

ADDENDUM NO. 1

Project: **On-Site Sodium Hypochlorite Generation System**
Addendum Issue Date: May 06, 2021
RFP Issuance: April 16, 2021
RFP submittal deadline: May 16, 2021 at 2:00 p.m. (Alaska Time)
Previous Addenda Issued: None
Issued by: Bob Cummings
City Engineer
City of Unalaska
bcummings@ci.unalaska.ak.us
(907) 581-1260

It is required to expressly and clearly acknowledge receipt of this Addendum when submitting your proposal. This addendum is hereby made a part of the Request for Proposal Documents and modifies the original Request for Proposal Documents. In case of conflicts between this Addendum and previously issued documents, this Addendum shall take precedence.

ADDENDUM ITEMS

Item 1:

Reference: Section 4.1 Overview

Subject: Available power at installation location

The available power at the site was not specified as a design basis parameter. The available power at the site is 3-phase, 480V Wye.

Item 2:

Reference: Section 4.1 Overview

Subject: Maximum pressure at the injection point

The maximum pressure at the injection point was not specified as a design basis parameter. The maximum pressure at the injection point is 95 psig.

Item 3:

Reference: Section 4.2 Sodium Hypochlorite Generation Equipment

Subject: Tolerance of produced aqueous sodium hypochlorite solution concentration

The tolerance for the concentration of the generated aqueous solution of sodium hypochlorite shall be increased from $\pm 0.05\%$ to $\pm 0.1\%$. Thus in the first sentence of the second paragraph of this section shall be replaced with the following, "The On-Site Sodium Hypochlorite Generation System shall generate an aqueous solution to a concentration of 0.8% ($\pm 0.1\%$) by weight of sodium hypochlorite expressed as chlorine."

Item 4:

Reference: Section 4.1 Overview

Subject: Alternate combination of chlorine production and storage requirement

There was a question regarding whether an alternate combination of the chlorine production and the sodium hypochlorite storage requirement could be proposed. The minimum required chlorine demand is 139 pounds per day of chlorine and the minimum required sodium hypochlorite storage is 12 hours of the minimum chlorine demand (139 pounds per day of chlorine). Assuming 15 gallons of a 0.8% sodium hypochlorite solution equals one pound of chlorine, the minimum storage requirement is 1,043 gallons. These values would remain unchanged if two independent sub-systems each capable of producing greater than the minimum required chlorine demand are proposed. However, it would be acceptable for a proposal to include a system that has sub-systems with maximum chlorine production of less than 139 ppd if the amount of time that it would take to empty the associated proposed sodium hypochlorite storage tank is greater than two weeks (14 days) assuming the chlorine demand is a constant 139 ppd. Here is a sample calculation for number of days to depletion.

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proposed sodium hypochlorite generating electrolytic cell units would each have independent control cabinets and rectifiers.

If the total net chlorine generation capacity is less than the minimum chlorine demand (139 ppd), increased sodium hypochlorite storage capacity can be used to satisfy the requirements of the Request for Proposal as long as the days to depletion is calculated to be greater than 14.0 days (as shown above).

Item 6:

Reference: section 2.0 selection process

Subject: removal of limitation to the submission of one proposal

If a respondent would like to submit more than one proposal, this would be acceptable. Each submitted proposal would need to be complete and will be evaluated on its own merits as an independent proposal.

Item 7:

Reference: Attachment A – Draft Procurement Agreement

Subject: inclusion of general conditions and insurance requirements for the procurement agreement

The general conditions of the draft procurement agreement were not included in the Request of Proposals. An Attachment A – Addendum No. 1, that includes the draft Procurement Agreement and the associated general conditions and insurance requirements, is attached to this addendum and replaces the already issued Attachment A.

ATTACHMENT A – ADDENDUM NO. 1

**Draft Procurement Agreement with General Conditions and Insurance
Requirements**

**STANDARD PROCUREMENT AGREEMENT
BETWEEN OWNER AND SUPPLIER**

THIS PROCUREMENT AGREEMENT is dated as of this ____ day of _____, 20__ by and between the **City of Unalaska** (hereinafter called "OWNER") and _____ (hereinafter called "SUPPLIER").

OWNER and SUPPLIER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. GOODS AND SERVICES.

SUPPLIER shall furnish the Goods, Special Services, and Other Services as specified or indicated in the PROCUREMENT DOCUMENTS. The Goods to be furnished are generally described as follows:

Supply [Insert language from RFQ].

Article 2. ENGINEER.

The Goods have been specified by the following:

[Insert Engineering Firm, Principal designer name, address, phone, fax, email]

who is hereinafter called "ENGINEER" and who will act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER by OWNER in connection with the furnishing of the Goods, Special Services, and Other Services in accordance with the PROCUREMENT DOCUMENTS.

Article 3. POINT OF DELIVERY.

The place where the Goods are to be delivered is defined in the Procurement General Conditions as the point of delivery and designated as:

F.O.B. Unalaska, Alaska. Article 4. CONTRACT TIME.

- 4.1 The Goods are to be delivered to the POINT OF DELIVERY and ready for OWNER's acceptance of delivery on (or within a period of fifteen (15) days prior to) _____.
- 4.2 All shop drawings and samples required by the PROCUREMENT DOCUMENTS will be submitted to ENGINEER for review and approval within ten (10) days after the date when the Contract Time commences to run as provided in paragraph 2.2 of the Procurement General Conditions.
- 4.3 Liquidated Damages. OWNER and SUPPLIER recognize that time is of the essence of this PROCUREMENT AGREEMENT and that OWNER will suffer financial loss if the Goods are not delivered at the POINT OF DELIVERY and ready for acceptance of delivery by OWNER within the time specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance with Article 12 of the Procurement General Conditions. They also recognize that the

timely performance of services by other parties involved in OWNER's project are materially dependent upon SUPPLIER's specific compliance with the requirements of paragraph 4.1. Further, they recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual losses or damages (including special, indirect, consequential, incidental, and any other losses or damages) suffered by OWNER if complete acceptable Goods are not delivered on time. Accordingly, and instead of requiring proof of such losses or damages, OWNER and SUPPLIER agree that as liquidated damages for delay (but not as a penalty) SUPPLIER shall pay FIVE HUNDRED DOLLARS (\$500) for each day that expires after the time specified in paragraph 4.1 for delivery of acceptable Goods.

Article 5. CONTRACT PRICE.

OWNER shall pay SUPPLIER for furnishing the Goods, Services, and Special Services, and for performing other services in accordance with the PROCUREMENT DOCUMENTS in current funds as follows:

[INSERT LANGUAGE FROM ACCEPTED, APPROVED QUOTE].

Article 6. PAYMENT PROCEDURES.

SUPPLIER shall submit Application for Payment in accordance with Article 6 of the Procurement General Conditions. Applications for Payment will be processed by ENGINEER as provided in the Procurement General Conditions.

- 6.1 Progress Payments. OWNER shall make progress payments on account of the CONTRACT PRICE in accordance with paragraph 6.3 of the Procurement General Conditions on the basis of SUPPLIER's Applications for Payment as follows:
 - 6.1.1 Upon receipt of the first Application for Payment submitted in accordance with paragraph 6.1 of the Procurement General Conditions and accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.2.1 of the Procurement General Conditions, an amount equal to 50% of the CONTRACT PRICE
 - 6.1.2 Upon receipt of the second such Application for Payment accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.2.2 of the Procurement General Conditions, an amount sufficient to increase total payments to SUPPLIER to 85% of the CONTRACT PRICE, less such amounts as ENGINEER shall determine in accordance with paragraph 6.2.3 of the Procurement General Conditions.
- 6.2 Final Payment. Upon receipt of the final Application for Payment accompanied by ENGINEER's recommendation of payment in accordance with paragraph 6.6 of the Procurement General Conditions, OWNER shall pay the remainder of the CONTRACT PRICE as recommended by ENGINEER.

Article 7. INTEREST.

All moneys not paid when due hereunder shall bear interest at the rate required by AS36.90.250, if applicable.

Article 8. SUPPLIER'S REPRESENTATIONS.

In order to induce OWNER to enter into this PROCUREMENT AGREEMENT, SUPPLIER makes the following representations:

- 8.1 SUPPLIER has familiarized himself with the nature and extent of the PROCUREMENT DOCUMENTS and has given ENGINEER written notice of all conflicts, errors, or discrepancies that he has discovered in the PROCUREMENT DOCUMENTS and the written resolution thereof by ENGINEER is acceptable to SUPPLIER.
- 8.2 SUPPLIER has familiarized himself with all local conditions and Federal, State, and Local laws, ordinances, rules, and regulations that in any manner may affect the production and delivery of the Goods and furnishing of Special Services and Other Services in connection herewith.
- 8.3 SUPPLIER does not require additional information from OWNER or ENGINEER to enable SUPPLIER to furnish the Goods, Special Services, or Other Services at the CONTRACT PRICE, within the CONTRACT TIME, and in accordance with the other terms and conditions of the PROCUREMENT DOCUMENTS, but subject to SUPPLIER's right to request interpretations and clarifications in accordance with paragraph 9.2 of the Procurement General Conditions.
- 8.4 SUPPLIER has correlated the results of all such examinations, investigations, and resolutions with the terms and conditions of the PROCUREMENT DOCUMENTS.

Article 9. PROCUREMENT DOCUMENTS.

The PROCUREMENT DOCUMENTS which comprise the entire Agreement between OWNER and SUPPLIER are attached to, or accompany, this PROCUREMENT AGREEMENT, made a part hereof, and consist of the following:

- 9.1 This PROCUREMENT AGREEMENT (pages 1 to __, inclusive).
- 9.2 Exhibits to this PROCUREMENT AGREEMENT (pages ___ to ___, inclusive).
- 9.3 Performance and other Bonds, identified as Exhibits and consisting of ___ pages.
- 9.4 Notice of Award.
- 9.5 Procurement General Conditions (pages ____ to ____, inclusive).
- 9.6 Procurement Supplementary Conditions (pages 1 to 2, inclusive).
- 9.7 Drawings, consisting of a cover and sheets numbered ___ through ___, inclusive, with each sheet bearing the following general titles: [**Insert**].
- 9.8 Addenda numbers ___ to ___, inclusive.
- 9.9 SUPPLIER's Quote (pages ___ to ___, inclusive).
- 9.10 Documentation submitted by SUPPLIER prior to Notice of Award (pages ___ to ___, inclusive).
- 9.11 All Modifications, including Change Orders, duly delivered after execution of this PROCUREMENT AGREEMENT.
- 9.12 There are no PROCUREMENT DOCUMENTS other than those listed above in this Article 9. The PROCUREMENT DOCUMENTS may only be altered, amended, or repealed by a Modification (as defined in Article 1 of the Procurement General Conditions).

Article 10. MISCELLANEOUS.

- 10.1 Terms used in this PROCUREMENT AGREEMENT which are defined in Article I of the Procurement General Conditions shall have the meanings indicated in the Procurement General Conditions.
- 10.2 No assignment by a party hereto of any rights under or interests in the PROCUREMENT DOCUMENTS will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the PROCUREMENT DOCUMENTS.
- 10.3 OWNER and SUPPLIER each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the PROCUREMENT DOCUMENTS.

IN WITNESS WHEREOF, the parties hereto have signed this PROCUREMENT AGREEMENT in triplicate. One counterpart each has been delivered to OWNER, SUPPLIER, and ENGINEER. All portions of the PROCUREMENT DOCUMENTS have been signed or identified by OWNER and SUPPLIER or by ENGINEER on their behalf.

This PROCUREMENT AGREEMENT will be effective on _____, 20__.

CITY OF UNALASKA

SUPPLIER

By: Erin Reinders, City Manager

By: _____

Subscribed and Sworn to
before Me, a Notary Public
in and for the State of
Alaska, this _____ day
of _____, 20__.

Subscribed and Sworn to
before Me, a Notary Public
in and for the State of
Alaska, this _____ day
of _____, 20__.

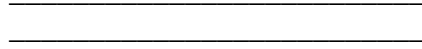
My Commission Expires:

My Commission Expires:

Address for giving notices:
City of Unalaska

Address for giving notices:

PO Box 610
Unalaska, AK 996685



Procurement General Conditions

Prepared by
Engineers Joint Contract Documents Committee
and
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Professional Engineers in Private Practice
A practice division of the
National Society of Professional Engineers
and by

American Consulting Engineers Council
and by

American Society of Civil Engineers
and by

Construction Specifications Institute

These Procurement General Conditions have been prepared for use with the Standard Form of Instructions to Bidders for Procurement Contracts (*EJCDC* Document 1910-26-0, 1981 edition) and with the Standard Form of Procurement Agreement Between Owner and Contractor (*EJCDC* Document 1910-26-A, 1981 edition). Their provisions are interrelated and a change in one may necessitate a change in the others.

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PROCUREMENT GENERAL CONDITIONS

ARTICLE 1 - Definitions

Wherever used in these Procurement General Conditions or in the other Procurement Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

Addenda-Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Procurement Documents.

Application for Payment-The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Procurement Documents.

Bid-The offer or proposal of the Bidder submitted on the prescribed form setting forth the price(s) for furnishing the Goods and Special Services.

Bonds-Bid and performance bonds and other instruments of security.

Change Order-A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion or revision in the Goods or Special Services. or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Procurement Agreement.

Contract Price-The moneys payable by OWNER to CONTRACTOR under the Procurement Documents as stated in the Agreement.

Contract Time-The total number of days or the dates stated in the Procurement Agreement for furnishing the Goods and Special Services.

CONTRACTOR-The person, firm or corporation with whom OWNER has entered into the Procurement Agreement.

day-A calendar day of twenty-four hours measured from midnight to the next midnight.

defective-An adjective which when modifying the words Goods or Special Services refers to Goods or Special Services which are unsatisfactory, faulty or deficient, or do not conform to the Procurement Documents

or do not meet the requirements of any inspection, reference standard, test or approval referred to in the Procurement Documents.

Drawings-The drawings which show the character and scope of the Goods to be furnished and which have been prepared or approved by ENGINEER and are referred to in the Procurement Documents.

effective date of the Procurement Agreement-The date indicated in the Procurement Agreement on which it becomes effective, or if no such date is indicated, the date on which the Procurement Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER -The person, firm or corporation named as such in the Procurement Agreement.

ENGINEER's Order-A written order issued by ENGINEER which clarifies or interprets the Procurement Documents or orders minor changes or alterations in the Goods or Special Services to be furnished but which does not involve a change in the Contract Price or the Contract Time.

Goods-All tangible personal property required to be furnished under the Procurement Documents.

Modification -(a) A written amendment of the Procurement Documents signed by both parties, (b) a Change Order, or (c) an ENGINEER's Order. A modification may only be issued after the effective date of the Procurement Agreement.

Notice of Award-The written notice by OWNER to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Procurement Agreement.

OWNER-The public body or authority, corporation, association, partnership or individual with whom CONTRACTOR has entered into the Procurement Agreement.

point of delivery-The place designated in the Procurement Agreement where the Goods are to be delivered.

Procurement Agreement- The written agreement between OWNER and CONTRACTOR covering the furnishing of the Goods, Special Services and other services in connection therewith. Other Procurement

Documents are attached to the Agreement and made a part thereof as provided therein.

Procurement Documents- The Procurement Agreement, Addenda (which pertain to the Procurement Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Procurement Agreement, the Bonds, these Procurement General Conditions, the Procurement Supplementary Conditions, the Specifications, the Drawings as the same are more specifically identified in the Procurement Agreement, together with all Modifications issued after execution of the Agreement.

Shop Drawings-All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of Goods.

Special Services-Services to be furnished by CONTRACTOR at the construction site as required by the Procurement Documents.

Specifications-Those portions of the Procurement Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Goods and Special Services, and certain administrative details applicable thereto.

ARTICLE 2 - Preliminary Matters

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Procurement Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 4.1.

Commencement of Contract Time:

2.2. The Contract Time will commence to run on the effective date of the Procurement Agreement

Schedules:

2.3. CONTRACTOR shall, within ten days after the effective date of the Procurement Agreement, submit to ENGINEER preliminary schedules of progress, shop drawing submissions, tests, and deliveries as required by the Procurement Documents. No schedule which is required to be and has been accepted by ENGINEER will be changed by CONTRACTOR without notice to ENGINEER.

ARTICLE 3 - Intent of Procurement Documents

3.1. The Procurement Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the furnishing of the Goods and Special Services. The Procurement Documents may be altered only by a Modification.

3.2. The Procurement Documents are complementary; what is called for by one is as binding as if called for by all. If, during performance of the contract, CONTRACTOR finds a conflict, error or discrepancy in the Procurement Documents, CONTRACTOR shall so report to ENGINEER in writing at once and shall obtain a written interpretation or clarification from ENGINEER before proceeding further; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Procurement Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

3.3. All materials, equipment and services that may reasonably be inferred from the Procurement Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe materials, equipment or services, such words will be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code 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. However, no provisions of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Procurement Documents) shall change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their agents, consultants or employees from those set forth in the Procurement Documents. Clarifications and interpretations of the Procurement Documents shall be issued by ENGINEER as provided in paragraph 9.2

ARTICLE 4 - Bonds and Insurance

Performance and Other Bonds:

4.1. CONTRACTOR shall furnish a performance bond in an amount at least equal to the Contract Price (unless otherwise provided) as security for the faithful

performance of all CONTRACTOR's obligations under the Procurement Documents. This Bond shall remain in effect at least until one year after the date of final payment, except as otherwise provided by law. CONTRACTOR shall also furnish such other Bonds as are required by the Procurement Supplementary Conditions. All Bonds shall be in the forms prescribed by the bidding documents or Procurement Supplementary Conditions and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

4.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in the state of the point of delivery or the surety ceases to meet the requirements of paragraph 4.1 CONTRACTOR shall within five days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

Property Insurance:

4.3. Unless otherwise provided in the Procurement Supplementary Conditions, CONTRACTOR shall assume all risk of loss or damage to the Goods prior to acceptance of delivery by OWNER at the point of delivery; and shall purchase and maintain insurance on the Goods during the process of fabrication and while in transit to insure against the perils of fire and extended coverage including "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage and such other perils as may be provided in the Procurement Supplementary Conditions and as CONTRACTOR deems appropriate.

ARTICLE 5 - Shipment and Delivery of the Goods

Shipment and delivery of the Goods shall be in accordance with this Article except as otherwise provided or specified.

5.1. All Goods will be delivered f.o.b. point of delivery. CONTRACTOR shall select the means and methods of transportation. All transportation charges, including but not limited to switching, trucking, lighterage and special handling will be paid by CONTRACTOR.

5.2. CONTRACTOR shall give OWNER and ENGINEER at least fifteen days' prior written notice of the date when the Goods will be ready for shipment and

the manner of shipment. Such notice will include instructions concerning any special equipment or services required at the point of delivery to unload and care for the Goods. CONTRACTOR also shall require the carrier to give OWNER not less than 24 hours notice by telephone of the anticipated hour of delivery.

5.3. OWNER shall provide facilities for receipt and unloading of the Goods. If the point of delivery is a construction site, OWNER shall provide the carrier reasonable access within the site to the point of delivery.

5.4. CONTRACTOR shall deliver the Goods to the point of delivery within a period of fifteen days (the "delivery period") prior to expiration of the Contract Time for delivery specified in the Procurement Agreement.

5.4.1. OWNER will not be obligated to accept any delivery of goods not made within the delivery period. Additional costs arising from delivery prior to or after the delivery period will be the responsibility of CONTRACTOR.

5.4.2. OWNER may by Change Order direct CONTRACTOR to ship to another point of delivery or to accelerate or postpone the delivery period. OWNER shall be responsible for all additional expenses incurred by CONTRACTOR as a result of any such direction, including but not limited to charges for storage, reconditioning, handling, overtime and insurance. If CONTRACTOR believes that any such direction justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

5.5. OWNER, accompanied by ENGINEER, shall inspect the Goods upon delivery for the sole purpose of identifying the Goods and general verification of quantities in order to provide a basis for a progress payment. Such inspection will not be construed as final or as acceptance of any Goods not in conformance with the Procurement Documents. If, when delivered, there are apparent defects in the Goods (through damage or otherwise), ENGINEER will give prompt written notice thereof to CONTRACTOR. CONTRACTOR shall without cost to OWNER correct the defect or replace the Goods with non-defective Goods. If CONTRACTOR does not do so promptly and to the satisfaction of OWNER and ENGINEER, OWNER may, upon ENGINEER's recommendation, accept delivery of the defective Goods and remedy the defect as appropriate with an appropriate reduction in the Contract Price as provided in paragraph 13.8 instead of requiring removal or replacement. OWNER may refuse to accept delivery of any Goods that are apparently

defective. If there are no apparent defects, OWNER shall accept delivery.

5.6. Notice of OWNER's acceptance of delivery will be provided to CONTRACTOR by a receipted copy of the shipping documents or as otherwise provided.

ARTICLE 6 - Applications for Payment

Applications for Progress Payments:

6.1. CONTRACTOR shall submit to ENGINEER for review Applications for Payment filled out and signed by CONTRACTOR and accompanied by such supporting documentation as is required by the Procurement Documents and also as ENGINEER may reasonably require. The first Application for Payment will be submitted after review and approval by ENGINEER of all Shop Drawings and of all samples required by the Procurement Documents. The second Application for Payment will be submitted after delivery of the Goods has been accepted by OWNER in accordance with paragraph 5.5 and will be accompanied by a bill of sale and other documentation satisfactory to OWNER warranting that OWNER has received the Goods free and clear of all liens, charges, security interests and encumbrances. Such documentation shall include releases and waivers from all parties who, during CONTRACTOR's performance under the Procurement Documents, might have obtained or filed any such lien, charge, security or encumbrance. In the case of multiple deliveries of Goods, additional Applications for Payment will be submitted as OWNER accepts delivery of additional items of the Goods.

Review of Applications for Progress Payments:

6.2. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

6.2.1. ENGINEER's recommendation of payment requested in the first Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's review of the Application for Payment and the accompanying data, that the Shop Drawings and samples have been reviewed and approved as required by the Procurement Documents and CONTRACTOR is entitled to payment of the

amount recommended; but will not constitute a representation to OWNER that ENGINEER has made any observation or inspection of the quality or quantity of the Goods.

6.2.2. ENGINEER's recommendation of payment requested in the Application for Payment submitted upon OWNER's acceptance of delivery of the Goods will constitute a representation by ENGINEER to OWNER, based on ENGINEER's review of the Application for Payment and the accompanying data and ENGINEER's inspection of the Goods in accordance with paragraph 5.5, that to the best of ENGINEER's knowledge, information and belief ENGINEER has identified the Goods listed in the Application for Payment and generally verified the quantities as being in accordance with the Procurement Documents, that on the basis of such limited inspection there are no apparent defects in the Goods, and that the Goods appear to be suitable for installation. Such recommendation will not constitute a representation that ENGINEER had made a final inspection of the Goods, that the Goods are free from defects, acceptable or in conformance with the Procurement Documents or that ENGINEER has made any investigation as to OWNER's title to the Goods.

6.2.3. ENGINEER may refuse to recommend that all or any part of a progress payment be made if, in ENGINEER's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests ENGINEER considers such refusal necessary to protect OWNER from loss because the Contract Price has been reduced due to Modifications, Goods are found defective, or CONTRACTOR has failed to furnish acceptable Special Services.

Amount and Timing of Progress Payments:

6.3. The amounts of the progress payments will be as provided in the Procurement Agreement. OWNER shall within ten days after receipt of each Application for Payment with ENGINEER's recommendation pay CONTRACTOR the amount recommended; but, in the case of the Application for Payment upon OWNER's acceptance of delivery of the Goods, said ten-day period may be extended for so long as is necessary (but in no event more than twenty days) for OWNER to examine the bill of sale and other documentation submitted therewith. OWNER shall notify CONTRACTOR promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

Final Inspection:

6.4. After all of the Goods have been incorporated into OWNER's project, tested in accordance with such field tests as are specified, and apparently functioning as intended, ENGINEER will make final inspection and advise OWNER and CONTRACTOR whether or not the Goods appear to be acceptable in accordance with the Procurement Documents. If not so acceptable, ENGINEER will identify the apparent defects in writing. CONTRACTOR shall immediately take such measures as are necessary to remedy all defects.

Final Application for Payment:

6.5. After CONTRACTOR has remedied all apparent defects to the satisfaction of ENGINEER, furnished all Special Services and delivered all maintenance and operating instructions, schedules, guarantees, certificates of inspection, and other documents (all as required by the Procurement Documents) ENGINEER will issue to OWNER and CONTRACTOR a notice of acceptability. CONTRACTOR may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Procurement Documents and such other data and schedules as ENGINEER may reasonably require.

Final Payment:

6.6. If, on the basis of the final inspection and review of the final Application for Payment and accompanying documentation, ENGINEER is satisfied that the Goods are in accordance with the Procurement Documents, that Special Services have been furnished as required and that CONTRACTOR's other obligations under the Procurement Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of paragraph 6.8 and present the Application to OWNER. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within thirty days after receipt thereof, pay CONTRACTOR the amount recommended by ENGINEER.

6.7. If, through no fault of CONTRACTOR, final incorporation of the Goods (or any component thereof) into OWNER's project, the testing the performance thereof as part of a functioning whole or the furnishing

of Special Services is delayed by more than ninety days (unless otherwise specified) after acceptance of delivery by OWNER and if ENGINEER so confirms, OWNER shall, upon receipt of an Application for Payment from CONTRACTOR and recommendation of ENGINEER, and without terminating the Agreement, make payment for the Goods (or components) so accepted and Special Services furnished. If the remaining balance to be held by OWNER for Goods and Special Services not yet furnished or accepted is less than the retainage stipulated in the Procurement Agreement, and if Bonds have been furnished as required in paragraph 4.1,

CONTRACTOR shall submit with such Application for Payment written consent of the surety to payment of the amount requested. Such payment will be made under the terms and conditions governing final payment, but will not constitute any waiver of claims.

Waiver of Claims:

6.8. The making and acceptance of final payment will constitute:

- 6.8.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens and claims, from defective Goods appearing after final inspection pursuant to paragraph 6.4, from defects in Special Services appearing after final payment or from failure to comply with the Procurement Documents or the terms of any special guarantees specified therein; however, final payment will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Procurement Documents; and
- 6.8.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 7 - Contractor's Responsibilities

Supervision and Coordination:

7.1. CONTRACTOR shall competently and efficiently supervise and direct production of the Goods and furnishing of Special Services and coordinate all operations required to deliver the Goods and furnish Special Services. CONTRACTOR shall designate in writing to OWNER and ENGINEER a person with authority to act on behalf of CONTRACTOR with respect to CONTRACTOR's obligations under the Procurement Documents, and all communications given to or received from that person will be binding on CONTRACTOR. Except as specifically provided in the

Procurement Documents with respect to Special Services or otherwise, CONTRACTOR shall not be required to perform services at the site.

Material, Equipment and Workmanship:

7.2. Unless otherwise specified, the materials and equipment incorporated in the Goods will be new and of good quality. All workmanship will be of good quality and free from defects. CONTRACTOR shall, if required by ENGINEER, furnish satisfactory evidence as to the source, kind and quality of the materials and equipment incorporated in the Goods. Special Services will be performed by competent and qualified personnel.

Equivalent Goods:

7.3. Whenever materials or equipment are specified or described in the Procurement Documents by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by ENGINEER if sufficient information is submitted by CONTRACTOR to allow ENGINEER to determine that the material or equipment proposed is equivalent to that named. The procedure for review by ENGINEER will be as set forth in paragraphs 7.3.1 and 7.3.2 as supplemented in the General Requirements.

7.3.1. Requests for review of substitute items of material or equipment will not be accepted by ENGINEER from anyone other than; CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER for acceptance thereof certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the timely delivery of the Goods, whether or not acceptance of the substitute will require a change in any of the Procurement Documents to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the production of the Goods is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service

will be indicated. ENGINEER may require CONTRACTOR to furnish at CONTRACTOR's expense additional data about the proposed substitute. ENGINEER will be allowed a reasonable time within which to evaluate the proposed substitute and will be the sole judge of acceptability, and no substitute will be ordered or installed without ENGINEER's prior written acceptance. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

7.3.2. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating substitutes proposed by CONTRACTOR and in making changes in the Procurement Documents occasioned thereby. Whether or not ENGINEER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's consultants for evaluating proposed substitutes.

Patent Fees and Royalties:

7.4. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in production of the Goods or the incorporation in the Goods of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Procurement Documents for use in producing the Goods and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Procurement Documents. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in production of the Goods or incorporation therein of any invention, design, process, product or device not specified in the Procurement Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Taxes:

7.5. CONTRACTOR shall pay all sales, consumer, use and other similar taxes, required by law to be paid in respect of the production and delivery of the Goods and the furnishing of Special Services.

Shop Drawings and Samples:

7.6. CONTRACTOR shall submit to ENGINEER in accordance with the accepted schedule of Shop Drawings submissions five copies (unless otherwise specified) of all Shop Drawings which will have been checked by and bear a specific notation or indication of approval of CONTRACTOR and be identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable ENGINEER to review the information as required.

7.7. CONTRACTOR shall also submit to ENGINEER with such promptness as to cause no delay in the timely production of the Goods, all samples required by the Procurement Documents. All samples will have been checked by and accompanied by a specific indication of approval of CONTRACTOR, and will be identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

7.8. At the time of each submission, CONTRACTOR shall in writing call ENGINEER's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Procurement Documents.

7.9. ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Goods and for compliance with the information given in the Procurement Documents. Such review and approval will not extend to design data reflected in Shop Drawings which is peculiarly within the special expertise of CONTRACTOR or any party dealing directly with CONTRACTOR. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and, if necessary, shall submit new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals. CONTRACTOR's submission of any Shop Drawing or sample bearing CONTRACTOR's approval shall constitute a representation to OWNER and ENGINEER that CONTRACTOR assumes full responsibility for having determined and verified the design criteria, quantities, dimensions, installation requirements, materials, catalog numbers, and similar data and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Procurement Documents; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Goods are in accordance with

the requirements of applicable laws, ordinances, rules or regulations.

7.10. When a Shop Drawing or sample is required by the Specifications, CONTRACTOR shall not commence production of any part of the Goods affected thereby until such Shop Drawing or sample has been reviewed and approved by ENGINEER.

7.11. ENGINEER's review and approval of Shop Drawings or samples will not relieve CONTRACTOR from responsibility for any deviations from the Procurement Documents unless CONTRACTOR has in writing called ENGINEER's attention to such deviation at the time of submission and ENGINEER has given written concurrence and approval to the specific deviation, nor will any concurrence or approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

Continuing Performance:

7.12. CONTRACTOR shall continue performance of the contract during all disputes or disagreements with OWNER. No production of Goods will be delayed or the timely delivery of Goods or furnishing of Special Services be prejudiced, delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and OWNER may otherwise agree in writing.

Access to Goods in Production:

7.13. CONTRACTOR shall provide ENGINEER, ENGINEER's representatives and other representatives of OWNER, testing agencies, and governmental agencies with jurisdictional interests proper and safe access to Goods in the process of production at reasonable times as is necessary for the performance of their functions in connection with the Procurement Documents.

ARTICLE 8 - Owner's Responsibilities

8.1. OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. OWNER shall furnish the data required of OWNER under the Procurement Documents promptly and shall make payments to CONTRACTOR when due.

8.3. In connection with OWNER's rights to order changes in accordance with Article 10, OWNER is obligated to execute Change Orders.

8.4. OWNER's responsibility in respect of accepting delivery of the Goods is set forth in paragraph 5.5.

8.5. OWNER shall provide CONTRACTOR, CONTRACTOR's representatives, testing agencies and other governmental agencies with jurisdictional interests, proper and safe access to the site at reasonable times as is necessary for performance of their functions

ARTICLE 9- Engineer's Status

OWNER's Representative:

9.1. ENGINEER will be OWNER's representative. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative are set forth in the Procurement Documents and will not be extended without written consent of OWNER and ENGINEER and written notice to CONTRACTOR.

Clarifications and Interpretations:

9.2. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Procurement Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Procurement Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

Rejecting Defective Goods:

9.3. ENGINEER will have authority to disapprove or reject Goods or Special Services which are defective.

Decisions on Disputes:

9.4. ENGINEER will be the initial interpreter of the requirements of the Procurement Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to such acceptability or the interpretation of the requirements of the Procurement Documents pertaining to CONTRACTOR's performance and claims under Articles 11 and 12 in respect of Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in

accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute or other matter shall be delivered by the claimant to ENGINEER and the other party to the Agreement within fifteen days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within forty-five days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. In his capacity as interpreter and judge ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.5. The rendering of a decision by ENGINEER pursuant to paragraph 9.4 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 6.8) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Procurement Documents or at law in respect of any such claim, dispute or other matter.

Visits to CONTRACTOR's Facilities:

9.6. ENGINEER will not make visits to CONTRACTOR's facilities where the Goods are being produced to observe production, inspection or testing of the Goods except as otherwise specified in the Procurement Documents.

Limitations on ENGINEER's Responsibilities:

9.7. Neither ENGINEER's authority to act under these Procurement General Conditions or elsewhere in the Procurement Documents nor any decision made by ENGINEER in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR or any of CONTRACTOR's agents or employees or any other person furnishing materials or equipment for incorporation in the Goods or furnishing services incidental thereto.

9.8. Whenever in the Procurement Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives Reasonable, "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of ENGINEER, it is intended that such requirement, direction, review or judgment will be

solely to evaluate the Goods and Special Services for compliance with the Procurement Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct any of CONTRACTOR's operations or activities.

9.9. ENGINEER will not be responsible for CONTRACTOR's failure to produce and deliver the Goods and furnish Special Services in accordance with the Procurement Documents, nor will ENGINEER be responsible for any acts or omissions of CONTRACTOR or of any other persons furnishing or delivering any Goods, furnishing Special Services or performing other services in connection therewith.

ARTICLE 10 - Changes in the Goods or Special Services

10.1. Without invalidating the Agreement, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Goods or furnishing of Special Services; these changes will be authorized by Change Orders. Upon receipt of a Change Order, CONTRACTOR shall proceed on the basis of the change involved. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12 on the basis of a claim made by either party.

10.2. ENGINEER may authorize minor changes in the Goods or Special Services not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. These minor changes may be accomplished by an ENGINEER's Order and will be binding on OWNER, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that an ENGINEER's Order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

10.3. Changes made in the Goods or Special Services without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except as provided in paragraph 10.2.

10.4. OWNER shall execute appropriate Change Orders prepared by ENGINEER covering changes which are required by OWNER, or because of any other claim of CONTRACTOR for a change in the Contract Time or

the Contract Price which is recommended by ENGINEER.

10.5. If notice to the surety of any change in the contract is required by the provisions of any Bond, the giving of such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - Change of Contract Price

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for furnishing the Goods, Special Services and performing other services in connection therewith. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or written amendment. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER and ENGINEER within fifteen days of occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days after such occurrence unless ENGINEER allows an additional period of time to ascertain accurate cost data. All claims for adjustment in the Contract Price shall be determined by ENGINEER if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

ARTICLE 12 - Change of Contract Time

12.1. The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and ENGINEER within fifteen days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by ENGINEER if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefor as provided

in paragraph 12.1. Such delays shall include, but not be limited to, acts of neglect by OWNER, or to fires, flood, labor disputes, epidemics, abnormal weather conditions, governmental procedures, or acts of God.

12.3. All time limits stated in the Procurement Documents are of the essence of the Procurement Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

ARTICLE 13 - Warranty and Guarantee; Tests and Inspections, Correction, Removal or Acceptance

CONTRACTOR's Continuing Obligation; Warranties, Guarantees:

13.1. CONTRACTOR's obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Procurement Documents is absolute, and CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Goods, Special Services and other services will be in accordance with the Procurement Documents and free from defects. Prompt notice of all observed defects will be given to CONTRACTOR.

13.2. Neither recommendation of any progress or final payment by ENGINEER, nor any payment by OWNER to CONTRACTOR under the Procurement Documents, nor any use of the Goods by OWNER, nor any act of acceptance by OWNER, nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 6.5, nor any correction of defective Goods or Special Services by OWNER will constitute an acceptance of Goods, Special Services or other services not in accordance with the Procurement Documents or a release of CONTRACTOR's obligation to furnish the Goods, Special Services and other services in accordance with the Procurement Documents, except as otherwise provided in paragraph 6.8.1.

Tests and Inspections:

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Goods for all those inspections, tests or approvals which the Procurement Documents specify are to be observed by ENGINEER

or another party prior to OWNER's acceptance of delivery. OWNER will give CONTRACTOR timely notice of all tests, inspections and approvals of the Goods called for by the Procurement Documents which are to be conducted at the site after such acceptance and prior to final payment.

Remedying Defective Goods:

13.4. If at any time after OWNER's acceptance of delivery under paragraph 5.5, and before expiration of the correction period under paragraph 13.6, OWNER or ENGINEER determines that the Goods are defective, CONTRACTOR shall, upon written notice from and as required by ENGINEER, either correct the defects or remove the Goods and replace them with non-defective Goods. If CONTRACTOR does not do so promptly and to the satisfaction of OWNER and ENGINEER, OWNER may, upon ENGINEER's recommendation, accept the defective Goods instead of requiring correction or removal and replacement.

13.5. If CONTRACTOR fails to take action as required by ENGINEER in accordance with paragraph 13.4, OWNER may, after ten days' written notice to CONTRACTOR, remedy any such deficiency instead of requiring removal or replacement. In an emergency where delay would cause serious risk of loss or damage, OWNER may take such action without notice to or waiting for action by CONTRACTOR.

Correction Period:

13.6. CONTRACTOR's responsibility for remedying all defects in the Goods will extend for a period of one year after the earlier of the date on which OWNER has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Procurement Documents or by any specific provisions of the Procurement Documents.

Remedying Defective Special Services:

13.7. If, at any time ENGINEER notifies CONTRACTOR in writing that any of the Special Services are defective, CONTRACTOR shall promptly provide acceptable services. If CONTRACTOR fails to do so, OWNER may obtain the Special Services elsewhere.

Costs of Remedying Defects:

13.8.. All direct, indirect and consequential costs of correcting, removing and replacing defective Goods or of obtaining Special Services elsewhere and of exercising OWNER's rights and remedies under paragraphs 5.5 and 13.4 through 13.7 inclusive, will be charged against CONTRACTOR in an amount verified by ENGINEER; and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Procurement Documents and a reduction in the Contract Price, or if incurred after final payment, an appropriate amount will be paid by CONTRACTOR to OWNER. Such direct, indirect and consequential costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of OWNER or others destroyed or damaged by correction, removal or replacement of defective Goods. CONTRACTOR will not be allowed an extension of the Contract Time because of any delay in performance attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph.

ARTICLE 14 - Suspension, Cancellation and Termination

OWNER May Suspend:

14.1. OWNER may, at any time and without cause, suspend production of the Goods or any portion thereof or the furnishing of Special Services or other services for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER. Upon fifteen days' written notice from OWNER, CONTRACTOR shall resume performance. CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 or 12.

OWNER May Cancel:

14.2. OWNER may, at any time without cause, upon ten days' written notice to CONTRACTOR, cancel all or any part of the undelivered Goods or unfurnished Special Services and shall pay CONTRACTOR reasonable cancellation charges.

OWNER May Terminate:

14.3. Upon the occurrence of anyone or more of the following events:

14.3.1. if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title II, U.S. Code), as now or hereafter in effect, or if

CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;

14.3.2. if a petition is filed against CONTRACTOR under any chapter of said Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

14.3.3. if CONTRACTOR makes a general assignment for the benefit of creditors:

14.3.4. if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law, or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

14.3.5. if CONTRACTOR admits in writing an inability to pay its debts generally as they become due; or

14.3.6. a breach by CONTRACTOR in any substantial way of any provision of the Procurement Documents and such breach continues for a period of fifteen days after written notice to correct the breach from OWNER to CONTRACTOR; OWNER may, after giving CONTRACTOR and the surety ten days' written notice and to the extent permitted by law, terminate the services of CONTRACTOR. In such case, CONTRACTOR shall not be entitled to receive any further payment until all Goods are provided and Special Services and other services furnished in accordance with the Procurement Documents. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs to OWNER of such termination (including compensation for additional professional services), such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price.

14.4. Where CONTRACTOR's services have been so terminated by OWNER, the transaction will not affect any rights and remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

CONTRACTOR May Suspend or Terminate:

14.5. If, through no act or fault of CONTRACTOR, production of the Goods or furnishing of Special Services is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon ten days' written notice to OWNER and ENGINEER, terminate the Procurement Agreement and recover from OWNER payment for all Goods completed and Special Services and other services furnished and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Procurement Agreement, if OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon ten days' written notice to OWNER and ENGINEER suspend production of the Goods and furnishing of Special Services or other services until payment of all amounts then due. The provisions of this paragraph will not relieve CONTRACTOR of obligations under paragraph 7.12 to continue performance of the contract without delay during disputes and disagreements with OWNER.

ARTICLE 15 - Arbitration

15.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of, or relating to the Procurement Documents or the breach thereof except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 6.8, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining subject to the limitations of this Article 15. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 15 will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

15.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.4 shall be made until the earlier of (a) the date on which ENGINEER has rendered a decision Or (b) the tenth day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter shall be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.4; and the failure to demand arbitration within said

thirty days' period shall result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.

15.3. Notice of the demand for arbitration shall be filed in writing with the other party to the Procurement Agreement and with the American Arbitration Association, and a copy shall be sent to ENGINEER for information. The demand for arbitration shall be made within the thirty-day period specified in paragraph 15.2 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

15.4. No arbitration arising out of or relating to the Procurement Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER and ENGINEER's agents, employees or consultants) who is not a party to this Agreement unless:

15.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration,

15.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

15.4.3. the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

15.5. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. §§10, 11).

ARTICLE 16 - Miscellaneous

Giving Notice:

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

Computation of Time:

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

General:

16.3. The duties and obligations imposed by these Procurement General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation) the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 13.1 and 13.6 and all of the rights and remedies available to OWNER and ENGINEER thereunder, will be in addition to, and shall not 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 law or contract, by special warranty or guarantee or by other provisions of the Procurement Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Procurement Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Procurement Documents will survive final payment and termination or completion of this Agreement.

City of Unalaska

PROCUREMENT INSURANCE REQUIREMENTS

- A. The Supplier shall carry and maintain throughout the life of this Procurement Agreement, at its own expense, insurance not less than the amounts and coverage herein specified, and the City of Unalaska, its employees and agents shall be named as additional insured under the insurance coverage so specified and where allowed, with respect to the performance of the work. The liability policies shall contain a “cross-liability” or “severability of interest” clause or endorsement. There shall be no right of subrogation against the City or its agents performing work in connection with the work, and this **waiver of subrogation** shall be endorsed upon the policies. Insurance shall be placed with companies acceptable to the City of Unalaska; and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy relative to this project shall become effective except upon **30 days** prior written notice thereof to the City of Unalaska.
- B. Before commencing the work, the Supplier shall furnish the City of Unalaska with certified copies of policies upon request. The minimum coverages and limits required are as follows:
1. **Workers’ Compensation** insurance in accordance with the statutory coverages required by the State of Alaska and **Employers Liability** insurance with limits not less than **\$1,000,000** and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf’s Land Act.
 2. **Commercial General Liability** with limits not less than **\$1,000,000** per Occurrence and **\$2,000,000** Aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Blanket Contractual, Supplier’s Protective, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability, and Personal Injury Liability. Coverage shall not contain any exclusion of Explosion, Collapse, or Underground. Coverage is to be endorsed to include a per project aggregate. Additionally, such insurance shall be considered primary to any other insurance carried by the City of Unalaska and the insurer will endorse the policy accordingly.
 3. **Commercial Automobile Liability** on all owned, non-owned, hired, and rented vehicles with limits of liability of not less than **\$1,000,000** Combined Single Limit for Bodily Injury and Property Damage per each accident or loss. This comprehensive coverage shall be as required by the State of Alaska.
 4. If applicable, **Supplier’s Equipment** insurance covering all of the Supplier’s equipment and machinery to be used in connection with the performance of the work specified in this contract. This coverage requirement may be waived at the

discretion of the City of Unalaska if the Supplier self-insures the equipment and will waive all right of recovery against the City of Unalaska in writing.

5. **Umbrella/Excess Liability** insurance coverage of not less than **\$1,000,000** per occurrence and annual aggregate providing coverage in excess of General Liability, Auto Liability, and Employers Liability.
 6. If work involves use of watercraft, **Protection and Indemnity** insurance with limits not less than **\$1,000,000** per occurrence. Hull and Machinery coverage is to be carried on the vessel for the full current market value. This coverage requirement may be waived at the discretion of the City of Unalaska if the Supplier self-insures the equipment and will waive all rights of recovery against the City of Unalaska in writing.
 7. **Builder's Risk Insurance:** Coverage shall be provided on an "All Risk" completed value basis and protect the interests of the City, the Supplier, and his subcontractors. Coverage shall include all materials, equipment, and supplies that are intended for specific installation in the project while such materials, supplies, and equipment are located at the project site and in transit from port of arrival to job site and while temporarily located away from the project site.
 8. **Professional Liability Insurance** with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, subject to a maximum deductible \$75,000 per claim. The City has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.
- C. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Supplier shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expense.
- D. All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the Supplier agrees to maintain "claims made" coverage for a minimum of two years after project completion.
- E. If the Supplier employs subcontractors to perform any work hereunder, the Supplier agrees to require such subcontractors to obtain, carry, maintain, and keep in force during the time in which they are engaged in performing any work hereunder, policies of insurance which comply with the requirements as set forth in this document. This requirement is applicable to subcontractors of any tier.
- F. The Supplier is required to maintain all certificates of insurance during the course of the Procurement Agreement and for a minimum of three (3) years following the completion of such Agreement. It is further agreed, that upon request by the City of Unalaska, the

Supplier will provide copies of any and all subcontractor certificates of insurance for review of compliance.

- G. Failure by the Supplier to maintain the required insurance coverage or to comply with the above, may, at the option of the City of Unalaska, be deemed Defective Work and remedied in accordance with the contract.

- H. All policies of insurance maintained by Supplier and the City of Unalaska, respectively, shall be written on reasonable and customary terms, conditions, and exclusions for procurement projects of similar size and scope. The coverages referred to in this document are set forth in full in the respective policy forms, and the descriptions of such policies in this document are not intended to be complete, nor to alter or amend any provisions of the actual policies and in matters, if any, in which the said descriptions may be conflicting with such instruments, the provisions of the policies of insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor the City of Unalaska's approval thereof shall relieve Supplier of any of its obligations under the Procurement Agreement. Neither party shall violate or knowingly permit any violation of any conditions or terms of the policies of insurance carried hereunder.