnished, and training procedures. Handouts, if any, to be used in training shall be included with the lesson plan. Describe in lesson plan "hands-on" demonstrations planned for training sessions.
  
- B. Submit acceptable lesson plan not less than 14 days prior to starting associated training.
  
- C. Indicate in lesson plan estimated duration of each training segment.
  
- D. Lesson plan shall include the following:
  1. Material and Equipment Overview (required for all types of operations and maintenance training):
    - a. Describe material and equipment's operating (process) function and performance objectives.
    - b. Describe material and equipment's fundamental operating principles and dynamics.
    - c. Identify equipment's mechanical, electrical, and electronic components and features. Group related components into subsystems and describe function of subsystem and subsystem's interaction with other subsystems.
    - d. Identify all support materials and equipment associated with operation of subject equipment, such as air intake filters, valve actuators, motors, and other appurtenant items and equipment.
    - e. Identify and describe safety precautions and potential hazards related to operation.
    - f. Identify and describe in detail safety and control interlocks.
  2. Operations Personnel Training:
    - a. Material and Equipment Overview: As described in Paragraph 1.4.D.1 of this Section.
    - b. Operation:

- 1) Describe operating principles and practices.
  - 2) Describe routine operating, startup, and shutdown procedures.
  - 3) Describe abnormal or emergency startup, operating, and shutdown procedures that may apply.
  - 4) Describe alarm conditions and responses to alarms.
  - 5) Describe routine monitoring and recordkeeping procedures.
  - 6) Describe recommended housekeeping procedures.
  - c. Troubleshooting:
    - 1) Describe how to determine if corrective maintenance or an operating parameter adjustment is required.
3. Mechanical Maintenance Training:
- a. Material and Equipment Overview: As described in Paragraph 1.4.D.1 of this Section.
  - b. Material and Equipment Preventive Maintenance:
    - 1) Describe preventative maintenance inspection procedures required to:
      - a) Inspect materials and equipment in operation.
      - b) Identify potential trouble symptoms and anticipate breakdowns.
      - c) Forecast maintenance requirements (predictive maintenance).
    - 2) Define recommended preventative maintenance intervals for each component.
    - 3) Describe lubricant and replacement part recommendations and limitations.
    - 4) Describe appropriate cleaning practices and recommend intervals.
    - 5) Identify and describe use of special tools required for maintenance of materials and equipment.
    - 6) Describe component removal, installation, and disassembly and assembly procedures.
    - 7) Perform “hands-on” demonstrations of preventive maintenance procedures.
    - 8) Describe recommended measuring instruments and procedures, and provide instruction on interpreting alignment measurements, as appropriate.
    - 9) Define recommended torquing, mounting, calibrating, and aligning procedures and settings, as appropriate.
    - 10) Describe recommended procedures to check and test equipment following corrective maintenance.
  - c. Equipment Troubleshooting:
    - 1) Define recommended systematic troubleshooting procedures.
    - 2) Provide component-specific troubleshooting checklists.
    - 3) Describe applicable materials and equipment testing and diagnostic procedures to facilitate troubleshooting.
    - 4) Describe common corrective maintenance procedures with “hands-on” demonstrations.
4. Instrumentation/Controls and Electrical Maintenance Training:
- a. Materials and Equipment Overview: As described in Paragraph 1.4.D.1 of this Section.

- b. Preventative Maintenance and Troubleshooting of Instrumentation and Control Systems: In accordance with requirements for Paragraph 1.4.D.3 of this Section.

## 1.5 TRAINING AIDS

- A. Manufacturer's instructor shall incorporate training aids as appropriate to assist in the instruction. Furnish handouts of text, tables, graphs, and illustrations as required. Other appropriate training aids include:
  - 1. Audio-visual aids, such as videos, Microsoft PowerPoint presentations, overhead transparencies, posters, drawings, diagrams, catalog sheets, or other items.
  - 2. Equipment cutaways and samples, such as spare parts and damaged equipment.
  - 3. Tools, such as repair tools, customized tools, and measuring and calibrating instruments.
- B. Handouts:
  - 1. Manufacturer's instructor shall distribute and use descriptive handouts during training. Customized handouts developed especially for training for the Project are encouraged.
  - 2. Photocopied handouts shall be good quality and completely legible.
  - 3. Handouts should be coordinated with the instruction, with frequent references made to the handouts.
  - 4. Provide not less than five copies of each handout for each training session.
- C. Audio-visual Equipment: Training provider shall provide audio-visual equipment required for training sessions. If suitable equipment is available at the location of where the Goods are installed, City may make available City's audio-visual equipment; however, do not count on City providing audio-visual equipment. Audio-visual equipment that training provider shall provide, as required, includes:
  - 1. Laptop computer, presentation software, and suitable projector.
  - 2. As required, extension cords and spare bulb for projector.
  - 3. Projection screen.

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 TRAINING DELIVERY

- A. Training Delivery – General:
  - 1. Instructors shall be fully prepared for the training sessions. Training delivery shall be communicative, clear, and proceed according to lesson plan accepted by ENGINEER, with lesson content appropriate for trainees. If CITY or

ENGINEER deems that training delivery does not to comply with the Contract Documents, training shall be postponed, rescheduled, and re-performed in acceptable manner at no additional cost to CITY.

2. Trainee Sign-in Sheets: In format acceptable to CITY, furnish sign-in sheet for trainees for each session. Sign-in sheets shall include the Project name, equipment or system for which training was furnished, and type of training (e.g., operations, mechanical maintenance, instrumentation/controls maintenance, or other), and name of each trainee. Upon completion of training, submit copy of each sign-in sheet as indicated in Article 1.3 of this Section.

B. "Hands-on" Demonstrations:

1. Manufacturer's instructor shall present "hands-on" demonstrations of operations and maintenance of materials and equipment for each training session, in accordance with lesson plan accepted by ENGINEER.
2. SELLER and manufacturer shall furnish tools necessary for demonstrations.

3.2 TRAINING SCHEDULE

- A. Manufacturer shall furnish not less than the hours of training and number of sessions indicated in Table 01 79 23-A of this Section. Travel time and expenses are responsibility of manufacturer and are excluded from required training time indicated in the Contract Documents.

B. Shifts and Training Sessions Required:

1. Operations at the Site take place 24 hours per day, divided into three shifts as follows: day, evening, and night shift.
2. Training Sessions:
  - a. Operators: Provide two identical training sessions, coordinated with City to cover all operators.
  - b. Mechanical Maintenance: Provide two identical training sessions for indicated equipment.
  - c. Instrument/Controls and Electrical Maintenance: Provide two identical training sessions.

**TABLE 01 79 23-A, TRAINING SUMMARY TABLE**

Material or Equipment	Specification Section	Total Training Time (hours)	Training Sessions Required		
			Operations	Mechanic Maint.	Instrument/ Controls & Electrical Maint.
GAC Pressure Contactors	Section 46 61 21	16	2 sessions each 4 hrs	2 sessions each 3 hrs	2 sessions each 1 hr

++ END OF SECTION ++

## SECTION 46 61 21

### GAC PRESSURE CONTACTORS

#### PART 1 - GENERAL

##### 1.1 DESCRIPTION

###### A. Scope:

1. SELLER shall provide all labor, materials, equipment, incidentals, and services as shown, specified, and required to furnish granular activated carbon (GAC) pressure contactors. Goods and Special Services shall include the following:
  - a. Pressure contactor adsorbers with internals for carbon retention.
  - b. Pressure contactor influent, effluent, and backwash piping with valves.
  - c. Carbon fill and discharge piping with valves.
  - d. Vent and pressure relief piping.
  - e. Water piping and utility connections.
  - f. Accessories specified in this Section.
  - g. Special Services as set forth in this Section, in the Agreement, Division 01 Specifications, and elsewhere in the Contract Documents.
2. SELLER shall provide advice, recommendations, training, and guidance to assist installing construction contractors that will handle the Goods, (including off-loading from SELLER's delivery vehicles), install the Goods, and assist and cooperate with installing construction contractor during checkout, startup, field quality control testing, and other activities. SELLER shall furnish training for City's personnel at the location where the Goods are installed.
3. Installing construction contractor shall be responsible for coordination of all interfaces with installing contractor's subcontractors and SELLER to achieve the operation of the completed system as required by the Contract Documents and the construction contract documents.
4. Due to the significant public health and safety concerns associated with completing the Project in a timely manner, as set forth in the Invitation for Bids, SELLER is strongly encouraged to do its utmost to comply with the Contract Times and all its contractual obligations in an expedient, efficient manner, well-coordinated by SELLER with the BUYER, ENGINEER, installing construction contractors, and City.

###### B. Coordination:

1. SELLER shall coordinate supply and delivery of the Goods and Special Services with installing construction contractors, Engineer, and City.
2. Although SELLER's Contract will not be assigned to an installing construction contractor, SELLER is nevertheless responsible, as an explicit obligation under the Contract, for coordinating fully and properly with the

- installing construction contractors. Principal coordination shall be with the General Contractor retained by BUYER, but SELLER shall also communicate with and coordinate with other installing contractors retained by BUYER for installing the Goods, including Electrical Contractor, Plumbing Contractor, and HVAC Contractor.
3. SELLER shall communicate directly with the installing construction contractors, copying BUYER and ENGINEER on such communications when in writing.
  4. SELLER shall fully communicate and coordinate with installing construction contractors regarding:
    - a. Delivery of the Goods to the Point of Destination and unloading the Goods from SELLER's delivery vehicles.
    - b. Handling, storing, and installing the Goods.
    - c. Scheduling and performance of SELLER's Special Services.
    - d. Perform Special Services in accordance with the Contract Times and the installing General Contractor's construction progress schedule.
  5. Should SELLER fail to properly coordinate and communicate with the installing construction contractors to the extent that furnishing of the Goods or Special Services is delayed, SELLER will be subject to damages and set-offs in accordance with the Agreement.

## 1.2 REFERENCES

- A. Comply with applicable provisions and recommendations of the following, except as otherwise shown or specified.
  1. Standards of the Hydraulic Institute.
  2. American National Standards Institute.
  3. American Society of Mechanical Engineers.
  4. American Society of Testing Materials (ASTM).
  5. ANSI/NSF Standard Drinking Water System Components – Health Effects.
  6. American Water Works Association (AWWA) Standards.
  7. U.S. Food and Drug Administration.
  8. Steel Structures Painting Council Surface preparation Specifications and National Association of Corrosion Engineers.

## 1.3 QUALITY ASSURANCE

- A. Seller's Qualifications:
  1. SELLER shall have not less than five years of experience manufacturing GAC pressure contactors for public drinking water treatment applications.
  2. Upon request of BUYER or ENGINEER, submit documentation of not less than five installations in satisfactory operation for 40,000-pound vertical pressure contactors of size similar to the required Goods. Each installation shall be at a separate public drinking water treatment facility and shall have not less than two pressure contactors per facility. For each installation, furnish to ENGINEER: name of facility, quantity and size of pressure contactors furnished, name and complete contact information of facility

owner, name and contact information of the engineer-of-record for the project, and approximate dollar-value of the equipment furnished.

B. Pre-Submittal Conference:

1. Refer to Specifications Section 01 33 00, Submittal Procedures, for requirements for the pre-submittal conference to be attended by SELLER and others.

#### 1.4 SUBMITTALS

A. Action Submittals: Submit the following:

1. Shop Drawings:
  - a. Dimensioned layout and section drawings showing pressure contactors and all piping, ports, and appurtenances, including contactor influent, contactor effluent, backwash waste, and backwash supply as well as GAC exchange piping and pipe connection locations.
  - b. System drawings (including dimension and materials of construction) showing the following:
    - 1) Pressure contactor construction including supports.
    - 2) Pressure contactor access.
    - 3) Pressure contactor ports and nozzles.
    - 4) Pressure contactor coating/lining and paint.
    - 5) Normal GAC media bed depth and GAC media volume.
    - 6) Available height for bed expansion during backwash.
    - 7) Underdrain collection assembly.
    - 8) Piping, valves, and fittings.
    - 9) Pressure gauges.
    - 10) Differential pressure sensor.
2. System weights, including empty pressure contactor weights, pressure contactor weights after installation of GAC media, and maximum pressure contactor weights after installation of GAC media and filling pressure contactors with water.
3. Cut sheets for valve assemblies, piping, pressure contactor underdrain assembly including nozzles, instruments, and other appurtenant items.
4. Equipment list.
5. Hydraulic calculations and graphical curves (curves full size on 8-1/2-inch by 11-inch sheets) indicating the items identified below. In each case, the extent of the piping included shall match the extent supplied by the SELLER and the GAC media used shall be the media specified. Calculations shall indicate each element making up the pressure drop and shall not account for any elevation changes as part of the pressure drop calculations.
  - a. Pressure drop in forward flow across the contactor and SELLER-furnished piping. Provide for minimum of three temperatures, to include 35 deg F, 60 deg F, and 90 deg F.
  - b. Pressure drop during backwash flow. Extent of losses modeled shall be as specified above with the exception that the termination point shall

be at the GAC influent line tee adjacent to the top of the contactor, as the air valve there is intended to allow free discharge from that point downwards.

6. Manufacturer's literature for interior lining and exterior coating products.
  7. Design pressure and capacity.
  8. System flow diagram showing all SELLER-furnished valves, components, instrumentation, and utilities.
  9. List of recommended spare parts including additional recommended spare parts for an operating period of one year. The list shall describe each part, the quantity recommended, the unit price of the part, and the contact information of the supplier of any specialty parts.
- B. Information Submittals: Submit the following:
1. SELLER Instructions:
    - a. Submit SELLER's installation instructions and recommendations for handling, storing, and protecting the equipment.
    - b. Installation data including setting drawings, templates, and directions for the installation of anchor bolts and other anchorages.
  2. Qualifications Statements:
    - a. Submit information indicated in Paragraph 1.3.A of this Section, upon request of ENGINEER or BUYER.
- C. Closeout Submittals: Submit the following:
1. Instruction of Operations and Maintenance Personnel:
    - a. Furnish submittals required in Section 01 79 23, Instruction of Operations and Maintenance Personnel.
  2. Operation and Maintenance Manuals:
    - a. Comply with the requirements of Section 01 78 23, Operations and Maintenance Data.
    - b. Preliminary Operation and Maintenance Manual Submittal shall be accepted by ENGINEER prior to start-up, training, adjusting, and performance testing of equipment.
- D. Maintenance Material Submittals: Submit the following:
1. Spare Parts, Extra Stock Materials, and Tools:
    - a. Tools: Furnish two sets of special tools for each size and type of valve furnished.

## 1.5 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. Delivery of Materials
1. Comply with Section 01 65 00, Product Delivery Requirements, and Section 01 66 00, Product Storage and Handling Requirements, and supplemental requirements below.
  2. Throughout shipment, all pressure contactor ports and pipe ends shall be sealed with watertight caps or blind flanges/plates that shall remain in place until installation of the equipment and completion of all piping connections.

## 1.6 WARRANTY

- A. Special Warranty: SELLER's standard form in which SELLER agrees to repair or replace components of equipment that fail due to materials or workmanship within specified warranty period.
  - 1. Warranty Period for Equipment: SELLER's standard, but not less than one year from the date on which the Goods are ready for their intended use.

## PART 2 - PRODUCTS

### 2.1 SYSTEM REQUIREMENTS

- A. System Description: GAC Pressure Contactor System (System) includes one pair (two units) of vertical pressure contactors (lead/lag positioning) and specified piping and appurtenances, excluding GAC media.
- B. Quantity: Nine Systems (e.g., 18 pressure contactor vessels), including eight duty Systems and one installed redundant System.
- C. General (for each System):
  - 1. Water will enter the lead pressure contactor via the GAC influent piping connection at the furnished piping module and flow downward through the GAC bed.
  - 2. An internal cone bottom and underdrain assembly shall be provided to collect the treated water and retain the GAC media in the bed.
  - 3. The lead contactor shall discharge water to the piping module and then through to the paired lag contactor.
  - 4. Treated water from the lag contactor shall exit to the piping module and then through the GAC effluent piping connection for downstream treatment and storage.
  - 5. Each System shall include all GAC media, piping, valves, actuators, instrumentation, and all appurtenances needed to provide a complete GAC pressure contactor treatment system. The pressure contactors shall be piped with GAC influent, GAC effluent, GAC backwash supply, and GAC backwash waste connections as well as connections for GAC media removal and replacement. System piping and valving shall be configured to allow parallel operation of the nine Systems and reversible series operation of the lead and lag contactors in each System. Each System shall include double block valving to ensure a cross-connection is not introduced by a single leaking-by valve.
  - 6. Materials in contact with process fluid shall be suitable for contact with potable water.

## 2.2 DESIGN AND SERVICE CONDITIONS

- A. Contactor Design and Service Conditions:
1. Dry GAC media design weight per pressure contactor: 40,000 lbs.
  2. Contactors shall be suitable for use with Filtrasorb 600 by Calgon Carbon Corporation or equal.
  3. Design average water flow rate through each System shall be 769 gpm, providing an empty bed contact time (EBCT) of 26 minutes (13 minutes each for lead and lag pressure contactors) at a total GAC feed flow of 8.85 MGD with eight Systems in operation.
  4. Wetted components and wetted surfaces of equipment used with potable water or water that will be treated to become potable shall conform to ANSI/NSF 61.
- B. Anticipated GAC Influent Water Temperature:
1. 35 degrees F minimum.
  2. 85 degrees F maximum.

## 2.3 PRODUCT AND MANUFACTURER

- A. Furnish the required quantity of one of the following GAC pressure contactors:
1. Model 12-40 Carbon Adsorption Vessels by Calgon Carbon Corporation.
  2. Model HP1240 by Evoqua Water Technologies.
  3. Model FPV42W by WesTech Engineering, Inc.
  4. Or equal.

## 2.4 MATERIALS AND FABRICATION

- A. GAC Pressure Contactors: GAC pressure contactors shall be free standing vertical cylindrical pressure contactors 12 feet in diameter with elliptical top and bottom heads. Straight side lengths shall be sufficient to allow for a minimum of 30 percent GAC bed expansion during backwash contained within the pressure contactor straight side.
1. The pressure contactors shall be designed, constructed, and stamped in accordance with ASME code, Section VIII, for design pressure rating of 125 psig at 140 degrees Fahrenheit.
  2. Each pressure contactor shall be constructed of carbon steel and shall have all welds and any other sharp edges ground smooth, and all imperfections such as skip welds, delaminations, scabs, slivers, and slag corrected prior to abrasive blasting. All surfaces shall be degreased prior to sandblasting. The pressure contactors shall be equipped with lifting lugs and support legs suitable for rigging and anchoring the pressure contactors.
  3. Manway Access: The pressure contactors shall be equipped with two manways sized to accommodate the repair and/or removal of the largest single internal component or for GAC media sampling, as follows. Manway access shall have permanently marked or mounted safety warnings at entry location indicating "CONFINED SPACE".

- a. Provide one minimum 24-inch diameter manway located on the lower straight side portion of the pressure contactor above the internal cone.
  - b. Provide one minimum 24-inch diameter manway located on the top head.
  - c. Provide one 14-inch by 18-inch elliptical manway on the bottom head.
4. Ports and Nozzles: All port and nozzle connections shall be flush on the inside of the shell and provided with 150-pound full face flanges on the outside. Steel flanges shall conform to AWWA C207 for steel ring flanges, Class B.
  5. Bolts shall conform to ASTM A 307, Grade A or B. Gaskets shall have full-face, of best quality natural or synthetic rubber, 1/8-inch thick.
  6. Underdrain Collection Assembly: Internal cone bottom underdrain equipped with stainless steel underdrain nozzles to provide a minimum of one nozzle for every nominal square foot of contactor cross-section. Nozzles shall be replaceable without removing external piping. Internal cone shall be designed to withstand a working differential pressure of 20 psig.
  7. Inlet: Sizing determined by SELLER. Minimum of 8-inch required. SELLER is responsible for providing reducers as needed to mate up with the 8-inch piping supplied by the installing construction contractor.
  8. Outlet: Sizing determined by SELLER. Minimum of 8-inch required. SELLER is responsible for providing reducers as needed to mate up with the 8-inch piping supplied by the installing construction contractor.
  9. Inlet and Outlet connections shall be oriented 180 degrees from each other on piping module to accommodate inlet and outlet piping connections from opposite directions.
  10. External clips shall be provided as required to properly accommodate the external piping.
  11. Piping module shall be fabricated, shop tested, and shipped as fully assembled units requiring a minimum of field installation labor.
- B. Pressure Contactor Interior Lining:
1. All surfaces shall be degreased prior to sandblasting. The internal surface of the pressure contactors shall be sand blasted (SSPC-SP5) to a white metal surface to provide a 3 to 4 mil anchor pattern in the metal.
  2. The interior of the pressure contactors shall be lined to resist abrasion by GAC media and to prevent corrosion that will occur when wet GAC media is in contact with carbon steel. Interior pressure contactor lining shall consist of a vinyl ester system with NSF certification for direct contact with drinking water, applied to a dry film thickness range of 35 to 45 mils above the cone bottom and 10 to 12 mils dry film thickness range below the cone bottom. Lining product shall be Plasite 4110 by Carboline or equal.
  3. Where supports, brackets, clips, and similar items of stainless steel are attached to the interior of the pressure contactors, lining shall extend a minimum of 1 inch onto the backup plate from the pressure contactor wall for immersion service. Manufacturer shall perform a spark test and millage checks to ensure complete coverage of the interior pressure contactor lining.

C. Process and Utility Piping:

1. The process piping on the pressure contactors shall include GAC influent, GAC effluent, GAC backwash supply, GAC backwash waste, vent piping including rupture disk portion, and GAC fill and discharge piping.
2. The exterior of the carbon steel piping shall be cleaned to a power tool grade (mechanical grade) and a rust inhibitive alkyd metal primer shall be applied before any rust can form. A finish exterior painting for outside service must be applied to the exterior of the piping before rust can form beneath the primer coat. Exterior finish paint color for steel pipe and fittings will be selected by the ENGINEER from available standard color options.
3. System piping provided by SELLER shall include a structural steel support frame for support of the piping module. Piping modules shall be shipped mounted on skids.
4. Process Pipe Material:
  - a. Reference, ASTM A53, Grade B.
  - b. Type: Carbon steel.
  - c. Weight: Schedule 40.
  - d. Lining: Carbon discharge piping shall be polypropylene lined.
5. Process Pipe Fittings:
  - a. Fittings for carbon discharge piping shall be polypropylene lined.
  - b. Threaded (3 inches and smaller):
    - 1) Reference: ANSI B16.3.
    - 2) Type: Malleable iron.
  - c. Flanged (4 inches and larger):
    - 1) Reference: ANSI B16.1, Class 125.
      - a) Gaskets:
        - (1) Type: White EPDM, 1/8-inch thick.
      - b) Fasteners:
        - (1) Reference: ASTM A193.
        - (2) Type: Type 304 stainless steel.
  - d. Welded:
    - 1) Reference: ANSI B16.9.
    - 2) Type: Butt welded.
6. Utility Pipe and Fittings:
  - a. Diameter: Less than 2-inch.
  - b. Material: ASTM 53, Grade B, Schedule 80
  - c. Fitting: Threaded.

D. Process and Utility Valves:

1. The process and utility piping, excluding GAC fill and discharge piping, shall be equipped with butterfly valves for flow control. A total of ten (10) 8-inch diameter butterfly valves shall be provided on piping module to accommodate the process and backwash control functions. Eight (8) of these valves shall be paired with an additional valve and bleed to form a double block valve for cross connection detection as specified below:
  - a. Two (2) double block valves for influent isolation.
  - b. Two (2) double block valves for effluent isolation.

- c. Two (2) double block valves for staging the pressure contactors.
  - d. Two (2) double block valves for backwash control.
  - e. Two (2) valves for the vent function/backwash outlet.
2. Influent, effluent, and backwash control valves shall be cast iron body, wafer type butterfly valve with aluminum-bronze disc, BUNA-N seats, and stainless steel shaft to mate to 150 pound ANSI flanges. Valves shall be rated for 200 psig in closed position at 180 degrees F and meet or exceed section 5.0 of AWWA specification C-504 (latest edition).
  3. Utility valves for the compressed air supply will be bronze or brass or barstock brass body regular port ball valves.
- E. Carbon Fill and Discharge:
1. Provide two (2) spent GAC discharge lines per pressure contactor.
  2. Pressure contactors shall be designed with adjustable GAC removal assembly to allow for removal of spent GAC media in 20,000 lb increments.
  3. GAC fill and discharge valves shall be 4-inch diameter, full port ball valves, 316 stainless steel construction, with TFE seats and seals. A total of three (3) valves shall be provided per pressure contactor, one (1) for carbon fill and one (1) for each for the two (2) spent carbon removal lines.
  4. Provide two flushing connection on each GAC fill line, one upstream and one downstream of the valve.
  5. Provide one flushing connection on each GAC discharge line, downstream of the valve.
  6. Flushing connections shall be welded into the steel or stainless steel pipe or screwed into solid propylene "spacers" for the lined pipe. Flushing connections shall consist of 3/4-inch pipe, 3/4-inch full port ball valve, and 3/4-inch quick connect adapter to match with water hose fittings.
  7. Carbon fill and discharge lines shall terminate in flanged fittings.
- F. Sampling/Drain/Vent Ports:
1. Each pressure contactor shall be outfitted with three (3) side sample nozzles, starting at 2-inch and reducing to a minimum of 1/2-inch, for use with in-bed water sample probes. Probes shall consist of 12-inch Type 316 stainless steel with a Type 316 stainless steel slotted nozzle to collect a water sample from within the GAC bed. The sample probe will be inserted through a 2-inch flanged nozzle and will be provided with a drop line and shutoff valve external to the pressure contactor. Shutoff valves shall be located no more than 4 feet above finish floor.
  2. Each pressure contactor shall be outfitted with one (1) side vent nozzle, starting at 2-inch and reducing to a minimum of 3/4-inch, located just below the internal cone, and provided with a drop line and shutoff valve external to the pressure contactor. Shutoff valve shall be located no more than 4 feet above finished floor.
  3. Pressure relief shall be provided by a 3-inch rupture disk constructed of impervious graphite and designed to relieve pressure at the design pressure of the vessel and at the maximum flow to the System. The rupture disks

shall be mounted off each pressure contactor's influent line and vent to atmosphere. A total of two (2) shall be provided for each System

## 2.5 ADDITIONAL ACCESSORIES

- A. Each pressure contactor shall be provided with an inlet distribution assembly connected to the inlet nozzle consisting of multiple radial arms. Each arm is drilled along its length to facilitate even distribution of water during normal operation and collection of backwash water. The assembly shall be constructed of 304 stainless steel.
- B. Each pressure contactor shall be provided with one (1) 8-inch stainless steel effluent strainer basket mounted in the effluent line from the pressure contactor. The basket strainer shall be constructed of 316 stainless steel 14 gage plate with 1/8-inch diameter holes drilled on 3/16-inch centers, covered with 40 mesh 316 stainless steel screen and topped by a 4 mesh 316 stainless steel support screen (0.063-inch wire diameter). A total of two (2) shall be provided for each System.
- C. Influent and effluent pipe for each vessel shall be provided with a molded neoprene reinforced rubber expansion joint that allows 4-way movement and 30 degree angular misalignment. A total of four (4) shall be provided for each System.

## 2.6 INSTRUMENTATION

- A. Instrumentation shall be located no more than 4 feet above finished floor.
- B. Each pressure contactor shall be provided with an indicating differential pressure switch, 4-inch diameter dial, scaled for 20-0-20 psi. The switch shall be rated at 1.0 amp @ 115 volts AC for remote indication. A total of two (2) switches shall be provided for each System.
- C. Process piping shall be equipped with pressure gauges to indicate the pressure entering and exiting each pressure contactor and to provide information on pressure drop across each pressure contactor and the System. Pressure gauges shall have 4-1/2-inch face diameter with a stainless steel bourdon tube in a phenolic case housing (1 to 160 psig range). A total of three (3) will be provided for each System.

## 2.7 EXTERIOR PAINTING

- A. Exterior Shop Painting: The exterior of the pressure contactors shall be degreased and power-tool cleaned as specified in SSPC-7. Following surface cleaning, a rust inhibitive epoxy primer shall be applied. The exterior finish coating shall be applied to the exterior of the pressure contactor before rust can form beneath the primer coat. The exterior surface of the pressure contactors shall be painted to a dry film thickness of 5 to 7 mil with a high solids epoxy paint material. The

exterior coating color shall be selected by the ENGINEER from available standard colors.

## 2.8 SPARE PARTS

- A. Lubricants: For valves, actuators, and appurtenances requiring lubricants, provide suitable lubricants for initial operation and for first year of use following Substantial Completion. Lubricants for equipment associated with conveying potable water or water that will be treated to become potable shall be food-grade and ANSI/NSF 61-listed.
- B. Tools, spare parts, and maintenance materials shall conform with Section 01 78 43, Spare Parts and Extra Materials.

## PART 3 - EXECUTION

### 3.1 EQUIPMENT INSTALLATION

- A. Installing construction contractor will install the Goods in accordance with SELLER's recommendations and the associated construction contract documents.

### 3.2 FIELD QUALITY CONTROL

- A. Field Tests:
  - 1. (None)
- B. Seller's Special Services:
  - 2. As required by the Agreement and Division 01 Specifications, SELLER shall furnish services of a qualified, factory-trained service representative thoroughly familiar with the Goods furnished for the following services at the Point of Destination and the location where the Goods will be installed:
    - a. Supervise unloading of Goods from SELLER's delivery vehicles for each separate delivery to the Point of Destination. Train installing construction contractor's personnel in handling of the Goods. Verify that installing construction contractor's method of hoisting and handling the equipment is acceptable to SELLER and will not damage the Goods or void associated warranties.
    - b. Check the installed Goods prior to installation of GAC media (furnished by others). Check each individual pressure contactor and submit documentation of checkout in accordance with Section 01 75 11, Checkout and Startup Procedures.
    - c. Assist installing construction contractor with performing field quality control tests on the installed Goods.
    - d. Instruct City's operations and maintenance personnel in operating and maintaining the Goods.

3. Instruct City's operation and maintenance personnel in accordance with Section 01 79 23, Instruction of Operations and Maintenance Personnel.
4. Revisit the location where the Goods are installed as often as necessary until the Goods are acceptable. All costs, including travel, lodging, meals, and incidentals are SELLER's responsibility. Should any of SELLER's services beyond the scope of this Contract be necessitated by the action or inaction of the installing construction contractor(s), such installing construction contractor will separately retain services of SELLER and directly reimburse SELLER for SELLER's added costs.

++ END OF SECTION ++