



AGENDA
Regular City Council Meeting
Monday, February 1, 2021, 6:00 PM
Council Chambers, 116 First Street, Neptune Beach, Florida

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
2. AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS
 - A. Presentation of National Gun Violence Survivors Week Proclamation (February 1-7, 2021)
3. APPROVAL OF MINUTES
 - A. **January 19, 2021, Special City Council Meeting**
4. COMMUNICATION / CORRESPONDENCE / REPORTS

• Mayor	• City Attorney
• City Council	• City Clerk
• City Manager	• Departmental Reports
5. COMMENTS FROM THE PUBLIC
6. CONSENT AGENDA / NONE
7. VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS / NONE
8. ORDINANCES / NONE
9. OLD BUSINESS / NONE
10. NEW BUSINESS
 - A. RESOLUTION NO. 2021-02, A Resolution of the City of Neptune Beach Requesting Improvements to Third Street (State Road A1A) to Address Pedestrian and Bicyclist Safety, Vehicle Turning Movements at Vehicle/Pedestrian Conflict Points, Drainage and Aesthetics Be Placed on the 2021 Duval County List of Priority Projects.
 - B. RESOLUTION NO. 2021-03, A Resolution of the City Council of the City of Neptune Beach, Florida, Supporting Florida Senate Bill 596 and Companion House Bill 6023, Which Would Repeal Florida Statute 163.045 to Enable Local Governments to Regulate Matters Relating to Trees Located on Residential Properties; Providing for Conflicts; and Providing for an Effective Date.
 - C. Authorization for City Manager to Solicit Bids for All Courts in Jarboe Park
11. COUNCIL COMMENTS
12. ADJOURN



PROCLAMATION

CITY OF NEPTUNE BEACH

WHEREAS, Every year, nearly 39,000 Americans are killed in acts of gun violence and nearly 85,000 more are shot and wounded; and

WHEREAS, By early February, more Americans are killed with guns than are killed in our peer countries in an entire calendar year; and

WHEREAS, A gun violence survivor is anyone who has personally experienced gun violence — whether you have witnessed an act of gun violence, been threatened or wounded with a gun, or had someone you know and cared for wounded or killed; and

WHEREAS, Forms of gun violence can include, but are not limited to: gun suicides, gun homicides, domestic violence involving a gun, shootings by law enforcement, and unintentional shootings; and

WHEREAS, 58 percent of American adults, including 68 percent of Black and Latino Americans, or someone they care for has experienced gun violence in their lifetime, demonstrating the reach and impact gun violence has in communities across America; and

WHEREAS, Firearms are the leading cause of death for children and teens;

WHEREAS, Americans in cities across the nation are working to end the senseless violence by advocating for common-sense gun safety legislation; and

WHEREAS, By commemorating National Gun Violence Survivors Week on February 1 to February 7, cities across America will raise awareness about gun violence and honor the lives stolen by gun violence; and

WHEREAS, We renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the wrong hands and encourage responsible gun ownership to help keep our communities safe.

NOW, THEREFORE BE IT RESOLVED, that the City of Neptune Beach, Florida, declares **February 1 to February 7, 2021**, to be

NATIONAL GUN VIOLENCE SURVIVORS WEEK

We encourage all citizens to support their communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

Elaine Brown, Mayor
City of Neptune Beach



MINUTES
SPECIAL CITY COUNCIL MEETING
TUESDAY, JANUARY 19, 2021, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266

Pursuant to proper notice, a Special City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, January 19, 2021, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266.

This meeting was the Regular Council meeting scheduled for Monday, January 4, 2021, and was rescheduled for Tuesday, January 19, 2021, due to COVID-19.

Attendance:

IN ATTENDANCE:

Mayor Elaine Brown
 Vice Mayor Fred Jones
 Councilor Kerry Chin
 Councilor Lauren Key
 Councilor Josh Messinger

STAFF:

City Manager Stefen Wynn
 City Attorney Zachary Roth
 Chief of Police Richard Pike
 Chief Financial Officer Carl LaFleur
 Public Works Director Jim French
 Mobility Management Director Megan Steward
 Senior Center Director Leslie Lyne
 Grant and Resiliency Coordinator Colin Moore
 Community Development Director Kristina Wright
 Code Compliance Supervisor Piper Turner
 City Clerk Catherine Ponson

**Call to
Order/Roll Call**

Mayor Brown called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

**Approval of
Virtual Voting**

Vice Mayor Fred Jones and Councilor Lauren Key attended the meeting via Communications Media Technology. Mayor Brown read the following into the record:

"Vice Mayor Jones and Councilwoman Key are not present due to COVID-19 and related health concerns. I believe that, in the exercise of good judgment, the threat posed by COVID-19 generally and the recent uptick in the state, city, and at City Hall, such concerns constitute "extraordinary circumstances" for participation through interactive electronic technology for Vice Mayor Jones and Councilwoman Key. As we have a quorum present in person, I believe such extraordinary circumstance complies with Attorney General Opinion 2003-41 to permit them to vote tonight through the GoToWebinar system.

Accordingly, I would ask for a motion that it be recognized that the COVID-19 and related health concerns preventing Vice Mayor Jones and Councilwoman Key constitute "extraordinary circumstances" to permit them to appear and vote tonight through GoToWebinar."

Made by Messinger, seconded by Chin.

MOTION: **TO PERMIT VICE MAYOR JONES AND COUNCILWOMAN KEY TO APPEAR AND VOTE TONIGHT THROUGH GO TO WEBINAR**

Roll Call Vote:

Ayes: 3- Chin, Messinger, and Brown.

Noes: 0

MOTION CARRIED

APPROVAL OF MINUTES

Minutes

Made by Messinger, seconded by Chin.

MOTION: **TO APPROVE THE FOLLOWING MINUTES:**

December 7, 2020, Regular City Council Meeting

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

COMMUNICATIONS / CORRESPONDENCE / REPORTS

Police Chief
Report

Police Chief Richard Pike reported that four members of the agency coping with COVID-19 have fully recovered and returned to work. The City requested a POD (Point of Distribution) some time ago. He has not received any information regarding vaccines.

Mayor Brown commented that she has been attempting to get a vaccination site at the Beach. She assured everyone that it is coming but it looks like supplies are running out in Jacksonville.

Chief Pike continued that the annual breakfast hosted by NBPD would be this Friday, January 22, 2021. In attendance would be the Beach Communities Police Departments as well as Fourth Judicial Circuit State Attorney Melissa Nelson.

City Manager
Report

City Manager Stefen Wynn reported the following:

- He gave an update of the demolition and construction of Jarboe Park.
- The Senior Activity Center is closer to being constructed. The geotechnical report has been received indicating no additional compaction required.
- He gave an update of the Florida Department of Economic Opportunity Grant for a portion of the Comprehensive Plan and Land Development Code updates.
- An updated schedule would be coming out for the rescheduled workshops for the Comp Plan and LDC updates.

Mr. Wynn introduced new Public Works Director Jim French. He was previously employed with the City as an engineer. Mr. French gave an update on the Wastewater Collection and Treatment Facility Plan. He advised that there would be more funding available from the Clean Water State Revolving Loan Fund for the August 2021 deadline and the City's submission would be more complete.

All monthly City Manager reports can be found, in their entirety, at : <https://www.ci.neptune-beach.fl.us/city-manager/pages/city-manager-reports>

PUBLIC COMMENTS**Public
Comments**

Jane Diamond, 576 Valley Forge Road, Neptune Beach, thanked the Council for their hard work on the playground and she is excited for the improvements. She did have concerns about the Bay Street parking. There is a lot of traffic already. She requested possibly rearranging the parking as there are kids on bicycles in the same area.

Mike and Melinda Richey, 717 Bay Street, Neptune Beach, stated they had concerns about the parking on Bay Street. He added that he also had concerns with kids in the neighborhood riding their bikes or skateboards in the area.

Beverly Hollod, 522 Bay Street, Neptune Beach, spoke regarding the parking on Bay Street. She stated the City is compromising and working on that issues. She questioned when the decision would be made and would public be able to participate in making that decision in a workshop.

Code Compliance Supervisor Piper Turner reported that Nicole de Venoge, 617 Oak Street, Neptune Beach, emailed in support of Ordinance No. 2020-25, prohibiting the release of balloons and sky lanterns.

Ginny Thurson, 1200 7th Street, Neptune Beach, requested Council consider the blind spots at the stop signs and questioned the area of the field.

ORDINANCES**Ord. No. 2020-14, Fire
Protection**

Ordinance No. 2020-14, Second Read and Public Hearing. An Ordinance Amending and Restating Chapter 10 (Fire Prevention and Protection); Amending Section 10-1 and Creating New Sections 10-2 through 10-38; Providing for Severability; Providing an Effective Date.

Public Hearing

Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.

Made by Messinger, seconded by Chin.

MOTION: TO ADOPT ORDINANCE NO. 2020-14 ON SECOND READ

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED**Ord. No. 2020-15, Balloons**

Ordinance No. 2020-15, Second Read and Public Hearing. An Ordinance Of the City of Neptune Beach, Florida, Amending Chapter 11 of the Code of Ordinances, Garbage, Trash, and Industrial Waste, By Amending Section 11-2, Compliance Construed; Pollution of Air, Adopting New Subsection to Prohibit the Outdoor Release of Balloons and Sky Lanterns; and Providing an Effective Date.

Public Hearing

Mayor Brown opened the public hearing.

Nicole de Venoge, 617 Oak Street, Neptune Beach, thanked the Mayor and Council for going ahead with this ordinance. She also thanked the City for being committed to help reduce the use of single-use plastics and hopefully making some incentives for both businesses and city property. She thanked them for the beautiful trees and hopes to see more of that happen.

There being no further comments from the public, the public hearing was closed.

Made by Messinger, seconded by Jones.

MOTION: **TO ADOPT ORDINANCE NO. 2020-15 ON SECOND READ**

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

Ord. No. 2020-16, Parking Spaces Ordinance No. 2020-16, Second Read and Public Hearing. An Ordinance of the City of Neptune Beach, Florida, Amending Chapter 22 of the Code of Ordinances, Traffic and Motor Vehicles, by Amending Section 22-48, Marking of Parking Spaces; Providing for Conflicts; Providing for Severability; and Providing an Effective Date.

Public Hearing Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.

Made by Chin, seconded by Key.

MOTION: **TO ADOPT ORDINANCE NO. 2020-16 ON SECOND READ**

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

Ord. No. 2020-17, Golf Carts Ordinance No. 2020-17, Second Read and Public Hearing. An Ordinance Creating a New Article V (Golf Carts), Chapter 22 (Neptune Beach Traffic and Motor Vehicles Code), Ordinance Code, Setting Forth Standards and Procedures for Approval and Designation of Public Rights-of-Way For Use By Golf Carts; Designating Parking Areas; Providing For Severability; Providing An Effective Date.

Public Hearing Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.

Made by Messinger, seconded by Jones.

MOTION: **TO ADOPT ORDINANCE NO. 2020-17 ON SECOND READ**

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

Ord. No. 2020-18, eScooter Moratorium Ordinance No. 2020-18, Second Read and Public Hearing. , An Ordinance by the City Council of the City of Neptune Beach Creating a Section 22-7, Article I, In General, Chapter 22, Traffic and Motor Vehicles; Instituting a Temporary Moratorium on the Commercial Rental and Lease, and Use of Rented and Leased, Electric Personal Assistive Mobility Devices, Micromobility Devices and Motorized Scooters; Providing for Legislative Findings, Designation of the Temporary Moratorium, Conflicting Ordinances, Severability, Enforcement, and an Effective Date.

Public Hearing Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.

Made by Messinger, seconded by Chin.

MOTION: **TO ADOPT ORDINANCE NO. 2020-18 ON SECOND READ**

Roll Call Vote:

Ayes: 5- Messinger, Chin, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

OLD BUSINESS / NONE

NEW BUSINESS

Res. No. 2021-01, PORF Board Appointment

Resolution No. 2021-01, A Resolution Appointing Member to the Community Development Board.

Mayor Brown explained this resolution appoints a fifth member, Leona Sheddin, to the Police Officers' Retirement Board.

Councilor Messinger stated he could think of no one better from a financial mindset and true passion for those that wear the badge. What she has done for the community when it comes to animals and other charitable organizations is inspiring.

Mayor Brown thanked Ms. Sheddin for volunteering and added her support.

Councilor Chin commented he has known Ms. Sheddin for many years and is happy to have her serve on this Board. She will do a fine job and support our fine officers for the years to come.

Councilor Key expressed Ms. Sheddin would be a great addition to the Board. She has a great background in finance. She applauds anyone who steps up to serve the community in this capacity.

Vice Mayor Jones agreed with Council and also added his support for Ms. Sheddin

Made by Messinger, seconded by Chin.

MOTION: **TO APPROVE RESOLUTION NO. 2021-01, APPOINTING LEONA SHEDDAN TO THE POLICE OFFICERS' RETIREMENT BOARD.**

Roll Call Vote:

Ayes: 5-Chin, Messinger, Key, Jones, and Brown.

Noes: 0

MOTION CARRIED

Adjournment

There being no further business, the meeting adjourned at 6:35 p.m.

Elaine Brown, Mayor

Attest:

Catherine Ponson, CMC
City Clerk

Approved: _____



**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM: RESOLUTION NO. 2021-02, A Resolution of the City of Neptune Beach Requesting Improvements to Third Street (State Road A1A) to Address Pedestrian and Bicyclist Safety, Vehicle Turning Movements at Vehicle/Pedestrian Conflict Points, Drainage and Aesthetics Be Placed on the 2021 Duval County List of Priority Projects.

SUBMITTED BY: Colin Moore, Grant and Resiliency Coordinator

DATE: January 27, 2021

BACKGROUND: The City is requesting that “Complete Streets” concepts for improvements to Third Street (State Road A1A) be added to the 2021 Duval County List of Priority Projects (LOPP).

Projects on the Duval County LOPP are submitted to the North Florida Transportation Planning Organization (TPO) each February for consideration and ranking. Upon TPO Board approval, the LOPP is then submitted to the Florida Department of Transportation (FDOT) to use in developing the Five-Year Tentative Work Program. (Please see the attached List of Priority Projects Process used for the 2020 Priority Projects.)

With A1A being a State Road, this process allows transportation funds to be programmed for improvements to Third Street in future FDOT Work Programs.

BUDGET: None

RECOMMENDATION: Approve resolution requesting Third Street Complete Streets Improvements be added to the Duval County List of Priority Projects.

ATTACHMENT: 1. Res. No. 2021-02, COJ Request



RESOLUTION NO. 2021-02

A RESOLUTION OF THE CITY OF NEPTUNE BEACH REQUESTING IMPROVEMENTS TO THIRD STREET (STATE ROAD A1A) TO ADDRESS PEDESTRIAN AND BICYCLIST SAFETY, VEHICLE TURNING MOVEMENTS AT VEHICLE/PEDESTRIAN CONFLICT POINTS, DRAINAGE AND AESTHETICS BE PLACED ON THE 2021 DUVAL COUNTY LIST OF PRIORITY PROJECTS.

WHEREAS, Third Street (State Road A1A) is owned and maintained by the Florida Department of Transportation, running through the City of Neptune Beach from Atlantic Boulevard (State Road 10) to the north to Seagate Avenue to the south; and

WHEREAS, Third Street consists of four lanes of travel between the cities of Atlantic Beach, Jacksonville Beach and Neptune Beach, providing adequate vehicular capacity in both directions to all three communities for a significant and regular volume of traffic; and

WHEREAS, Third Street is used as a school walking route by students within a two-mile radius of San Pablo Elementary School, Duncan U. Fletcher Middle School, and Duncan U. Fletcher High School; and

WHEREAS, Third Street lacks sufficient crossings for pedestrians to traverse safely from the east or west side of the road to the other; and

WHEREAS, Third Street lacks sufficient bicycling lanes and multiuse paths for the safe sharing of the corridor by automobiles, bicycles, and pedestrians; and

WHEREAS, on the 4th day of September, 2018, the City of Neptune Beach adopted via Resolution 2018-07 a Complete Streets Policy to prioritize safe, convenient, and accessible transportation for all users; and

WHEREAS, the City of Neptune Beach procured the services of Dover, Kohl & Partners in 2019 to develop as part of the Neptune Beach Vision Plan a concept rendering of improvements to Third Street to improve pedestrian and bicyclist safety, roadway drainage systems, and the general aesthetics of the roadway corridor; and

WHEREAS, the Jacksonville Metropolitan Statistical Area (MSA) remains one of the country's most dangerous areas for pedestrians, ranking No. 6 nationally on a "pedestrian danger index" according to the 2019 Dangerous By Design report published by Smart Growth America

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:

SECTION 1. The City of Neptune Beach hereby authorizes the formal request and does formally request that the City of Jacksonville add to the 2021 Duval County List of Priority Projects "Complete Streets" and "Context Sensitive" concepts for improvements to Third Street (State Road A1A), and that the project address safety improvements for pedestrians and bicyclists; turning movements at vehicle/pedestrian conflict points; drainage; and aesthetics.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

This Resolution adopted by the City Council of Neptune Beach, Florida, at the Regular Council Meeting held this 1st of February, 2021.

Elaine Brown, Mayor

ATTEST:

Catherine Ponson, CMC
City Clerk

LIST OF PRIORITY PROJECTS PROCESS

Develop List of Candidate Projects (*January*)

1. A list of candidate projects is developed from the following:
 - Projects in the previous year *List of Priority Projects* not funded through construction.
 - Local County/City submittals within the North Florida TPO area
 - Local Airport, Port and Transit Authority submittals within the North Florida TPO area
 - Concurrency Management Process
 - Public Input
2. Project Ranking (*February*)
 - Unless otherwise indicated, projects were initially prioritized in Path Forward 2045, the North Florida TPO's Long Range Transportation Plan adopted November 14, 2019
 - TPO Staff works with local governments to develop a preliminary List of Priority Projects to submit to the Technical Coordinating Committee (TCC), Citizens Advisory Committee (CAC) and Transportation Planning Organization (TPO) Board for review and approval at the March TCC, CAC and TPO Board Meetings.
 - Mass transit, port and aviation projects are prioritized by the submitting agencies and are forwarded to the North Florida TPO to include in the LOPP Document.
 - Adopting the List of Priority Projects (March)
 - Following approval by the North Florida TPO, the List of Priority Projects is submitted to FDOT to use in developing the Five-Year Tentative Work Program.



**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM: RESOLUTION NO. 2021-03, A Resolution of the City Council of the City of Neptune Beach, Florida, Supporting Florida Senate Bill 596 and Companion House Bill 6023, Which Would Repeal Florida Statute 163.045 to Enable Local Governments to Regulate Matters Relating to Trees Located on Residential Properties; Providing for Conflicts; and Providing for an Effective Date.

SUBMITTED BY: City Attorney Zachary Roth

DATE: January 29, 2021

BACKGROUND: Section 163.045, passed two years ago, prohibits the City from regulating the removal of trees on residential properties if the owner obtains a letter from arborist or landscape architect. This statute has resulted in the significant canopy loss in the City under its terms, including healthy trees. This bill would put the regulation of these trees back in the hands of the local government.

BUDGET: N/A

RECOMMENDATION: Approve Resolution No. 2021-03

ATTACHMENT: 1. Res. No. 2021-03



RESOLUTION NO. 2021-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, SUPPORTING FLORIDA SENATE BILL 596 AND COMPANION HOUSE BILL 6023, WHICH WOULD REPEAL FLORIDA STATUTE 163.045 TO ENABLE LOCAL GOVERNMENTS TO REGULATE MATTERS RELATING TO TREES LOCATED ON RESIDENTIAL PROPERTIES; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Senator Linda Stewart and Representative Anna V. Eskamani are leading the effort to repeal a state preemption of local ordinances related to trees located on residential properties; and

WHEREAS, Senator Stewart's Senate Bill 596 and Representative Eskamani's House Bill 6023 would repeal Section 163.045, Florida Statutes, and restore the rights of local governments related to pruning, trimming, or removal of trees on residential property; and

WHEREAS, the City of Neptune Beach and many other Florida communities utilize tree- protection codes to define their communities' character and standards of life, and local governments should be restored local controls to protect these invaluable natural resources; and

WHEREAS, local county and city governments are more closely connected to their residents' wishes and needs than the state government, and as such, should be restored the ability to adopt regulations that reflect the values of their respective communities and the desires of their residents; and

WHEREAS, the application of Section 163.045 in practice resulted in significant impacts to the canopy in the City of Neptune Beach;

WHEREAS, the City of Neptune Beach seeks to preserve and protect home rule authority for Neptune Beach and local governments.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Neptune Beach, Florida:

SECTION 1. That the City Council of the City of Neptune Beach supports Senate Bill 596 and House Bill 6023, which would repeal Section 163.045, Florida Statutes,

preempting local regulation affecting trees located on residential properties.

SECTION 2. That the City Council directs the City Clerk to transmit a copy of this Resolution to the Florida Governor, the City of Jacksonville, the Florida League of Cities, and the Duval County delegation of the Florida Legislature, for distribution.

SECTION 3. That all resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

This Resolution adopted by the City Council of Neptune Beach, Florida, at the Regular Council Meeting held this 1st of February, 2021.

Elaine Brown, Mayor

ATTEST:

Catherine Ponson, City Clerk



**CITY OF NEPTUNE BEACH
CITY COUNCIL MEETING
STAFF REPORT**

AGENDA ITEM: Authorization for City Manager to Solicit Bids for All Courts in Jarboe Park

SUBMITTED BY: Stefen Wynn, City Manager

DATE: January 27, 2021

BACKGROUND: Staff and the City's Consultants have finalized a plan for improvements to all ball courts in Jarboe Park. This plan includes: (8) Pickleball Court; (2) Tennis Courts; (2) Sand Volleyball Courts; and a non-regulation sized Basketball Court. The construction of which is outside of the specialty of City Staff, and as such will need to be bid.

The project will be bid in accordance with State Law and the City's Ordinances for Procurement.

BUDGET: See agenda package

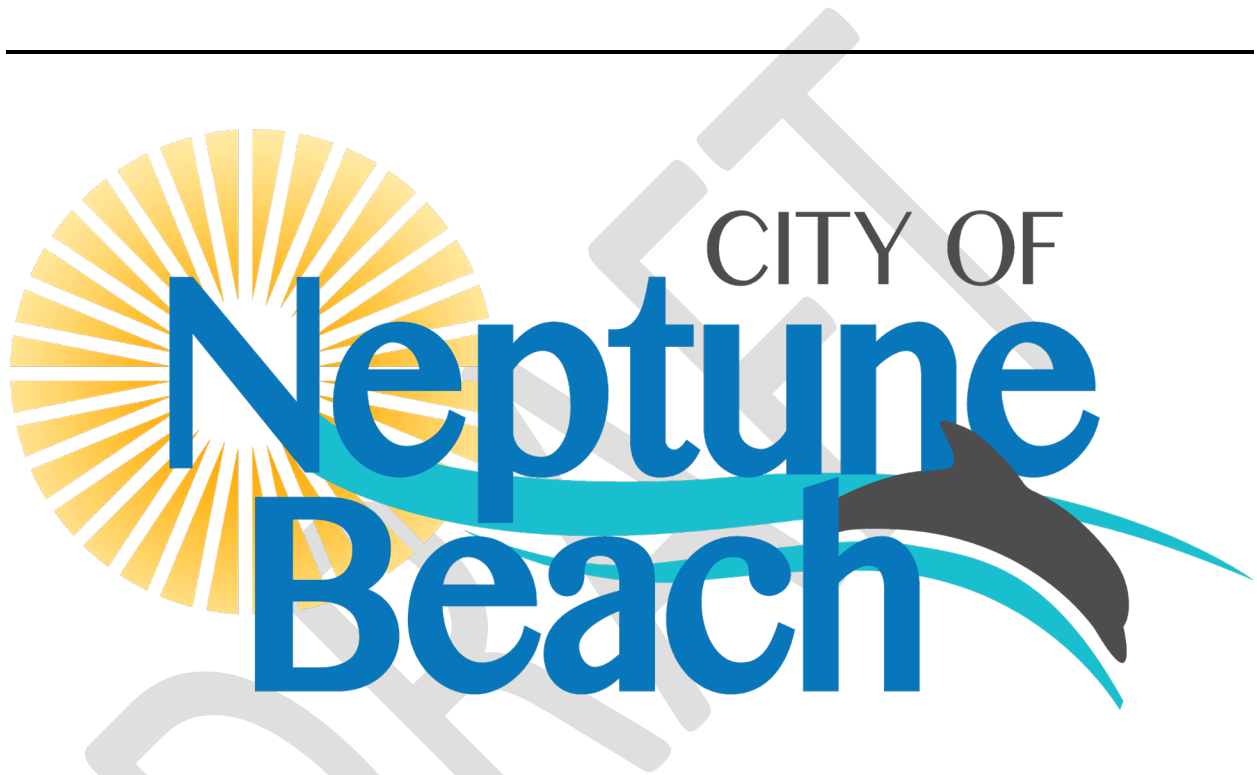
RECOMMENDATION: Staff recommends approval to allow the project to go for bid.

ATTACHMENT: 1. CONB 2021-01 Courts at Jarboe Park.

CITY OF NEPTUNE BEACH

**CONSTRUCTION OF TENNIS, PICKLEBALL, BASKETBALL AND
VOLLEYBALL COURTS AT JARBOE PARK**

CONB BID NO. 2021-01 JARBOE PARK COURT IMPROVEMENTS



BID DUE

March 10, 2021

AT 2:00PM

**MANDATORY
'PRE-BID' MEETING**

February 17, 2021

AT 10:00AM

CITY OF NEPTUNE BEACH

**CONSTRUCTION OF TENNIS, PICKLEBALL,
BASKETBALL AND VOLLEYBALL COURTS AT JARBOE PARK**
CONB BID NO. 2021-01 JARBOE PARK COURT IMPROVEMENTS

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CITY OF NEPTUNE BEACH
Duval County, Florida
Construction of Tennis, Pickleball, Basketball
and Volleyball Courts at Jarboe Park

ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN that the City of Neptune Beach, Florida (City), will be accepting sealed Bids in triplicate, for the construction of various ball courts in Jarboe Park, at City Hall located at: **116 1st St. Neptune Beach, Fl. 32266**, until **2:00 pm** local time on **March 10th, 2021**. Bids shall be opened during a publicly held meeting of the City Manager or his designee, City Clerk, and appropriate department head(s) on March 10th, 2021 at 4:00 pm at 116 1st St. Neptune Beach, Fl. 32266, at which time the Bids received will be publicly opened and referred to a committee comprised of the City Manager, City Clerk, Director of Finance, Public Works Director, and Grants Manager.

CONB Bid No. 2021-01 Jarboe Park Court Improvements

The Selected Bidder shall furnish, unless otherwise noted, all necessary permits, labor, equipment and materials to complete the following: acrylic color-coated asphalt, and sand court construction including base and pad preparation; curbing; fencing; court lighting; equipment necessary for Tennis Courts, Pickleball Courts, Volleyball Courts and a Basketball Court. All materials, methods of construction, equipment and standards must be in accordance with the Federal, State and City laws, rules, standards and ordinances.

Bids will be received for a single prime Contract. Bids shall be on a unit price basis as indicated in the bid form, and will be made to the lowest, best and most responsible bidder selected by the City.

The Issuing Office for the Bidding Documents is the Neptune Beach City Manager's Office, 116 1st St. Neptune Beach, Fl. 32266. Telephone (904) 270-2400. Bidding Documents are available via email in portable document format (PDF) at no cost. Contact Stefen Wynn, at CM@nbfl.us.

Any questions prior to bid opening shall be directed, in writing, via email to Stefen Wynn, at CM@nbfl.us

Partial sets of Bidding Documents will not be available from the City of Neptune Beach. Neither the City nor any staff members will be responsible for full or partial sets of Bidding Documents, including Addenda if any, obtained from sources other than the Issuing Office of the City of Neptune Beach.

Prospective Bidders may examine the Bidding Documents at the Issuing Office on Mondays through Fridays during normal working hours.

There will be a mandatory pre-bid meeting on Wednesday, February 17, 2021 at 10:00 AM, local time, at the 'Neptune House' in Jarboe Park: 510 Florida Blvd. Neptune Beach. Fl. 32266. A Representative of the City will be present to discuss the Project. All Bidders will be responsible for any information discussed at the pre-Bid meeting. Bids will not be accepted from bidders who did not attend the mandatory pre-bid meeting.

Bid security shall be furnished in accordance with the Instructions to Bidders. If the contract is awarded to a bidder and the bidder fails to accept or execute such contract as awarded without a valid excuse, the security shall be forfeited.

Bids shall be in triplicate and properly and completely executed on the provided bid forms included in the Specifications. The bid documents shall include properly and completely executed Bonding Capacity Certification Letter. The Owner may make such investigations as deemed necessary to determine the ability of the Bidder to perform the work and the Bidder shall furnish to the Owner all such information including a copy of the bidders Financial Statements and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein.

Bids will not be valid unless received in triplicate by the Bid deadline. Sealed packages should be mailed or delivered in person marked on the outside so that it is distinguishable from regular mail and package deliveries with the notation "BID ENCLOSED – CONB Bid No. 2021-01 Jarboe Park Court Improvements to be opened at 2:00 p.m., local time, March 10th, 2021" addressed to the City Manager, City of Neptune Beach, 116 1st Street, Neptune Beach, Florida 32266, so as to guard against opening prior to the date and time set therefore. No bid shall be returned to the bidder or withdrawn by the bidder after the same has been received by the City Clerk. Only sealed bids shall be received and considered.

The City of Neptune Beach reserves the right to change the time and date of the pre-Bid meeting, to change the Bid due date and time, to accept any bid, reject any or all bids, to waive informalities and make the award or any portion thereof that, in the City's sole and absolute judgment, will be in the best interest of the City in any manner thereof.

Sincerely,

Stefen A.B. Wynn
City Manager

Date: January 28, 2021

Publish: February 4, 2021

Pre-Bid Meeting: February 17, 2021

Due: March, 10, 2021

SECTION 200
INSTRUCTION TO BIDDERS

1. SEALED BIDS

Sealed bids for furnishing all goods and services necessary to complete the Work specified in these documents will be received at:

Date: March 10, 2021

Time: 2:00 PM

**Place: Neptune Beach City Hall
116 1st St.
Neptune Beach, Fl. 32266**

2. SCHEDULE OF EVENTS

No.	Event	Date	Time (EST) *
1	Advertisement to Bid	2/4/2021	9:00 AM
2	<u>Mandatory Pre-Bid Meeting</u> 510 Florida Blvd. Neptune Beach, Fl. 32266	2/17/2021	10:00 AM
3	Deadline to Submit Questions	2/24/2021	2:00 PM
4	Deadline for City Responses to Questions	3/3/2021	5:00 PM
5	Deadline to Submit Bid Response	3/10/2021	2:00 PM
6	Evaluation of Bid Responses	3/10 – 14/2021	8:00 AM – 5:00 PM
7	Announcement of Selected Contractor	3/15/2021	6:00 PM

**The City reserves the right to change the scheduled dates and time.*

3. DEFINITION OF TERMS

<i>Bid/Proposal</i>	The bid documents submitted by the Bidder.
<i>Bidder/Proposer</i>	Any person, firm or corporation submitting a proposal for the Work covered by these specifications or his duly authorized representative.
<i>Business Day</i>	A day other than Saturday, Sunday, or a National Holiday.
<i>City</i>	The City Council of the City of Neptune Beach, or the City Manager, if applicable.
<i>City Engineer</i>	The City's general engineering consultant.
<i>City Manager</i>	The City's chief administrative officer and Project Manager.
<i>Contract</i>	The Contract for Construction to be executed by Contractor and City for the Work.
<i>Contractor</i>	The person, firm or corporation with whom the City has executed a Contract for the Work.
<i>Days</i>	Shall refer to calendar days.
<i>Project Manager</i>	The City Manager of the City.
<i>Responsible Bidder</i>	In order to be considered a, "Responsible Bidder," the Bidder must possess integrity as well as adequate equipment and personnel to do the Work within the time limits that are established and adequate financial status to meet the obligations to perform the Work. The firm must not have defaulted on a prior Contract or been disbarred by any agency.
<i>Responsive Bidder</i>	Any person, firm or corporation submitting a Bid for the Work whose Bid form is complete and includes all required attachments and enclosures, free from exclusions or special conditions and has no alternative Bids for any items, unless alternatives are requested in the specifications.
<i>Work</i>	The services required by the Contract documents, including labor and materials.

4. Delivery of Bids

All Bids, whether mailed or delivered in person, shall be submitted in a SEALED ENVELOPE bearing on the outside the following project information as well as the name of the Bidder and his address clearly marked:

**BID ENCLOSED - CONB BID NO. 2021-01 JARBOE PARK COURT IMPROVEMENTS TO BE
OPENED AT 2:00 PM, LOCAL TIME, MARCH 10, 2021**

Addressed to:

**City of Neptune Beach
Attn: Stefen Wynn, City Manager
116 1st St.
Neptune Beach, FL 32266**

All Bids must be received by the City no later than Wednesday March 10, 2021 at 2:00 PM.

5. BID GUARANTY

A certified or cashier's check drawn on a national or state bank, or bid bond, in the amount of **five percent (5%)** of the total Bid, shall accompany each Bid as a guarantee that the Bidder will, if award is made, execute an Agreement to do the Work for the amount proposed and furnish any required certificates with insurance and bond documents. The Bid bond shall be from a surety with at least an A- rating under Best's Guidelines, made payable to: The City of Neptune Beach.

6. BID FORMS

The Bidder shall submit an original Bid on the Bid forms attached to this REQUEST FOR PROPOSAL. The Bidder shall fill in all blank spaces completely for each and every unit item for which the Bid is tendered. The Bidder shall state the price, typewritten or in ink, for which he proposes to each item of Work.

The Bid shall include:

- 1) Agreement/Contract
- 2) Bid Forms
- 3) Bid Guarantee
- 4) Certificate or Evidence of Insurance
- 5) Qualifications Statement
- 6) Non-Collusion Affidavit
- 7) Certification Regarding Lobbying
- 8) Anti-Kickback Affidavit
- 9) Sworn Statement on Public Entity Crime Form
- 10) Drug Free Workplace Form

7. SIGNATURE ON BID

The Bidder shall sign the Bid as follows: If the Bid is made by an individual, the Bidder's name and address shall be shown. If made by a firm or partnership, the name and address of each member of the firm or partnership shall be shown. If made by a corporation, the person signing the Bid shall show the name of the state under the laws of which the corporation is chartered, also names and business addresses of its corporate officers. The Bid shall bear the seal of the corporation attested by the secretary. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.

8. AWARD OF CONTRACT

The award of the agreement will be to the lowest, best and most responsible Bidder; whose qualifications indicate the award will be in the best interest of the City and whose bid complies with the requirements of these specifications. In no case will the award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the City Manager is satisfied that the Bidder is qualified to do the work and have the necessary organization, capital and equipment to carry out the work in the specified timeframes. In evaluating the responsibility, the City may also consider previous contracts with the City, past performance and experience with other contracts, compatibility of the project team with City personnel, and any other criteria deemed relevant by the City. If the City accepts a Bid, the City will provide a written notice of award to the lowest, best and most responsible Bidder, who meets the requirements of section 2.10.1. If the successful Bidder to whom the Contract is awarded forfeits the Award by failing to meet the conditions of Subsection 13, the City may at the City's sole option, award the agreement to the next lowest, best and most responsible Bidder or reject all bids or re-advertise the Work.

The City, at its sole discretion, may consider the lowest, best and most responsible bidder as the bidder who has the lowest bid amount for: CONB BID NO. 2021-01 JARBOE PARK COUR IMPROVEMENTS.

9. COST OF BIDS

All expenses involved with the preparation and submission of Bids to the City or any work performed in connection therewith, shall be borne by the Bidder(s). No payments shall be made for any responses received, nor for any other effort required or made by the Bidder(s) prior to commencement of work as defined by the Agreement duly approved by the City Council.

10. EVALUATION AND CRITERIA

Proposals will be evaluated in accordance with weighted criteria listed below:

Maximum Points Available	
Experience in Court Construction	30
Proposers Qualifications	15
References	15
Cost	40
<i>TOTAL</i>	<i>100</i>

These weighted criteria are provided to assist the Proposers in the allocation of their time and efforts during the submission process. The criteria also guide the Selection Committee during the short-listing and final ranking of Proposers by establishing a general framework for those deliberations. Short listed proposals may be selected for an interview prior to a recommendation being presented to the City Council. As the best interest of the City may require, the right is reserved to reject any and all proposals or waive any minor irregularity or technicality in proposals received. The City will determine which Proposers are, "responsible and responsive."

DESCRIPTION OF EVALUATION CRITERIA(S):

EXPERIENCE IN COURT CONSTRUCTION (30 POINTS): The City recognizes that installing outdoor court surfaces for Tennis, Pickleball, Volleyball and Basketball requires a specialty to ensure a safe playing field. Each Proposer will be evaluated on their experience in completing similar projects and their apparent expertise in ball court construction. Particular emphasize should be given on how many outdoor ball courts the firm has completed.

PROPOSER QUALIFICATIONS (15 POINTS): Each Proposer shall give a description of the firm, including the size, range of activities, and the number of years with relative experience with governmental accounts. Particular emphasize should be given as to how the firm-wide experience and expertise in this type of project will be brought to bear on the proposed project. The firm should also submit proof of insurance as part of the qualifications portion of their proposal.

REFERENCES (15 POINTS): As part of the Proposal evaluation process, the City will conduct an investigation of references, including a record check or history of consumer affairs complaints. Proposer's submission of a Proposal constitutes acknowledgement of the process and consent to investigate. The City is the sole judge in determining Proposers qualifications. Only relevant experience will be considered in regards to acceptable governmental references.

COST (40 POINTS): Each Proposer shall provide a unit cost with a total for the service proposed. The City has an annually approved budget with which to work and must ensure that the best interests of the City are met through awarding the proposal that best meets the criteria contained within this document and the best possible price to the City. The City processes payments on a monthly basis and invoices received from the awarded Proposer should include a detailed description of quantities used and labor exercised for the project.

11. SCOPE OF WORK

Since 2018, the City has conducted many public hearings and design charettes to arrive at a consensus for a Master Plan for the Park. As a result, the City hired an Engineer and Landscape Architect to produce and design improvements to Jarboe Park. Previously awarded improvements to the park include: connectivity to the East Coast Greenway trail system; playground and fitness equipment upgrades; and entrance and bridge improvements.

The City recognized that, although contained within the park, improvements to the outdoor ball courts require specialized care and expertise.

Improvements to the Jarboe Park Ball Courts are composed of:

- a. Refurbishment and installation of equipment for (2) Volleyball Courts
- b. Construction of (8) Pickleball Courts including placement of equipment
- c. Construction of (2) Tennis Courts including placement of equipment
- d. Construction of (1) Non-Regulation Sized Basketball Court
- e. Installation of necessary fencing
- f. Installation of LED lighting and light posts

All demolition work of existing courts has been completed by the City. The City will bring all court areas up to appropriate subgrade prior to any installation of new asphalt court surfaces.

The following is a summary of the scope of work: minor sitework to include finish subgrade; adding base material to all asphalt ball court areas; Type III Asphalt top/finish coat; saw cut all edges of ball courts; install all tennis, pickleball, basketball and volleyball equipment; install vinyl-coated galvanized chain link fencing around ball courts; install light poles and LED light fixtures and install electrical panel and pull wire for power to all light poles; and sand and refurbish sand volleyball courts; and install vinyl-coated polyester wind screens along fences.

12. RIGHT TO REJECT BIDS

The City reserves the right to accept or reject any and/or all Bids or parts of Bids to workshop or negotiate any and all Bids, to waive irregularities, and to request re-Bids on the required materials or services.

13. ELIGIBLE BIDDERS

The City reserves the right, before awarding a Contract, to require the Bidder to submit evidence of their qualifications, as may be deemed necessary, and consider any evidence available to it of the financial, technical, and other qualifications and abilities of the Bidder. The Contract will be awarded only to a Bidder fully qualified to undertake the proposed Work. All material or services must meet all applicable and Federal, State and Local specifications and permit requirements. In accordance with 23 CFR 635.112 (e), no public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

14. RETURN OF THE BID GUARANTY

All Bid Guarantees of unsuccessful Bidders will be returned after the Agreement is awarded and executed.

15. EXECUTION OF CONTRACT

The successful Bidder(s) shall, within (10) days of receipt of a written notice of the Award of the Agreement, deliver to the City a fully-executed Agreement and all requested certificates of insurance and bonds.

16. FORFEITURE OF BID GUARANTY FOR FAILURE TO EXECUTE CONTRACT

The failure of the successful Bidder(s) to execute an Agreement and submit required insurance certificates and bonds as specified in Subsection 13 will result in forfeit of the Award. Each Bidder agrees in advance that the City will sustain certain damages too difficult to accurately ascertain. Accordingly, if the Award is forfeited under this Section, the amount of the Bid guaranty of the forfeiting Bidder will be retained by the City, not as forfeiture or a penalty, but as liquidated damages.

17. TIME AND AWARD

The Bidder agrees to abide by the overall and unit prices quoted in the Bid for up to ninety (90) days from the date of bid opening to allow for the City review, award, and execute the Agreement.

18. INTERPRETATION AND CLARIFICATION

All questions about the meaning or intent of the Bid documents and specifications shall be directed in writing to the City Manager's Office, Stefen Wynn, M.P.A., at: 116 1st St. Neptune Beach, Fl. 32266. Interpretation or clarifications considered necessary by the City in response to such questions will be issued by means of addenda electronically mailed or delivered to all parties that are on record with the City Clerk as having requested and received the Bid Documents. Provided however, that it is each Bidder's sole responsibility to be informed of any changes to the REQUEST FOR PROPOSAL in the form written addenda and the City shall not be responsible for any Bidder's failure to receive the same. The City has the right to rely on all Bids received and the submittal of a Bid shall represent the Bidder's acknowledgement that he has read and understood the REQUEST FOR PROPOSAL and any addenda thereto. Written questions must be received by: Wednesday, February 24, 2021 at 2:00 PM. Only questions answered by written addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect.

19. BID MODIFICATIONS

No modifications shall be submitted by Bidder or accepted by the City.

20. WITHDRAWAL OF A BID

A Bidder may not withdraw their Bid at any date and time once it is received by the City Clerk, or City Manager, per City Code Section 2-384.

21. OPENING OF BIDS

Bids will be publicly opened and read aloud at the appointed time and place stated in the Invitation to Bid/Request for Proposals. Late Bids will not be considered. No responsibility will be attached to any City Staff for the premature opening of a Bid not properly addressed and identified. Bidders of their authorized agents are invited to be present at the Bid opening.

22. PUBLIC ENTITY CRIMES ACT

In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a Contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a Bid on a Contract to provide any goods or services to the City, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a Contract with any public entity and may not transact business with the City in excess of the threshold amount provided in Section 287.917, Florida Statutes for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the Contract, and may cause the Contractor debarment.

23. CITY LICENSES, PERMITS AND FEES

In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the City before or during the Work or the percentage method of unit method of all licenses, permits and fees required by the City and payable to the City by virtue of the Work as part of the Agreement are as follows:

- a. Contractor shall have and maintain during the term of the Agreement all appropriate City licenses, and fees for which shall be paid in full in accordance with the City's fee structure for such licenses. Typically, there will not be any percentage reduction or waiving of City license fees.
- b. During the performance of the Agreement there may be times when the Contractor will be required to obtain a City permit for the Work. It is the responsibility of the Contractor to ensure that they have the appropriate City permits to perform such Work as may become necessary during the performance of the Agreement. Any fees related to City required permits in connection with the Agreement will be waived by the City. Licenses, permits, and fees that may be required by the County, State, or Federal entities are not included in the above list, and remain the responsibility of the Contractor to obtain.

24. INSURANCE

The awarded Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in Article 6 ("Contract for Construction") of the Agreement. The awarded Bidder shall include with their Bid either Certificates of Insurance evidencing same or documentation from their insurer evidencing insurability of the Bidder to meet the insurance requirements.

25. BONDS

In addition to a Bid Bond, a performance and payment Bond for the entire Grand Total Bid Amount shall be required by the winning Proposal as a condition of any resulting Contract.

26. QUALIFICATION OF SURETIES

Generally, the following requirements shall be met by all surety companies furnishing bid, performance, payment or any other type of bonds:

A. Qualifications as to companies being rated acceptably:

- i. The surety shall be rated as, "A" or better as to general policyholders rating and class V or better as to financial category by Best's Key Rating Guide, published by Alfred M. Best Company, Inc. of 75 Fulton Street, New York, NY., 10038.
- ii. The surety shall be listed on the US Department of Treasury, Fiscal Service, Bureau of Government Financial Operations, Circular 570, (1982 Rev.) entitled, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
- iii. All surety companies are subject to approval and may be rejected by the City without cause, in the same manner that Bids may be rejected.

B. Limitations for bonding limits or bonding capital refer to the limit or amount of bond acceptable on any one risk.

- i. The bonding limit of the surety shall not exceed ten percent (10%) of the policyholder surplus (capital and surplus) as listed by the aforementioned Best's Key Rating Guide, on any one risk (penalty or amount of any one bond).

C. Requirements:

- i. Policy holder's surplus is required to be five (5) times the amount of any one bond.
- ii. The agent countersigning the bond shall be a resident of the State of Florida.

27. FAMILIARITY WITH LAWS

The Bidders is assumed to be familiar with all applicable Federal, State, and local laws, ordinances, rules, and regulations that may in any manner effect the Work.

28. EXAMINATION OF BIDDER'S FACILITIES

The City, as part of its evaluation may perform an examination of the Bidder's facilities. The City Manager or designee, as part of the evaluation may perform this examination.

The term facilities as used in this REQUEST FOR PROPOSAL shall include, but not limited to, all properties operated by the Bidder, all equipment used in the performance of business by the Bidder, and/or any other evidence, tangible or intangible that the City may deem necessary to substantiate the technical and other qualifications, and the abilities of the Bidder to perform the Work.

The examination shall include, but shall not be limited to, appearance and cleanliness of facilities, appearance and cleanliness of equipment, "road worthiness" of vehicles, appearance and visibility of all signage on vehicles, and possession and distribution of mandatory equipment. Vehicles shall be examined for compliance with State of Florida Statutes, as well as applicable County and City Ordinances.

Additionally, examination may include verification of some of the (physical) minimum requirements for Bidders. The City reserves the right to perform such examinations on the Successful Bidder as often as it deems necessary, to ensure proper performance of the proposed Agreement.

29. PROTEST PROCEDURES

With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ, or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding Contracts, reserving rights of further negotiation, or modifying or amending any Contract, the notice of protest shall be filed in the following manner:

A. Right to Protest

With respect to contracts over \$100,000.00 any actual bidder, or qualified Proposer (hereinafter collectively referred to as, "Bidder") who has a substantial interest in, and is aggrieved in connection with the solicitation or proposed award of, a request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), or invitation for bid for goods and/or services (hereinafter, collectively referred to as the, "Bid") may protest to the City Manager. Protests arising from the decisions and votes of any evaluation or selection committee shall be limited to protests based upon alleged deviation(s) from established purchasing procedures set forth in the Code of the City of Neptune Beach, any written guidelines issued by the City, and the specifications, requirements and/or terms set forth on any bid.

B. Bid Protest

Any protest concerning the bid specifications, requirements and/or terms must be made within three (3) Business Days from the time the facts become known and, in any case, at least two Business Days prior to the opening of Bids. Such protest must be made in writing to the City Manager, and such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this section. Failure to timely protest bid specifications, requirements and/or terms is a waiver of the ability to protest the specifications, requirements and/or terms.

C. Protest After Opening Bids

Any protest after the bid opening, including challenges to actions of any evaluations or selection committee as provided above shall be submitted in writing to the City Manager. The City will allow such bid protest to be submitted anytime until two (2) business days following the release of the City Manager's written recommendation to the City Council, as same is set forth and released in the City Council Agenda Packet, for award of the bid in question. Such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements contained herein. All actual bidders shall be notified in writing (which may be transmitted by electronic communication), following the release of the City Manager's written recommendations to the City Council.

D. Reasonable Reimbursement

The City may require reasonable reimbursement for expenses incurred in processing any protest hereunder, which expenses shall include, but are not limited to, staff time, legal fees, and expenses (including expert witness fees), reproduction of documents and other out-of-pocket expenses.

E. Authority to Resolve Protests

The City Manager shall have the authority to settle and resolve a protest as outlined herein. The City Manager's decision shall be final and only be changed by a majority vote of the City Council.

F. Responsiveness

Prior to any decision being rendered under this section with respect to a bid protest, the City Clerk and the City Attorney, shall certify whether the submission of the protester to the solicitation in question is responsive. The parties to protest shall be bound by the determination of the City Clerk and the City Attorney with regard to the issue of responsiveness.

G. Distribution

A copy of each decision by the City Manager and the City Attorney shall be mailed or otherwise furnished promptly to the protestor.

H. Stay of Procurements During Protest

In the event of a timely protest, as described above, the City shall not proceed further with the solicitation or with the award pursuant to such bid until a decision is issued in the manner described above, unless a written determination is made by the City Manager, that the award pursuant to such bid must be made without delay in order to protect a substantial interest of the City.

I. Remedy

The institution and filing of a protest, as outlined above, is an administrative remedy that shall be employed prior to the institution and filing of any civil action against the town concerning the subject matter of the protest.

J. Protests Barred

Untimely protests that don't meet the requirements outline above shall be barred. Any basis or grounds for a protest not set forth in the letter of protest as required above shall be deemed waived.

K. Report

At the time of the City Manager's written decision or recommendation for award of a Bid is presented at a meeting of the Mayor and City Council, the City Attorney will provide a legal opinion informing the Mayor and City Council about any legal issues relative to any bid protest filed in connection with the bid in question.

L. No Waiver

Nothing in the protest procedures shall waive the City's sovereign immunity pursuant to Florida Statute, Section 768.28.

30. TERM OF CONTRACT

The initial Work order will be substantially completed as determined by the City, within sixty (60) Calendar Days and be final within thirty (30) calendar days from then. The Work shall commence within fifteen (15) calendar days of the Effective Date of a contract to the awarded Bidder.

For purposes of CONB BID NO. 2021-01 JARBOE PARK COURT IMPROVEMENTS, the timeline begins upon notice of award to the winning Bidder on Tuesday March 16, 2021. Mobilization is expected to begin on Wednesday, March 31, 2021; Substantial Completion is expected by Saturday, May 15, 2021; and Final Completion is expected Monday, June 14, 2021.

The Work shall be completed and ready for final payment in accordance with contract documents received by the winning Bidder. The City may allow extended daily working hours and work on weekends if requested by the Contractor with advanced notice and approved by the City Manager in writing.

CONTRACT PERIOD/PRICES SHALL BE FIXED AND FIRM FOR THE TERM OF THE CONTRACT

END OF SECTION

SECTION 300

PROPOSAL

1. BUYER AND BIDDER

This Bid is submitted to:

**City of Neptune Beach
Attn: Stefen Wynn, City Manager
116 1st St.
Neptune Beach, Fl. 32266**

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Procurement Contract with Buyer in the form included in the Procurement Bidding Documents, and to furnish the Goods and Special Services as specified or indicated in the Procurement Bidding Documents, for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Procurement Bidding Documents. The Bidder maintains that this Proposal is made without connection or arrangement with any other person, company, or parties making a bid or proposal and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

The Bidder certifies that the Bidder is not a nonresident alien, or a foreign corporation/entity formed under the laws of a country other than the United States. The Bidder acknowledges and agrees that any contract will include a requirement that the Bidder register with and use the E-Verify system as provided in Florida Statute Section 448.095. Further the Bidder acknowledges and agrees that if the Bidder enters into a contract with a subcontractor, the subcontractor must provide the Bidder with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

The Bidder further declares that they have examined the site of the work and that from personal knowledge and experience, or that they have made sufficient observations of the conditions of the proposed Project Site to satisfy themselves that such site is a correct and suitable one for this work and they assume full responsibility therefore, that they have examined the Drawings and Specifications for the work and from their own experience or from professional advice that the Drawings, including bid item quantities, and Specifications are sufficient for the work to be done and they have examined the other Contractual Documents relating thereto, including, but not limited to, the Notice of Bid Invitation, Instructions to Bidders, Proposal, Contract, General Conditions, Supplementary Conditions, Special Conditions, Technical Specifications, Drawings and have read all addenda prior to the receipt of bids, and that they have satisfied themselves fully, relative to all matters and conditions with respect to the work to which this Proposal pertains.

The Bidder further agrees that the deductions for liquidated damages, as stated in the Contract Form, constitute fixed, agreed, and liquidated damages to reimburse the City for additional costs to the City resulting from the work not being completed within the time limit stated in the Contract Form.

2. BASIS OF BID

NOTE: THIS SCHEDULE OF BID ITEMS IS MERELY ILLUSTRATIVE OF THE MINIMUM AMOUNT/QUANTITY OF WORK TO BE PERFORMED UNDER THE CONTRACT. IN THE CASE OF

ANY CONFLICT BETWEEN THIS SCHEDULE OF BID ITEMS AND THE DETAILED SPECIFICATIONS, THE DETAILED SPECIFICATIONS WILL PREVAIL.

THE BIDDER FURTHER PROPOSES, CERTIFIES AND AGREES TO COMPLY IN ALL RESPECTS WITH THE TIME LIMITS FOR COMMENCEMENT AND COMPLETION OF THE WORK STATED IN THE CONTRACT FORM.

A. Unit Price Bids

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

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
1	Mobilization & Demobilization (5% Max)	LSum.	1		\$
2	Construction Engineering	LSum.	1		\$
3	Fine Site Grading	AC	1.1		\$
4	3" Compacted Aggregate Base, #2's	CYD	375		\$
5	3" Compacted Aggregate Base, #53 Limestone	CYD	375		\$
6	(2) ¾" Asphalt Lifts (Type S-3)	SYD	3,381		\$
7	Install Tennis Net Poles, Installed in Concrete	Ea	2		\$
8	Install Tennis Nets with Adjustable Center Straps	Ea	2		\$
9	Heavy-Duty Basketball Goal Posts, 10', Installed in Concrete	Ea	1		\$
10	Heavy-Duty Basketball Goal Post, 8', Installed in Concrete	Ea	2		\$
11	Pickleball Net Posts, Installed in Concrete	Ea	8		\$
12	Pickleball Nets and Adjustable Center Straps	Ea	8		\$
13	10' High Galvanized vinyl - coated Chain Link Fencing, 9 gauge with 1 5/8" OD top rail; 7 gauge bottom tension cable bottom rail; 3" OD, Schedule 40 Galv. Polyester coated pipe 10' high terminal and gate posts; 2 ½" OD galv. Polyester coated tubing at other vertical posts	LF	875		\$
14	4' x7' High Galvanized, vinyl-coated chain link fence gates, 9 gauge	Ea	5		\$

15	5" OD Round Tapered Steel polyester coated Light Poles, installed in concrete	Ea	30		\$
16	Scimitar 4 Brick LED light Fixtures, Factory Coated to Match Fence Color	Ea	50		\$
17	Electrical panel, timers, all required wiring and labor to install and hookup all light poles and light fixtures for all courts	Lsum.	1		\$
18	Refurbish and Reorient Beach Volleyball Courts, including labor to install new equipment	LSum.	1		\$
19	Furnish all necessary nets, poles and equipment for Beach Volleyball Courts	Ea.	2		\$
20	Prepare, clean, sand, level, fill and Finish Tennis Courts, pickleball courts and basketball court; to include installation of two coats of sand-filled acrylic color-coating; final striping of boundary lines	LSum.	1		\$
Total of All Unit Price Bid Items					\$

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

3. **TIME OF COMPLETION**

Bidder agrees that furnishing the Goods and Special Services will conform to the schedule of procurement Contract times set forth herein:

No.	Event	Date	Time (EST) *
1	Notice of Award	3/16/2021	9:00 AM
2	<u>Mobilization</u>	3/31/2021	8:00 AM
3	Substantial Completion	5/15/2021	2:00 PM
4	Final Completion	6/14/2021	5:00 PM

4. ATTACHMENTS TO THIS BID

A. Bid Bond

Attached hereto is a cashier's check on the _____
_____ Bank of _____
_____ or Bid Bond for the sum of: _____
_____ Dollars (\$ _____), made
payable to the City of Neptune Beach, Florida.

(Affix Seal)

(Name of Bidder)

Signature of Officer

(Title of Officer)

Address: _____
City: _____ State: _____ Zip: _____

The full names and residences of persons and firms interested in the foregoing bid, as principals, are as follows:

Name of the executive who will give personal attention to the work:

ATTACH APPROPRIATE GUARANTY DOCUMENTATION

B. List of Major Sub Contractors

Bidders are required to list with the Proposal, on this sheet all major sub-contractors included for the execution of the Work. Failure to complete the list may be cause for declaring the Proposal irregular and disqualifying the Bid.

The successful Bidder shall employ the subcontractors listed hereunder for the class of Work indicated, which list shall not be modified in any way without the written consent of the City of Neptune Beach.

The Bidder expressly agrees that:

1. If awarded a Contract as a result of this Proposal, the major subcontractors used in the execution of the Work will be those listed below.
2. The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the Work required.

Category of Class	Name of Subcontractor	Address of Subcontractor

SECTION 350
CONTRACTOR'S QUESTIONNAIRE
QUALIFICATION STATEMENT

Bidders may submit information on their own form and within their own format as long as the questions below are answered within the submission.

Submitted to: The Mayor and City Council of the City of Neptune Beach, Florida:

By: _____

Principal Office: _____

How many years has your organization been in business under your present business name?

Does your organization have current occupational licenses entitling it to do the work contemplated in this Contract? _____.

If so, where in Florida are you licensed to do business? _____

State of Florida Occupational License (State type and number):

Federal ID No.: _____

Please include copies of above licenses and certifications with Proposal.

How many years of experience in similar work has your organization had?

(A) As a General Contractor _____

(B) As a Subcontractor _____

(C) What contracts has your organization completed? State below:

Contract Amount	Class of Work	Date Completed	Name of Owner

How many years has your organization, or your subcontractor, had in the actual construction of outdoor ball courts?

_____ Years

List the detailed experience below:

Name & Tel. No. of Owner	Project Name	Date Completed

Are you a Certified Disadvantaged Business Enterprise (DBE) with the State of Florida?

Have you ever failed to complete any work awarded to you? _____

If so, where and why? _____

Has any officer or partner in your organizations ever failed to complete a contract handled in their own name? _____

If so, state the name of the individual, name of owner, and reason thereof:

In what other lines of business are you financially interested or engaged?

Give references as to experience, ability and financial standing.

What equipment do you own that is available for the proposed Work and where is it located?

Financial Statement:

What Bank or Banks have you arranged to do business with during the course of the Contract should it be awarded to you?

I hereby certify that the above answers are true and correct.

Name of Bidder: _____

Signature of Officer: _____

Title of Officer: _____

END OF SECTION

DRAFT

SECTION 375
SWORN STATEMENTS, ACKNOWLEDGEMENTS, AND AFFIDAVITS

1. NON-COLLUSION AFFIDAVIT

State of Florida

County of Duval

_____ (“Affiant”), being first duly sworn, deposes and says that:

1. Affiant is _____ of _____, (the “Bidder”) and has submitted the attached Bid;
2. Affiant has personal knowledge of the matters set forth herein and is competent to testify:
3. Affiant is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting the Bid;
4. The Bid is genuine and is not collusive or a sham Bid;
5. Neither the Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including the Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm, or person to submit a collusive or sham Bid, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Neptune Beach or any person interested in the proposed Contract.

By: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 2021, by

_____, who is personally known to me or has produced
_____ as identification. _____

Notary Public

My Commission expires: _____

(Affix Seal)

Print Name

2. Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements
Appendix "A" – 49 CFR Part 20

The undersigned (Contractor) certifies, to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal Grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employees of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with the instructions {as amended by "Government Wide Guidance for New Restrictions on Lobbying," Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et. seq.)}
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. sec. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to Civil Penalty of not less than \$10,000 and not more than \$100,000 for each such failure. {Note: Pursuant to 31 U.S.C. sec. 1352 (c) (1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure}.

The Contractor, _____, certified or affirms the truthfulness and accuracy of each statement of its certifications and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date: _____

3. Anti-Kickback Affidavit

State of Florida

County of Duval

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the City of Neptune Beach, its elected officials, or its consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 2021, by

_____, who is personally known to me or has produced

_____ as identification. _____

Notary Public

My Commission expires: _____

(Affix Seal)

Print Name

SPACE INTENTIONALLY LET BLANK

4. Sworn Statement on Public Entity Crimes
Section 287.133 (3) (a), Florida Statutes

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted to the City of Neptune Beach

by: _____

Print Name and Title

for: _____

Print Name of Entity Submitting Sworn Statement

whose business address is:

and (if applicable) its Federal Employer Identification Number (FEIN) is: _____

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn Statement.

I, the undersigned, understand that a, "public entity crime" as defined in Paragraph 287.133(1)(9)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

Further, I, the undersigned, understand that, "convicted," or, "conviction," as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any Federal or State Trial Court of record relating to charges brought by indictment or information after July 1, 29189, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

I, the undersigned, understand that an, "affiliate," as defined in Paragraph 287.133(1)(a), Florida Statutes means:

- a. A predecessor or a successor of a person convicted of a public entity crime; or

- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term, "affiliate," includes those officers, director, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person control another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

I, the undersigned, understand that a, "person," as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term, "person," includes those officers, director, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

Based on information and belief, the statement that I have marked below is true in relation to the entity submitting the sworn statement. **[Indicate which statement applies by initialing.]**

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989. HOWEVER, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[Attach a copy of the final order.]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

By: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 2021, by

_____, who is personally known to me or has produced

_____ as identification. _____

Notary Public

My Commission expires: _____

(Affix Seal)

Print Name

SPACE INTENTIONALLY LEFT BLANK

5. Drug-Free Workplace Form

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that

_____ does:

(Name of Business)

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled-substance is prohibited in the workplace and specifying the actions that will be taken against the employees for violations of such prohibition.
- b. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- c. Give each employee engaged in providing the commodities or contractual services that are under bud a copy of the statement specified in subsection (a).
- d. In the statement specified in subsection (a), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- e. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance and rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- f. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Proposer's Signature

Date

SECTION 400
BID BOND

STATE OF FLORIDA)
)
SS. COUNTY OF DUVAL)

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ as Principal, and

_____, as Surety,

a Corporation chartered and existing under the laws of the State of _____, with its

principal offices in the City of _____, and authorized to do business in the State

of Florida are held and firmly bound unto the Owner, _____ in _____

the penal sum of _____ Dollars (\$) _____

lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT WHEREAS THE PRINCIPAL HAS SUBMITTED THE ACCOMPANYING BID, DATED _____, 2021, FOR:

JARBOE PARK COURT IMPROVEMENTS

CITY OF NEPTUNE BEACH, FLORIDA

NOW, THEREFORE:

- A. If the principal shall not withdraw said bid within sixty (60) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Owner in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

- B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the Owner the difference between the amount specified in said bid and the amount for which the Owner may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this ____ day of _____, 2020, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESSES: (If Sole Ownership or Partnership, two (2) witnesses required)
(If Corporation, Secretary Only will attest and affix seal)

WITNESSES:

PRINCIPAL:

Name of Firm

Signature of Authorized (Affix Seal)

Title

Business Address

City, State & Zip Code

WITNESSES:

SURETY:

Corporate Surety

Attorney-in-Fact (Affix

Seal) Business Address

City, State & Zip Code

Name of Local Insurance Agency

CERTIFICATES AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

Secretary (Corporate Seal)

STATE OF FLORIDA)
)
SS: COUNTY OF DUVAL)

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared _____, to be well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the _____ and that he has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of the Owner, the _____

Sworn and Subscribed to before me this _____ day of _____, 2020.

Notary Public

(Attach Power of Attorney
to original Bid Bond)

(Printed Name)

State of Florida at Large (Seal)

My commission expires: _____

END OF SECTION

SECTION 500
PERFORMANCE BOND

STATE OF FLORIDA)
)
SS. COUNTY OF DUVAL)

KNOW ALL MEN BY THESE PRESENTS, that _____ as
Principal, hereinafter called Contractor, and _____
as Surety, hereinafter called Surety, are held firmly bound unto the City of Neptune Beach, as
Obligee, hereinafter called, Owner, in the amount of: _____

Dollars (\$_____) for the payment whereof Contractor and Surety bind themselves, their
heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

WHEREAS, contractor has by written agreement dated _____, 2020, entered
into a Contract with Owner for:

JARBOE PARK COURT IMPROVEMENTS
CITY OF NEPTUNE BEACH, FLORIDA

in accordance with Drawings and Specifications prepared by the City Engineer which Contract is by
reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that,
if the Principal shall in all respects promptly and faithfully perform and comply with the terms
and conditions of said Contract and his obligations thereunder and shall indemnify the Owner
and the Consulting Engineer and save either or all of them harmless against and from all costs,
expenses and damages arising from the performance of said Contract or the repair of any work
thereunder, then this obligation shall be void; otherwise, this Bond shall remain in full force and
effect, in accordance with the following terms and conditions:

- A. The Principal and Surety jointly and severally agree to pay the Owner any difference between the sum to which the said Principal would be entitled on the completion of the Contract, and that sum which the Owner may be obliged to pay for the completion of said work by Contract or otherwise, and any damages, direct or indirect or consequential, which the said Owner may sustain on account of such work, or on account of the failure of said Contractor to properly and in all things, keep and execute all of the provision of said Contract.
- B. And this Bond shall remain in full force and effect for a period of one (1) year from the date of acceptance of the project by the Owner and shall provide that the Contractor guarantees to repair or replace for said period of one (1) year all work performed and materials and equipment furnished that were not performed or furnished according to the terms of the Contract, and shall make good, defects thereof which have become apparent before the expiration of said period of one (1) year. If any part of the project, in the judgment of the Owner, for the reasons above stated needs to be replaced, repaired or made good during that time, the Owner shall so notify the Contractor in writing. If the Contractor refuses or neglects to do such work within five (5) days from the date of service of such Notice, the Owner shall have the work done by others and the cost thereof shall be paid by the Contractor or his Surety.
- C. And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive Notice of any change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.
- D. The surety represents and warrants to the Owner that they have a Best's Key Rating Guide General Policyholder's Rating of " _____ " and Financial Category of "Class _____".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this _____ day of _____ 2021, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESSES: (If Sole Ownership or Partnership, two (2) witnesses required)
(If Corporation, Secretary Only will attest and affix seal)

WITNESSES:

PRINCIPAL:

Name of Firm

Signature of Authorized (Affix Seal)

Title

Business Address

City, State & Zip Code

WITNESSES:

SURETY:

Corporate Surety

Attorney-in-Fact (Affix

Seal) Business Address

City, State & Zip Code

Name of Local Insurance Agency

CERTIFICATES AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

Secretary (Corporate Seal)

STATE OF FLORIDA)
)
SS: COUNTY OF DUVAL)

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared _____, to be well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the _____ and that he has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of the Owner, the _____

Sworn and Subscribed to before me this _____ day of _____, 2020.

Notary Public

(Attach Power of Attorney
to original Bid Bond)

(Printed Name)

State of Florida at Large (Seal)

My commission expires: _____

END OF SECTION

SECTION 510
PAYMENT BOND

STATE OF FLORIDA)
)
SS. COUNTY OF DUVAL)

KNOW ALL MEN BY THESE PRESENTS, that _____ as
Principal, hereinafter called Contractor, and _____
as Surety, hereinafter called Surety, are held firmly bound unto the City of Neptune Beach, as
Obligee, hereinafter called, Owner, in the amount of: _____

Dollars (\$ _____) for the payment whereof Contractor and Surety bind themselves, their
heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

WHEREAS, contractor has by written agreement dated _____, 2020, entered
into a Contract with Owner for:

JARBOE PARK COURT IMPROVEMENTS
CITY OF NEPTUNE BEACH, FLORIDA

in accordance with Drawings and Specifications prepared by the City Engineer which Contract is by
reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that,

if the Principal shall promptly make payment to all claimants, as herein below defined, then this
obligation shall be void; otherwise, this Bond shall remain in full force and effect, subject to the
following terms and conditions:

- A. A claimant is defined as any person supplying the Principal with labor, material and
supplies, used directly or indirectly by the said Principal or any subcontractor in the
prosecution of the work provided for in said Contract, and is further defined in Section
255.05(1) of the Florida Statutes.
- B. The above-named Principal and Surety hereby jointly and severally agree with the Owner
that every claimant as herein defined, who has not been paid in full before the expiration
of a period of ninety (90) days after performance of the labor or after complete delivery
of materials and supplies by such claimant, may sue on this Bond for the use of such

claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

C. No suit or action shall be commenced hereunder by any claimant.

1. Unless claimant, other than one having a direct contract with the Principal, shall within forty-five (45) days after beginning to furnish labor, materials or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to this bond for protection.
2. Unless claimant, other than one having a direct contract with the Principal, shall within ninety (90) days after such claimant's performance of the labor or complete delivery of materials and supplies, deliver to the Principal written notice of the performance of such labor or delivery of such material and supplies and the nonpayment therefore.
3. After the expiration of one (1) year from the performance of the labor or completion of delivery of the materials and supplies; it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitations shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
4. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

D. The Principal and the Surety jointly and severally, shall repay the Owner any sum which the Owner may be compelled to pay because of any lien for labor or materials furnished for any work included in or provided by said Contract.

E. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration of or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications applicable thereto shall in any way affect its obligations on this Bond, and the Surety hereby waives notice of any such change, extension of time, alterations of or addition to the terms of the Contract, or to the work or to the Specifications.

F. The Surety represents and warrants to the Owner that they have a Best's Key Rating Guide General Policyholder's rating of "_____" and Financial Category of "Class _____".

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this ____ day of _____, 2020, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESSES: (If Sole Ownership or Partnership, two (2) witnesses required)
(If Corporation, Secretary Only will attest and affix seal)

WITNESSES:

PRINCIPAL:

Name of Firm

Signature of Authorized (Affix Seal)

Title

Business Address

City, State & Zip Code

WITNESSES:

SURETY:

Corporate Surety

Attorney-in-Fact (Affix

Seal) Business Address

City, State & Zip Code

Name of Local Insurance Agency

CERTIFICATES AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

Secretary (Corporate Seal)

STATE OF FLORIDA)
)
SS: COUNTY OF DUVAL)

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared _____, to be well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the _____ and that he has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of the Owner, the _____

Sworn and Subscribed to before me this _____ day of _____, 2020.

Notary Public

(Attach Power of Attorney
to original Bid Bond)

(Printed Name)

State of Florida at Large (Seal)

My commission expires: _____

END OF SECTION

SECTION 520
CERTIFICATE OF INSURANCE

THIS IS TO CERTIFY THAT THE _____
(Insurance Company)

Address _____

of _____

has issued policies of insurance, as described below and identified by a policy number, to the insured named below; and to certify that such policies are in full force and effect at this time. It is agreed that none of these policies will be canceled or changed so as to affect the interest(s) of the City of Neptune Beach (hereinafter sometimes called the Owner) until thirty (30) days after written notice of such cancellation or change has been delivered to the City Clerk, copy to City Manager.

Insured _____

Address _____

Status of Insured: _____ Corporation _____ Partnership _____ Individual

Location of Operations Insured _____

Description of Work:

JARBOE PARK COURT IMPROVEMENTS

CITY OF NEPTUNE BEACH, FLORIDA

INSURANCE POLICIES IN FORCE:

Forms of Coverage	Policy Number	Exp. Date
Workers Comp./Employers Liability	_____	_____
Comprehensive Automobile Liability	_____	_____
Comprehensive General Liability	_____	_____
Excess Liability	_____	_____
Other (Please specify type:_____)	_____	_____

POLICY INCLUDES COVERAGE FOR:**YES****NO**

1. Additional Insured: Owner & Engineer
2. Liability under the United States Longshoremen's and Harbor Workers' Compensation Act.
3. All owned, hired, or non-owned automotive equipment used in connection with work done for the Owner.
4. Contractual Liability
5. Damage caused by explosion, collapse or structural injury, and damage to underground utilities.
6. Products/Completed Operations
7. Owners and Contractors Protective Liability
8. Personal Injury Liability
9. Excess Liability applies excess of:
 - (a) Employers Liability
 - (b) Comprehensive General Liability
 - (c) Comprehensive Automobile Liability

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

TYPES OF POLICY**FORMS OF COVERAGE****LIMITS OF LIABILITY**

Workers' Compensation

Bodily Injury

\$

Statutory

Employers Liability

Bodily Injury

\$

Each
Accident

Disease

\$

Each
Person

Disease

\$

Policy
LimitComprehensive Auto
LiabilityCombined Single
Limit BI/PD

\$

Each
Accident

Comprehensive General Liability

Bodily Injury \$_____ Each Occurrence

\$_____ Aggregate

Property Damage \$_____ Each Occurrence

\$_____ Aggregate

OR

Combined Single \$_____ Each Occurrence

Limit BI/PD \$_____ Aggregate

Occurrence

Excess Liability Combined Single

Limit BI/PD \$_____ Aggregate

Other

The Insurance Company hereby agrees to deliver, within ten (10) days, two (2) copies of the above policies to the City Manager when so requested.

NOTE: Entries on this certificate are limited to Authorized Agent or Insurance Company Representative.

Date:_____

(SEAL) _____

Issued at:_____

Insurance Company

Insurance Agent or Company

Authorized Representative

Send original and one copy to:

City of Neptune Beach
Attn: Catherine Ponson, CMC, City Clerk
116 1st St.
Neptune Beach, Fl. 32266

END OF SECTION

SECTION 530
ACKNOWLEDGEMENT OF CONFORMANCE
WITH OSHA STANDARDS

TO THE CITY OF NEPTUNE BEACH:

We, _____, hereby acknowledge and agree that as Contractors for the construction of the JARBOE PARK COURT IMPROVEMENTS, CITY OF NEPTUNE BEACH, FLOIRDA, CONB BID NO. 2021-01, within the limits of the City of Neptune Beach, Florida, that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the City of Neptune Beach, and its Consulting Engineers against any and all legal liability or loss the City, or the Engineer may incur due to _____

Failure to comply with such act.

By: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 2021, by
_____, who is personally known to me or has produced
_____ as identification. _____

Notary Public

My Commission expires: _____

(Affix Seal)

Print Name

END OF SECTION

SECTION 600
GENERAL CONDITIONS

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
OF THE PROCUREMENT CONTRACT**



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STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer's acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.
21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
24. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services.
25. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.

26. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.
27. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
28. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
29. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
30. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods and Special Services are a part.
31. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.
32. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
33. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer's review of the Submittals.
34. *Seller*—The individual or entity furnishing the Goods and Special Services.
35. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods and Special Services. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
36. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
37. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not

Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

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

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*
 1. The Procurement Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or
 - c. in the case of Special Services, have not been completed.
 3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
 4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
 5. The word “furnish,” when used in connection with the Goods and Special Services means to supply and deliver said Goods to the Point of Destination (or some other

specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.

- C. *Procurement Contract Price or Procurement Contract Times*: References to a change in “Procurement Contract Price or Procurement Contract Times” or “Procurement Contract Times or Procurement Contract Price” or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term “or both” is not expressed.
- D. Unless stated otherwise in the Procurement Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

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

2.02 Copies of Documents

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

2.03 Electronic Transmittals

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

2.04 Preliminary Schedules

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

2.05 Preliminary Conference

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

2.06 Safety

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

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 Intent

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as

being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.

- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

3.02 Reference Standards

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

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*

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

- B. *Resolving Discrepancies*: Except as may be otherwise specifically stated in the Procurement Contract Documents, the provisions of the Procurement Contract Documents will take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Procurement Contract Documents and:
1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
 2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Procurement Drawings and Procurement Specifications

- A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods and Special Services, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods and Special Services thereunder.
1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.
- B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer's written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.
- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

3.05 Reuse of Documents

- A. Seller and its subcontractors and suppliers shall not:
1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without

Buyer's express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 Commencement of Procurement Contract Times

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

4.02 Continuing Performance

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

4.03 Adjustments to Progress Schedule

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

4.04 Delays

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. inspection delays by governmental authorities, and custom delays;
 4. international shipping delays;
 5. acts or failures to act of third-party entities; and
 6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller's entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
1. Seller's entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller's obligations, as of the time of the delay, disruption, or interference.
 2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.
 3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller's progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller's progress; (4) the number of days' increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

ARTICLE 5—BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.

- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Contract.
- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer's termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 Insurance

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

5.03 Surety or Insurance Companies

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

ARTICLE 6—LICENSES AND FEES

6.01 Intellectual Property and License Fees

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights, or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.
- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Contract Documents.

6.02 Seller's Infringement

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

- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 Buyer's Infringement

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.
- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER'S RESPONSIBILITIES

7.01 Performance of Obligations

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

7.02 Labor, Materials and Equipment

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

2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
3. shop-assembled to the greatest extent practicable.

7.03 Laws and Regulations

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such performance. It will not be Seller's responsibility to make certain that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
 1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or equal" item.
 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.

- B. *Engineer's Evaluation*: Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee*: Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data*: Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 Taxes

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

7.06 Submittals

A. *Shop Drawing and Sample Requirements*

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

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

1. *Shop Drawings*

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

2. *Samples*

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

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

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. Submittals Other than Shop Drawings and Samples

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

7.07 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the Procurement Contract,

provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

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

7.08 Concerning Subcontractors and Suppliers

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

ARTICLE 8—SHIPPING AND DELIVERY

8.01 Shipping

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

8.02 Delivery

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

8.03 Risk of Loss

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

- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

ARTICLE 9—BUYER'S RIGHTS

9.01 Seller's Warranties and Guarantees

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

9.02 Inspections and Testing

A. *General Provisions*

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

B. *Visual Inspection on Delivery*

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

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and

Seller has performed and completed all Special Services, Buyer will make a final inspection.

2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

9.03 Non-Conforming Goods and Special Services

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.
- B. *Buyer's Rejection of Non-Conforming Goods*
 1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
 2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
 3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- C. *Buyer's Rejection of Non-Conforming Special Services*
 1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
 2. Seller shall promptly provide conforming Special Services acceptable to Buyer.
 3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.
- D. *Remedying Non-Conforming Goods:* If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
- E. *Buyer's Acceptance of Non-Conforming Goods:* Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.
- F. *Seller Obligations:* Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects,

attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.

- G. *Buyer's Rejection of Conforming Goods:* If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

9.04 Correction Period

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

ARTICLE 10—ENGINEER'S STATUS

10.01 Engineer's Role Defined

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

10.02 Duties and Responsibilities; Authority; Limitations

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods and Special Services, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special

Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.

- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller's failure to furnish the Goods and Special Services in accordance with the Procurement Contract Documents.

ARTICLE 11—CHANGES

11.01 Amending and Supplementing the Procurement Contract

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

11.02 Change Orders

- A. Buyer and Seller shall execute appropriate Change Orders covering:
 - 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods and Special Services furnished in accordance with a Change Directive;
 - 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
 - 3. Changes in the Goods and Special Services which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods and Special Services involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Change Directives

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

11.04 Field Orders

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

11.05 Buyer-Authorized Changes in the Goods and Special Services

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

11.06 Buyer's Contingency Allowance

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.

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

11.07 Unauthorized Changes in the Goods and Special Services

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

11.08 Change of Procurement Contract Price

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

11.09 Change of Procurement Contract Times

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

11.10 Notification to Surety

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

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 Claims

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.

- B. Claimant shall deliver to Engineer and the other party to the Procurement Contract written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.
- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Contract Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Paragraph 12.02.
- H. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 12.01, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02.
- I. If Article 12 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 12, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- J. No Claim for an adjustment in Procurement Contract Price or Procurement Contract Times will be valid if not submitted in accordance with Article 12.
- K. The effect on Claims of an assignment of the Procurement Contract by Buyer to a Contractor/Assignee is addressed in the Procurement Agreement, Article 5.

12.02 Dispute Resolution Method

- A. Either Buyer or Seller may initiate the mediation of (1) any Claim decided in writing by Engineer under Paragraph 12.01 before such decision becomes final and binding, or (2) any

other dispute between the parties, including but not limited to any dispute arising after final inspection of the Goods and Services. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Procurement Contract. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to the Procurement Contract. Timely submission of the request will stay Engineer's decision from becoming final and binding.

- B. Mediation is a condition precedent to seeking final dispute resolution under Paragraph 12.01.C. Buyer and Seller shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation will be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the dispute, then Engineer's written Claim decision under Paragraph 12.01.D or a Claim denial pursuant to Paragraph 12.01.E becomes final and binding, or if applicable such other dispute is deemed resolved in favor of respondent, unless, within 30 days after termination of the mediation, Buyer or Seller:
 - 1. elects in writing to invoke any final dispute resolution process provided for in the Supplementary Conditions, or
 - 2. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
 - 3. if no final dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim or dispute to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

ARTICLE 13—PAYMENT

13.01 Applications for Progress Payments

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

13.02 Review of Applications for Progress Payments

- A. *Review of Applications*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Goods and Special Services or other obligations of Seller have progressed to the point indicated;
 - b. the quality of the Goods and Special Services or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
 - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Goods and Special Services or other obligations of Seller have been exhaustive, extended to every aspect of the Goods and Special Services or other obligations of Seller in progress, or involved detailed inspections of the Goods and Special Services or other obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Seller's performance or furnishing of Goods and Special Services or other obligations of Seller; or
 - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
 - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
 - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
 - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
 - a. the Goods and Services are non-conforming, requiring correction or replacement;

- b. the Procurement Contract Price has been reduced by Change Orders;
- c. Buyer has been required to correct non-conforming Goods and Special Services in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E; or
- d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

13.03 Basis and Amount of Progress Payments

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

13.04 Suspension of or Reduction in Payment

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:
 - 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Contract Documents, and
 - 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
 - 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods and Special Services, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
 - c. Seller has failed to provide and maintain required bonds or insurance;
 - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Goods and Special Services are non-conforming, requiring correction or replacement;
 - f. Buyer has been required to correct non-conforming Goods and Special Services, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E;
 - g. the Procurement Contract Price has been reduced by Change Orders;
 - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;

- i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods and Special Services; or
 - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

13.05 Final Payment

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

13.06 Waiver of Claims

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal,

set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 Cancellation

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

14.02 Suspension of Performance by Buyer

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

14.03 Suspension of Performance by Seller

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

14.04 Breach and Termination

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

B. *Seller's Breach*

1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

ARTICLE 15—MISCELLANEOUS

15.01 Giving Notice

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

15.02 Controlling Law

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

15.03 Computation of Time

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

15.04 Cumulative Remedies

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

15.05 Survival of Obligations

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

15.06 Entire Agreement

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

15.07 No Waiver

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

15.08 Headings

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

15.09 Successors and Assigns

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

END OF SECTION