
NOX
GROUP

EXHIBIT C

PURCHASE ORDER AGREEMENT

Job No. _____-____

VENDOR ("Seller") AGREES TO FURNISH, SUPPLY AND DELIVER TO CONTRACTOR ("Buyer") THE GOODS AND/OR SERVICES DESCRIBED BELOW IN COMPLETE ACCORDANCE WITH THE GOVERNING CONTRACT DOCUMENTS, INCLUDING ANY ADDENDA OR AMENDMENTS THERETO FOR Buyer's USE AND/OR INCORPORATION IN THE ABOVE CAPTIONED PROJECT AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW. THIS AGREEMENT SHALL NOT BE MODIFIED UNLESS EXPRESSLY AGREED TO IN WRITING BY AUTHORIZEDREPRESENTATIVES OF VENDOR AND Buyer. ADDITIONAL OR DIFFERENT TERMS ARE NOT PART OF THIS AGREEMENT.

Fully Integrated Agreement

The Purchase Order Agreement conditions represent the final and complete agreement between Buyer and Seller, and any prior or contemporaneous agreements between the parties is fully replaced by these Purchase Order conditions. Future modifications to the Purchase Order conditions must be reflected through a Purchase Order Change/Amendment. Seller's acceptance is limited to the terms and conditions of this Purchase Order. Seller's terms and conditions of sale are not a part of the agreement between Buyer and Seller and will not be considered an indication of exception to these Purchase Order conditions. Commercial terms relating to the sale of goods contained within any prior "credit application," delivery ticket or similar document, are voided. Any acknowledgment or commencement of performance, of this Purchase Order, or any Purchase Order Change, constitutes acceptance of these Purchase Order conditions.

The parties Agree that execution of this Agreement, shall only be by their proper officers or duly authorized agents. Seller further agrees to return the executed Agreement to Buyer within three (3) days from receipt of the Agreement. In the event that Seller fails to execute and return such Agreement within five (5) days of the date of order, or if Seller in any way acts upon the agreement, Seller shall be bound to all terms and conditions of the Agreement as though it were fully executed by Seller, and by failure to execute within the appropriate five (5) days' time, waives all rights it might have to object to the specific language, terms, and conditions of such contract.

Prime Contract Flow Down

Seller shall be bound by the terms and conditions, duties, and obligations of the Contract Documents insofar as the same are applicable to Seller's scope of work. Seller shall be bound to Buyer by in the same manner and to the same extent as Buyer is bound to Owner. If any Subject Material fails to meet Contract Document requirements, Seller shall be liable for all costs and expenses incurred by Buyer as a result of that failure. All costs for defending Owner or Buyer against any and all claims whatsoever, shall be deducted from monies otherwise due, provided that a sufficient balance to cover such costs remains unpaid at the time notification of the claim is received. Buyer reserves the right to offset payment of any amount due or become due sufficient to protect Buyer from any such

cost. If the full amount of this, or any other Agreement has already been paid, or if balance due is not sufficient to offset such costs, Seller agrees to reimburse Buyer for any and all expenses arising from the claim or claims, including without limitation, reasonable attorney's fees and any other legal fees or costs. The words "Vendor" or "Supplier" when used throughout the Contract Documents shall mean Seller as applicable to Seller's scope of work. Seller agrees to furnish partial lien waivers, upon the request, at the option of Buyer, and provide a full lien waiver as a condition of final payment.

When this Agreement covers goods and/or services to be used and/or incorporated in projects governed by prime contracts with the United States government, all applicable clauses affecting government requirements of manufacturers and Seller shall be, and hereby are adopted and incorporated by reference, and shall have the same force and effect as if fully set forth herein. Where applicable, Seller may be required to furnish copies of purchase orders for manufactured or fabricated items purchased in connection with this Agreement from third parties for delivery to this project without further processing by Seller. Seller shall extend full cooperation to Buyer in the preparation of, and the submission of any and all claims involving the goods and/or services arising out of or in any way connected with this Agreement.

Firm Price

The price of this Purchase Order is not subject to change unless expressly set forth herein, and includes all taxes and duties of every kind, unless Buyer provides Seller with TPT Exemption Certificate(s). Seller is responsible for paying all royalties and licensing fees associated with the Subject Material.

If the terms of this Agreement provide for the purchase of materials on a unit price basis, the unit of measure for payment shall be one for which certified verification of weights are measured at the point and time of load delivery. Seller agrees that receipt of load tickets by Buyer's representative at the point of delivery does not constitute acceptance of Seller's quantities for payment purposes. In the event parties fail to agree on the actual quantities delivered, Buyer shall have the right to measure quantities of work and make final settlement on the basis of such measurement.

Seller acknowledges Buyer's status as a consumer. If a sales tax or use tax is applicable to the purchase hereunder, Buyer agrees that such tax will be set forth as a separate line item for billing purposes.

Seller warrants that the prices charged in connection with this order conform to all applicable government regulations. Seller further warrants and agrees to defend and hold harmless Buyer from and against all suits, actions, or claims arising out of this Agreement for infringement of any patent rights, copyrights, and licensing agreements, held or alleged to be held by others.

Seller acknowledges that he has familiarized himself with all of the conditions of the locality, project, plans, specifications, and any other factor or circumstance which may affect his performance under this Agreement, and that nothing in this Agreement shall obligate or render Buyer liable for additional payment to Seller on account of his misunderstanding or failure to familiarize himself with such factors and conditions.

Changes

Notwithstanding anything to the contrary herein, Buyer may make changes to any Purchase Order Agreement, including adjustments to quantities ordered, changes to the specifications of the Subject Material, alterations to the delivery schedule, or suspension of the order, by issuing a Change Order or other reasonable notification to Seller. Seller's price will be equitably adjusted for significant quantity adjustments, and specification changes at the previously set and locked-in unit price for all goods adjusted, unless the additive or deductive modification equals a twenty-five percent (25%) or greater alteration in the previously ordered quantity or the specifications of the Subject Material. Any Seller claims for equitable adjustment must be made in writing within one (1) business day of receipt

of the Change Order. Seller may not proceed to change unit pricing with changes affecting quantity, or the contract price for modifications to specifications of the Subject Material without a signed Change Order from Buyer.

Cancellation

Buyer may terminate this Agreement at any time, for Buyer's own convenience and without charge to Buyer. In the event that any Prime Contract is terminated, cancellation of this Agreement occurs automatically upon notice, without charge to Buyer.

Delivery

Time is of the essence in this Agreement. Seller, having stated or acknowledged the required delivery dates, shall be responsible for the necessary execution of orders, planning, scheduling, correlation of documents, preparation, submission, and approval of shop drawings, samples, schedules, templates, the coordinating and expediting of shipping procedures, and shall do all things necessary to guarantee delivery of this order by the stipulated date or dates. Seller agrees to exercise due diligence and to cause each of his authorized agents or representatives to exercise due diligence, in executing and processing this order and all of its terms. Seller agrees to keep Buyer fully informed as the delivery status of the materials, goods, and/or services as represented by this order, and to advise the Buyer, in writing, of any delay, circumstance or development in the execution, processing, or shipment of this order which may impair his ability to meet the required delivery date or dates, or which may otherwise affect the discharge of his obligations under this Agreement. Should Seller fail in this, or any of the other requirements of this Agreement, Buyer may, at its option and in its sole discretion, modify or cancel this order upon three (3) days written notice to Seller, and Buyer may place or replace the order, in full or in part with others, all without prejudice to any other right or remedy it may have at equity, contract, or law. Seller acknowledges liability for damages to Buyer resulting from Seller's failure to perform in a timely manner and any determination of damages directly attributed to Seller's failure or deficiency in the performance of its obligations under this Agreement or the Contract Documents. For any circumstances beyond its control, and for which the owner grants time extensions, Seller hereby agrees to notify Buyer immediately by filing a written request with Buyer's representative for an extension of time within two (2) days of the date on which the delay first occurred; otherwise, Seller shall waive any future claim with respect to such delay. Buyer will promptly relay any such request deemed valid to the appropriate authority, but shall not be responsible for its acceptance, nor shall this Agreement be construed in any way to require acknowledgment by Buyer of any cause for delay not accepted by the cognizant authority.

Seller shall be responsible to ensure that all materials are packaged, labeled, and protected prior to shipping, in accordance with any and all applicable requirements of the Contract Documents.

Unless otherwise stipulated on the face of this Agreement, Seller shall designate shipping routes and methods (subject to other provisions hereof) and shall be fully responsible for selection of the most expeditious and reliable means of accomplishing delivery to destination according to the terms of this Agreement and the Contract Documents. While Seller may not be deemed responsible for shipping delays of a general or industry-wide nature, such as general transportation strikes, embargos, acts of God or national emergencies, Seller agrees to exercise all due diligence to anticipate and mitigate the effect of such delays, and shall extend full cooperation to Buyer in the recovery and re-routing of such shipments when and as required to meet critical delivery schedules.

Unless otherwise stipulated on the face of this Agreement, terms shall be F.O.B. jobsite, freight prepaid. At Buyer's option, a minimum handling charge of $50.00 may be assessed against Seller/Vendor to partially defray the additional clerical attendant expense upon the making of separate disbursements and obtaining verification of payment from third parties where shipments have been made on a "freight collect" basis.

Buyer shall have five (5) business days to inventory and inspect all Seller deliveries for accuracy and/or damage. Should inaccuracies or damage be identified within this period, Buyer will notify Seller of such

items and it shall be the responsibility of the Seller to make right any inaccuracies or damage expeditiously.

Seller understands the phased construction requirements for this job and agrees to cooperate in the fullest extent possible.

Seller is to protect all adjacent materials from damage due to its operations as required.

Unless otherwise provided in the Contract Documents, title to all goods shall be transferred to Buyer upon acceptance. The risk of loss, with respect to all goods provided by Vendor shall remain with Seller until acceptance.

All damages assessed against Buyer for delays caused by Seller will be deducted from any monies due to Seller.

Work On Site

In the event that this Agreement specifies installation activities, or requires the Seller to be physically present on the project site, the Seller agrees; (1) to pay all taxes on the payroll of its employees under the terms of all applicable laws; (2) to carry and pay for sufficient Workmen's Compensation or Employers Liability insurance, property damage insurance, Auto Liability insurance, and general liability insurance, and to indemnify, defend, and hold Buyer harmless from all costs or damages arising out of or in any way related to actions caused by or against Seller's employees; (3) to comply with all relevant laws and regulations concerning employment, wages and hours of employees engaged in the work, and to defend, indemnify, and hold Buyer harmless from all claims which may be made against Buyer by employees or Governmental Agencies as a result of or occasioned by Seller's failure to do so; and (4) to defend, indemnify and hold Buyer harmless from all claims or suits for damages arising out of such work or installation; and (5) comply with all project applicable safety and quality standards.

Payment & Applications

As an express condition precedent to Buyer making payment to Seller, Seller must furnish all lien waivers, affidavits, manufacturer's warranty documents, insurance policies, and all other documents, requested by Buyer. Seller shall in accordance with the Prime Contract, keep all parties, premises, and funds free from liens or claims arising out of the furnishing of the Subject Material. As a further express condition precedent to Buyer making payment to Seller, Seller must 1) provide Buyer with a signed affidavit listing all of Seller's downstream suppliers or subcontractors who have the right to make liens or claims against the Prime Contract parties, premises, or funds ("Downstream Claimants"), and Seller must also 2) provide to Buyer, from Downstream Claimants, all lien waivers, affidavits, or other documents requested by Buyer releasing all rights of Downstream Claimants to make any liens or claims on the Prime Contract parties, premises, and funds.

Final payment will not be made until Seller has submitted all required documents including without limitation, lien waivers, as-built drawings, sales tax affidavits, operation and maintenance manuals, guarantees, etc.

Receipt of payment by Buyer from Owner for Seller's materials is a condition precedent to Buyer's obligation to make payment to Seller, regardless of the reason for Owner's non-payment, whether attributable to the fault of the Owner, Buyer, Seller or to any other cause. Seller further agrees that no payment is due and owing to Seller until Owner has made such payment to Buyer and that the sole source of funding for this Agreement are payments made by Owner to Buyer. Payment as used in this Agreement shall include but are not limited to, retainage, progress payments, payment for change orders, extra work, and final payment. Seller hereby acknowledges that it relies solely and exclusively on the credit of Owner, not Buyer, for payment for Seller's materials. No payments under this Agreement will be considered due until seven (7) days after receipt by Buyer of such payment by Owner, and only when all conditions of this contract relative to sales tax information, payroll reporting requirements, insurance certificates, bond requirements, list of suppliers, and Seller's

progress statements format and procedure, previous payments certification, release of claims, submittals, and satisfactory rate of progress have been met. Seller hereby acknowledges that it relies solely and exclusively on the credit of Owner, not Buyer or anyone else, for payment for Seller's work. Receipt of payment by Contractor from Owner shall be a condition precedent to any payment to Seller. Provisions of this paragraph apply to Seller's rights and remedies against any payment bond.

In consideration whereof, Buyer agrees to pay Seller the amount(s) defined in exhibit a, in current funds and to make such payment according to the terms hereof or as otherwise may be agreed by a signed change order between the parties.

In receiving payment hereunder, Seller agrees to apply such payment only against this order, and only against the account of Buyer on or for this project, unless written consent of Buyer shall first have been obtained for application of payments hereunder against some other account.

Monthly progress payments are to be made from itemized statements in accordance with provisions as contained herein and as approved by Buyer and/or Owner.

Seller shall submit a maximum of one (1) pay application by the 15th of every month for this specific purchase order to Buyer.

Seller shall include specific detail on pay application referencing the Buyer's line item detail pursuant to the Agreement. Specific detail shall include but not limited to Buyer's Job Number, Purchase Order Agreement Number; Line Item Number, Item Description, Unit Rate, Quantity of Subject Material Delivered, Quantity of Subject Material Delivered since previous pay application, Extension of Costs, and Quantity of Back Order Items, if applicable.

Seller acknowledges and warrants that payment by Buyer, under this Agreement, is conditioned upon timely delivery to Buyer of the specified goods fully complying with the Contract Documents in sound, usable, and acceptable condition. Nothing in this Agreement shall be construed or act to create a contractual relationship between Buyer and any shipper of goods hereunder. It shall be Sellers's sole responsibility to arrange for delivery of goods without liability to Buyer.

Seller hereby agrees, at the option and request of Buyer, to submit any billing for partial or "progress" payment on a form and with the certification as supplied by Buyer.

Buyer shall have the right, and such right is acknowledged, to withhold a fair and equitable amount from any payment due hereunder pending satisfactory settlement of any claims against the project or against Buyer by third parties for the account of Seller, or for disputes involving Seller and other Sellers, or sub-Sellers, wherein Buyer is directly or indirectly an interested party. It is further agreed that Buyer may withhold a fair and equitable amount from any payment due hereunder pending satisfactory settlement of any charges, expenses, losses, or costs incurred by Buyer as a result of Seller's failure to timely provide all materials, timely perform services, or failure of the materials, goods, or services represented by this order to fully meet all requirements of the plans, specifications, and the Contract Documents. It is further agreed that Buyer may withhold payment on this order without Seller's claim for payment or security on the project, if Buyer shall fail to honor any representations or warranties, express or implied, as to the materials furnished under any agreement between the parties.

Seller acknowledges the right of Buyer to cash discount terms for prompt payment of invoices under this Agreement equally favorable to those terms granted other trade customers of Seller. Seller warrants that such equally favorable terms have been offered or have been inserted herein at the time of execution of this Agreement. Where payment terms have not been stipulated, Seller shall propose terms according to the foregoing or, in the event of its failure to do so, Seller further agrees that any cash discount may be taken by Buyer on either the 10th or the 25th of the month, whichever date next succeeds date of receipt of invoice in Buyer's office. In the event an invoice to be discounted is for goods deemed by Buyer to require confirmation of delivery to jobsite in sound

condition, Seller further agrees that the discount terms may be extended to provide reasonable time, not to exceed five (5) business days to permit Buyer to secure such confirmation from field sources. On any order for which Buyer does not grant a cash discount, the payment terms hereof shall be the same as those applying to Buyer under the Contract Documents or, in the sole discretion of Buyer, net 30. In no instance shall invoices rendered for goods hereunder be regarded as due until seven (7) days following receipt of payment therefor by Buyer from Owner. Seller further agrees that no payment hereunder shall be considered due until and unless delivery of the goods for which invoices are rendered has been accomplished in a satisfactory manner and in full compliance with the terms hereof.

Warranty

Seller warrants to Buyer that the goods furnished under this Agreement will be of good quality and new unless the Contract Documents require or permit otherwise. Seller further provides to Buyer all warranties relating to the goods implied or provided by law, including the warranty of merchantability and fitness for a particular purpose. Seller acknowledges that no exclusion of, or limitation on, warranties contained in any proposal, product literature, or other submittal shall affect the warranties provided in this paragraph.

The Subject Material is guaranteed by the Seller against latent and patent defects for a guarantee period set by Contract Document terms. If the Contract Document terms do not set such a period, Seller's warranty obligation period shall run for a minimum of one year or such longer period of time as may be provided by law, following project Substantial Completion, as certified by the Owner or Engineer. Any third-party warranties, including manufacturer warranties, applicable to the Subject Material are automatically transferred to Buyer, and Seller will provide documentation of this transfer. If the Subject Material gives rise to any warranty or defect issues, Seller must compensate Buyer for all resulting costs and damages. Seller further agrees to replace any defective material without charge, or otherwise remedy any defects to the satisfaction of Buyer. Seller must defend, indemnify, and hold harmless Buyer from and against all claims, liability, loss, damage, or expense, including attorney's fees, by reason of any actual or alleged infringement of intellectual property rights by the Subject Material.

Default

Seller's failure to perform any of its obligations under this Agreement is an event of default. Seller's insolvency, assignment of the Agreement, assignment of any accounts receivable, entrance into a factoring agreement, or declaration of bankruptcy, are each event of default. Without prejudice to any other rights or remedies available to Buyer, any default of Seller entitles Buyer to take any or all of the following actions: (1) terminate this Agreement, (2) withhold payment from Seller until completion of Contract Document operations, (3) set-off any amounts due to Seller under any Agreement between Buyer and Seller, or (4) procure substitute material at Seller's expense. In the event of Seller's default, Seller must compensate Buyer for all resulting costs and damages, including but not limited to, reasonable attorney's fees.

It is agreed that Seller shall not assign or sublet this Agreement or any part hereof, including payments hereunder, without first obtaining the written consent of Buyer. Unless specifically waived in writing by Buyer, it is agreed that Buyer shall have a prior claim on or against any payments due or to become due under this or any other agreement between the parties in the event Seller should fail to comply or shall be disabled from complying with the terms of this or any other agreement between the parties. In the event any claim or claims are asserted against Seller by parties supplying material or services to Seller for use under this or any other agreement between parties, it is agreed that set off of the proceeds due or to become due hereunder shall exist in favor of Buyer retroactive to the date of this agreement.

Indemnity

To the fullest extent permitted by law, Seller shall defend, indemnify, and hold harmless Buyer, its

affiliates, members, partners, and their respective officers, directors, shareholders, employees, representatives, agents, contractors, customers, successors, and assigns (the “Indemnified Parties”) from and against any and all liabilities, obligations (including without limitation, liabilities or obligations relating to any violation of any laws, rules, or regulations by Seller or its directors, officers, employees, agents, representatives, a sub-Seller, anyone directly or indirectly employed by them, or any for whose acts they may be liable), claims, demands, losses, damages, suits, actions, liens, costs, expenses (including attorneys' fees), fines, penalties, or charges of any nature whatsoever imposed on, asserted against, or incurred by the Indemnified Parties as a result of: (a) violation of any law, ordinance, rule, or regulation by Seller or its officers, directors, employees, agents, customers, representatives, successors, assigns, or invitees; or (b) the negligent, or intentional, act or omission of Seller or its employees, agents, representatives, customers, successors, assigns, or invitees; or (c) in whole or in part, Seller’s breach or nonperformance of this Agreement.; or (d) any delay in delivery, defect or deficiency in the goods. Seller’s indemnification obligation shall survive the termination, cancellation, expiration, or completion of this Agreement. This indemnity shall be enforceable even when an Indemnified Party is partly at fault, but in such event, Seller shall only indemnify an Indemnified Party to the extent any claim, action, damages, suit, or other cost is caused by Seller’s negligent or intentional act or omission

To the fullest extent permitted by law, Seller shall defend, indemnify and hold Buyer and its agents and employees harmless from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from this Agreement but only to the extent caused by the acts or omissions of Seller, a sub-Seller, anyone directly or indirectly employed by them, or any for whose acts they may be liable.

Provided Buyer has fulfilled its payment obligations under this Agreement, Seller shall defend and indemnify Buyer from all loss, liability, damage or expense, including reasonable attorneys’ fees and litigation expenses, arising out of any lien claim or other claim for payment by any supplier or sub-Seller of any tier. Upon receipt of notice of a lien or other claim for payment, Buyer shall notify Seller. If allowed by Buyer and applicable law, Seller may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

Dispute Resolution

The parties agree that in the event any controversy should arise between them as a result of this Agreement, the Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW, WITH OR WITHOUT A JURY. The current AAA Construction Industry Arbitration Rules shall apply and AAA shall administer the arbitration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party’s disclosed claim or counterclaim exceeds $250,000. An arbitrator’s award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction. The costs of any binding dispute resolution procedure and reasonable attorneys’ fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute. The jurisdiction and venue shall be in the state wherein the project is located.

Compliance with Applicable Law

Seller agrees to comply with all Federal, State, and Local laws and requirements throughout Seller’s performance of this Agreement as set forth in the Contract Documents. The Seller agrees to defend, indemnify, and hold Buyer harmless from any loss Buyer may sustain by reason of Seller’s failure to comply with any laws or regulations.

Seller shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Seller or any other person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Seller (except damage or loss attributable to the fault of

Drawings or Specifications or to the acts or omissions of Owner or Engineer or Engineer's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Seller or the person or organization directly or indirectly employed by any of them).

Bond

If required under the terms of this Agreement, Seller agrees to furnish a good and sufficient Supply Bond with a Surety and on a form acceptable to Buyer within ten days following receipt and execution of this Agreement. At any time during the performance of this Agreement, with or without cause, upon Buyer's seven days written request Seller shall obtain and furnish such Supply Bond to cover the remainder of its obligation hereunder. Unless otherwise stipulated, the premium cost of such Supply Bond shall be borne by Buyer.

Deliverables

If required by the Contract Documents, furnish immediately ONE (1) electronic copy of all shop drawings, design criteria, schedules, schematics, brochures, descriptive literature, samples, O&M manuals, etc. as required by the specifications for submittal to Architect/Engineer.

Deliverables shall be submitted promptly, as identified within Exhibit B, and in sufficient number to provide adequate information to all interested parties. Approval of the deliverables by Architect/Engineer, or by Buyer shall not alter the requirements of the Contract Documents for quality, quantity, finish or dimension. The cost of all required deliverables and field measuring is included in the amount of the Agreement. The cost of altering or reworking any deliverables and/or fabricated items not conforming to approved drawings shall be for Seller's account. Any proposed substitution of materials, equipment or methods of fabrication for those shown or specified in the Contract Documents shall be approved in writing by the architect/engineer and by Buyer if such substitution is proposed subsequent to bidding. If any such substitution involves changes in the work of Buyer or others from that required by the original item, and such change has not been brought to Buyer's attention, in writing, prior to the date of this Agreement, the cost of any such changes shall be borne by the party making the substitution.

Seller is responsible to ensure that all deliverables are formatted in accordance with the Contract Documents. "Bulk" deliverables, encompassing multiple types of materials and/or equipment, will not be accepted. Seller must include a cover sheet for each deliverable, indicating all specification deviations.

Review, approval, or rejection of Seller's deliverables does not in any way change the terms of this Agreement or relieve Seller of fulfillment of this Agreement. Purchasing materials and/or equipment to be incorporated into the project before the submittal for approval by Owner, Architect/Engineer, and/or Buyer is at the sole risk of the Seller. The cost of review for Seller's deliverables requiring resubmission shall be borne by Seller. Buyer will provide documentation to Seller to support any resubmission review costs incurred. It is in the best interest of all parties for the Seller to prepare complete and accurate deliverables.

For materials and/or equipment requiring O&M manuals, per the Contract Documents, Seller shall prepare a Preliminary O&M manual, formatted as specified within the Contract Documents, will be submitted to the Buyer for review no later than thirty (30) days prior to the delivery of such materials. Should the Seller fail to comply with this requirement, Buyer shall withhold associated payment to Seller until such information is provided and deemed satisfactory.

Pursuant to Title III - Emergency Planning and Community Right-to-Know Act, two (2) copies of applicable Safety Data Sheets (SDS's) and your Hazardous Communication Program must be furnished to Buyer ten (10) days prior to the delivery of materials to the jobsite. It shall also be Seller's responsibility to include this requirement in any lower tier material contracts and/or purchase orders and furnish same to Buyer. Failure to comply with this regulation is a breach of this

Agreement and payment due will be withheld until breach is rectified. Refer to enclosed Hazardous Material Notification Memo.

Statutory/Mandatory Clauses

Affirmative action:

a. Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or ancestry, or physical or mental handicap. Seller will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or ancestry, physical or mental handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, disciplinary actions and grievances, rates of pay or other forms of compensation, other terms and conditions of employment and selection for training, including apprenticeship.

b. Seller will make reasonable accommodation to the known physical or mental handicap of an otherwise qualified employee or applicant for employment as required by law.

c. Seller will in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, sex, age national origin or ancestry, or physical or mental handicap.

d. Seller will send to each labor union, organization, or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, and training programs, a notice advising the labor union, organization or worker's representatives and training programs of its Equal Employment Opportunity (EEO) policy and request their cooperation in meeting its EEO obligations. Seller shall post copies of the notice in conspicuous places available to employees, applicants for employment and the general public.

e. Seller will comply with all provisions of Title VII of the US Civil Rights Act of 1964, as amended. Seller, if required by Section 5 of these Special Provisions to take affirmative action steps and/or to submit a written Affirmative Action Plan, will follow the guidelines found in Executive Order 11246, Revised Order No. 4 (41 CFR Part 60-2 or 60-4 as appropriate), 41 CFR Part 60- 250 and 41 CFR Part 60-741 in the preparation of its Affirmative Action Plan and in the performance of its Affirmative Action/Equal Employment Opportunity duties under this Contract. Vendor will also comply with all applicable provisions of Executive Order 11246, Section 203 pertaining to subcontracts in excess of $10,000.

f. Seller will post in conspicuous places available to employees, applicants for employment and the general public, nondiscrimination notices required to be posted by state and federal agencies.

g. In the event of Seller's noncompliance with the nondiscrimination clauses of this Contract or with any other applicable laws, rules or orders pertaining to Affirmative Action/Equal Employment Opportunity and Nondiscrimination, this Agreement may be canceled, terminated or suspended in whole or in part.

h. Seller will include the provisions of Paragraphs (A) through (G) in every sub-subcontract or material contract (purchase order agreement) so that such provisions shall be binding upon every sub-Seller. Seller shall take such action, with respect to any sub-subcontract, as necessary to enforce such provisions, including sanctions provided for noncompliance.