



PURCHASE ORDER

Terms of Purchase attached.

All material is subject to approval of Owner/Engineer.

Seller: [Seller Name]  
 Address: [Vendor Address]  
 Contact: [Vendor Contact Person]  
 Phone: [Vendor Phone No.]  
 Fax: [Vendor Fax No.]  
 Email: [Vendor Email Address]

Date: [PO Date]  
 Job No.: [WW Job No.]  
 PO No.: [PO number]

Spec. section(s) for reference:  
 [Spec Section]  
 [Spec Section]  
 [Spec Section]  
 [Spec Section]  
 [Spec Section]

Project Name: [Project Name/Info]  
 Ship to address: [Project or ship to address]

Units	Description	Unit Cost	Sales Tax Applicable	Extended Amount
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
		\$	<input type="checkbox"/>	\$
	Start-up Services	\$	<input type="checkbox"/>	\$
	Freight (FOB Project)	\$	<input type="checkbox"/>	\$

Sales tax to be paid by: Seller  Western Water

Taxable Subtotal: \_\_\_\_\_ \$  
 Sales Tax at [Tax Rate]: \_\_\_\_\_ \$  
 Non-Taxable Subtotal: \_\_\_\_\_ \$  
**Total Purchase Order:** \_\_\_\_\_ **\$**

Submittals are required if checked: , provide per plans and specs.

Startup Documents (e.g., O&M manuals) are required if checked: , provide per plans and specs.

We acknowledge receipt of your purchase order and agree to comply with the terms and conditions set forth.

**Seller,**  
 Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Western Water,**  
 Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

Please return a signed copy of purchase order to Western Water for signature; a fully executed copy will be returned to you.

**WESTERN WATER ("Contractor")  
TERMS OF PURCHASE**

**1. UNCONDITIONAL ACCEPTANCE.** Seller's acceptance is limited to the terms and conditions of this Purchase Order Agreement ("Agreement"). Commencing performance, including but not limited to preparing submittals or shop drawings, or making deliveries or any acknowledgment of this Agreement by Seller shall constitute an acceptance of the terms and conditions of this Agreement by Seller. Contractor is bound only by the terms and conditions of this Agreement notwithstanding any proposals, terms or conditions additional to or different from those accompanying Seller's performance or acknowledgment. If Seller's proposal or quote is referenced in this Agreement, this Agreement shall prevail in the event of any conflict between the documents. No additional terms or modifications shall be binding on Contractor unless accepted by it in writing. All different or additional terms proposed or required by Seller are hereby rejected. All terms and conditions of the Prime Contract between Owner and Contractor ("Contract") applicable to Seller's performance, and all plans and specifications of the Project applicable to the materials and/or equipment to be furnished or actually furnished hereunder including but not limited to Exhibit A ("Materials"), are incorporated herein by reference as though set forth in detail.

**2. SUBMITTALS/DRAWINGS.** Seller shall prepare and submit all submittal data required by the Contract or requested by Contractor, including, without limitation, all shop drawings, product data, performance information, or other submittals ("Submittals"), according to Contractor's schedule. Within fourteen (14) calendar days of execution of this Agreement, Seller shall prepare and submit to the Contractor the Seller's Submittal Log. Seller's Submittal Log is to outline all the Seller's planned project submittals, including the expected submission dates and durations for each submittal's corresponding equipment/material. Seller's Submittal Log shall be itemized by spec section and subsection for clarity. Complete Submittals shall be timely delivered to Contractor's office so as not to delay completion of the Project. Seller shall deliver complete copies of the Submittals in such quantities as specified by this Agreement. Contractor reserves the right to back charge Seller for time and material costs to make additional copies if Seller does not provide the required number of Submittals. Contractor reserves the right to back charge seller if Submittals are deficient, do not conform to the contract specifications, or require unnecessary resubmitting. **It shall be incumbent upon Seller to discover any mistakes, errors, or deviations from the requirements of the Contract in the Submittals. Seller shall clearly and specifically identify any such deviations on the front of the Submittal.** Failure to note such deviations shall render the Seller liable for furnishing materials covered by this Purchase Order as originally specified in the Plans and Specifications. **In addition to requirements of the Contract Documents, all submittals shall include a "spec check" based on the below requirements:**

- A. **A copy of the applicable section(s), with addendum updates included as appropriate (i.e. conformed specs), with each lettered or numbered paragraph check-marked to indicate specification compliance or marked to indicate requested deviations from specification requirements.**
  - a. **A check mark shall denote full compliance with a paragraph as a whole.**
  - b. **If deviations from the specifications are indicated, and therefore requested by the Seller, each deviation shall be underlined and denoted by a number in the margin to the right of the identified paragraph, referenced to a detailed written explanation of the reasons for requesting the deviation. The Engineer is the final authority for determining acceptability of requested deviations. The remaining portions of the paragraph not underlined will signify compliance on the part of the Seller with the specifications.**
  - c. **Where required, partial submittals shall include similar markups. Each paragraph outside of Seller's scope or necessary to be addressed under separate cover shall be underlined and denoted by a number in the margin to the right of the identified paragraph, referenced to an appropriate explanation of the reason for exclusion.**
- B. **Failure to include a copy of the marked-up specification sections, along with justification(s) for any requested deviations to the specification requirements, with the submittal shall be sufficient cause for rejection of the entire submittal with no further consideration.**
- C. **Any deviation from the Contract Documents not specifically requested and clearly identified, although accepted through oversight, may be rejected at any stage of the Work. The Seller shall, at their own expense, reconstruct all work affected by the later rejection of a contract deviation that was not specifically called out and explained for review and acceptance by the Engineer as detailed above.**

Incomplete Submittals shall be returned to Seller without review. Any required re-submittal shall be made promptly so as not to delay the Project. In the absence of direction from Contractor, re-submittals shall be made within fourteen (14) calendar days of Seller's receipt of the re-submittal requirements. Final approval of Seller's Submittals shall not relieve Seller from responsibilities for unauthorized changes, deviations, omissions or other errors of any sort, or the failure of the Materials to comply with the Contract requirements. The time for

delivery shall not be extended for delays in the submittal process unless Owner grants such a time extension. If the time for delivery is set as a period of time from receipt of approved submittals, that duration will be reduced by any period of avoidable delay caused by Seller in the submittal/re-submittal process. Seller shall also timely furnish O & Ms in accordance with the Plans and Specifications as soon as possible after approval of Submittals, but under no circumstances later than thirty (30) days prior to delivery of Materials. When required by the Plans and Specifications, maintenance summary and equipment record forms shall be included in the O & Ms.

If required by the Plans and Specifications, Samples shall be timely delivered to Contractor's office, according to Contractor's schedule.

Seller's representative shall furnish written certification of proper installation. Seller shall deliver all required special tools with equipment and must include a list of special tools required for checking, testing, parts replacement and maintenance.

When required by the specifications, machinery, equipment and components such as tanks, piping and electrical supports designed by manufacturers or suppliers shall be designed in accordance with the provisions of the latest edition of the Uniform Building Code to withstand seismic loads in addition to other loads. Submittals shall include a certification from a California design engineer verifying that designs are in conformance with Uniform Building Codes and that all applicable loads, including seismic, have been satisfied.

**3. CHANGES AND RIGHT TO TERMINATE.** Changes will be binding on Contractor only if in writing and signed by the Contractor.

(a) Contractor may, by written change order signed by an authorized representative of Contractor, make any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, or time of delivery. Contractor may terminate or suspend at its convenience all or any portion of this order not shipped as of the date of termination or suspension of the order. In the event of any change or termination, the parties shall equitably adjust the price based upon good faith negotiations. If the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provisions of this Agreement. However, if unit prices have been designated as to materials maintained in the normal course of Seller's business as standard stock, such unit prices shall control all price adjustments for quantity changes. No change or termination shall relieve Contractor or Seller of any obligations as to material shipped prior to Seller's receipt of the change, termination or suspension order. Any claim for adjustment by Seller hereunder must be asserted in writing within ten (10) calendar days from the date the change or termination is ordered.

(b) If the Owner orders any change, adjustment, substitute, addition, deletion, suspension, or termination that affects Seller, Seller shall comply with Owner's order. In that event, Seller agrees to be bound by the dispute resolution procedure of the Contract.

(c) In the event of a termination for default, Contractor may, in addition to all other rights and remedies, purchase substitute items or services elsewhere and hold Seller liable for the excess costs and damages, including attorneys' fees and experts' and consultants' fees actually incurred.

(d) Unless provided for in the Prime Contract there shall be no adjustments to the Contract Price for material price fluctuations, labor increases, surcharges, or other "escalation" adjustments, or for increases in costs or changes in prices as a result of the imposition of or changes in tariffs or taxes.

**4. PAYMENT.** The price specified includes all taxes and duties of any kind levied by federal, state, municipal, or other governmental authorities, which either party is required to pay with respect to the reduction, sale, use or shipment of the Materials, and all charges for packing, loading, unloading and shipping. If transportation costs are designated as part of the cost to Contractor, only actual transportation costs shall be included. Damage to goods in transit shall be charged to Seller.

A copy of the invoice shall be sent at time of shipment to Contractor's address. To receive payment, Seller must have signed and returned this PO to Contractor and material/equipment must be delivered and an invoice received prior to the pay estimate cut-off date. Unless otherwise noted on the Purchase Order, Ten percent (10%) retention shall be withheld from each invoice and paid within thirty (30) days of completed start-up, testing, instruction, and Owner's acceptance as required by the Contract and/or specifications, notwithstanding the fact that specific break-out costs for these items may be designated on this Purchase Order. If Operation and Maintenance manuals, startup and testing documents, and/or training documents ("Startup Documents") are required by the Contract, specifications, or typically

furnished, an additional Twenty percent (20%) retention shall be withheld from each invoice, half to be paid within thirty (30) days of approval of the Startup Documents and the other half paid with thirty (30) days of receipt of final approved hard copies of all Startup Documents. Seller shall invoice for or request release of partial retention upon approval of Startup Documents and for remaining retention upon delivery of approved hard copies. Payment terms not to exceed one hundred twenty (120) calendar days after complete performance by Seller.

Contractor may deduct from any amounts due or to become due to Seller, any amount owing by Seller to Contractor; and if Seller breaches this Agreement or if any lien, claim or other liability is asserted against Contractor arising out of Seller's obligations under this Agreement, Contractor shall have the right to retain out of any payments due or to become due to Seller an amount sufficient to completely protect Contractor from resulting loss, liability, damage or expense, until the situation has, in the opinion of the Contractor, been satisfactorily remedied or adjusted by Seller.

Seller's invoice shall set forth the acceptable items delivered to the Project site, the date of delivery, the unit cost and total costs of the items invoiced. Seller's right to payment is subject to the same payment provisions enforced upon Contractor by the terms of the Contract. If Owner or any other person responsible for providing construction funds from which payment to Contractor is to be made, delays in making payment to Contractor, Contractor shall have a reasonable time to make payment to Seller. "Reasonable time" shall be determined according to the relevant circumstances, but in no event, shall it be less than the time Seller and Contractor require to pursue to conclusion their legal remedies to obtain payment against Owner and/or any other person responsible for providing construction funds, including but not limited to mechanic's lien, stop notice, arbitration, or litigation remedies.

At Contractor's request, Seller shall furnish appropriate waiver and lien releases which conform to Civil Code sections 8132-8138 for all equipment and/or material for which payment is being sought, and, if requested by Contractor, unconditional waiver and release forms through the conclusion of the preceding payment period. Except at Contractor's option, no payment under this Agreement shall be made until and unless such waiver and release forms have been furnished.

**5. PAYMENT NOT ACCEPTANCE.** Payment on account, in and of itself, does not constitute an approval and acceptance of the materials furnished, or any part thereof. No payment made by Contractor under this Agreement shall be construed to be an acceptance by Contractor of defective or improper materials.

**6. RISK OF LOSS.** Notwithstanding the terms of shipment, the risk of loss shall pass to Contractor only after delivery to the job site or other place designated in writing by Contractor, and inspection and acceptance of the Materials. Upon delivery, Contractor promptly will inspect for proper quantities and visible shipping damage. Contractor will provide Seller with notice of any shortage or visible shipping damage within five (5) business days of delivery.

**7. DELIVERY.** Time is of the essence of this Agreement. Delivery shall be made at the location provided by Contractor, complete and undamaged, per the table in Exhibit A. Should delivery for any reason fail to be timely, Seller shall be liable to Contractor for liquidated damages as a result of such failure per the table in Exhibit A. No extension of time shall be granted unless Seller has provided written notice and a request for extension within ten (10) calendar days of the event giving rise to the request; any extension granted shall be at Contractor's discretion.

Seller shall notify Contractor when Material is ready to ship, and shall await Contractor's acknowledgement and release to ship, prior to Seller shipping Material. Deliveries will only be accepted during normal working hours. No deliveries will be accepted after hours, on holidays or weekends without prior approval from the Contractor. No backorders or drop shipments shall be made without Contractor's prior written agreement.

Prior to delivery Seller shall forward to Contractor a copy of any packing slip/list indicting the items being delivered.

**8. DEFAULTS.** If Seller fails to perform any of its obligations, Contractor shall be entitled to all remedies provided by law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Contractor's opinion threaten Seller's ability to perform in a timely manner, or fails to make any delivery in a timely fashion, or fails to comply with any provision of this Agreement, and the failure is not

corrected within forty-eight (48) hours of written request of Contractor, Contractor, in addition to any other rights or remedies it may have hereunder or at law, may terminate this Agreement upon written notice to Seller; such termination shall be deemed a termination for default. Contractor's failure to notify Seller of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection or acceptance thereof will not bar Contractor from pursuing any remedies for breach which it may otherwise have.

**9. REQUESTED CORRECTIONS.** In the event Seller fails to comply with any of the provisions herein, Contractor may, without prejudice to any other right or remedy available, give a written correction notice to Seller. If Seller fails to correct the deficiency within the time prescribed in such notice, Contractor shall have the right to procure the necessary materials and any associated labor elsewhere, and to charge Seller for all costs and losses which result.

**10. INSPECTION.** Seller must obtain and pay for all permits, licenses, tests and official inspections and shall comply with all laws, ordinances and regulations bearing on the production and delivery of the material. Contractor shall have the right to inspect and test materials at Seller's plant any time prior to shipment and to conduct additional inspections at any time after the materials arrive at the job site. Contractor's right to reject nonconforming materials, or to avail itself of any other remedy to which Contractor may be entitled, shall not be impaired by making or failing to make any inspection of, or payment for, or acceptance of the materials, notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Seller shall be liable for all inspection, reshipment and return costs for nonconforming materials. Seller shall not replace rejected materials unless so directed by Contractor in writing, and if requested, shall replace the defective materials and all affected work so as not to delay Contractor's schedule.

**11. WARRANTIES.** Seller warrants to Contractor that it has fully and carefully reviewed the provisions, specifications, drawings, samples or other descriptions contained in this Agreement and in the Contract and Project Plans and Specifications. Seller warrants to Contractor that the Materials shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Contract or furnished by Seller. Seller further warrants that the Materials will be complete in all respects necessary to make the Materials fully functional if installed in accordance with the Contract. All warranties implied by law or usage of trade are incorporated into this Agreement and shall apply to services and materials ordered. Seller guarantees to Contractor that the Materials supplied shall be free of any and all defects in workmanship and materials which may develop within twelve (12) months from Project acceptance, the period required by the Project Specifications, or during the period of any special warranty provided by Seller, whichever is longer. Seller's warranty shall in all respects meet the terms of the warranty requirements of the Owner's Project Specifications. All warranty work shall be commenced within ten (10) calendar days of written notice, or such shorter period as may be necessary under the circumstances. Seller shall be responsible for all costs associated with repairing or replacing the Materials and all affected work, including removal, freight, in and out, and reinstallation expenses. The Materials are ordered by Contractor in reliance on each and all of the specified warranties and guarantees, as well as those implied by law or usage of trade. Contractor's remedies pursuant to this section are in addition to, and not a limitation on, all other remedies allowed by law.

**12. INFRINGEMENT.** Seller shall pay all royalties and licensing fees arising in connection with the sale or use of materials hereunder. Seller further undertakes and agrees to defend, indemnify, and hold harmless, at Seller's expense, Contractor and its officers, employees, agents, successors, assigns, customers or users of its customer's products against any and all claims, demands, suits, actions or proceedings for actual or alleged infringement of any U.S. or foreign letters patent, copyrights or trademarks resulting from the use or purchase of any Materials.

**13. COMPLIANCE.** Seller's performance, including any and all designs, shall in all ways strictly conform with all applicable laws, regulations, safety orders, labor agreements and working conditions to which it is subject, including, but not limited to, all State, Federal and local non-discrimination in employment provisions, and all applicable provisions required by the Contract and by Contractor's own internal safety program, and all local regulations and building codes. Seller shall execute and deliver all documents as may be required to effect or evidence compliance.

**14. INDEMNITY.** Seller assumes all risk in furnishing the Materials and shall indemnify, hold harmless and defend Contractor and Owner, and each of their officers, employees, successors, assigns, sureties, insurers, and agents, against any and all losses, damages, liabilities, judgments, fines, penalties, and claims of any kind whatsoever, including actual attorneys' fees and experts' or consultants' fees, which relate to or arise directly or indirectly out of the performance or nonperformance of this Agreement including, but not limited to,

losses of any Materials property damage and injury to persons, including death. This indemnity applies regardless of any active and/or passive negligent act or omission of Contractor or Owner or their agents or employees. Seller, however, shall not be obligated under this Agreement to indemnify Contractor or Owner for the sole negligence or willful misconduct of Contractor or Owner or their agents or employees. The indemnity set forth in this section shall not be limited by the insurance requirements set forth in Section 17, nor shall the insurance provisions be limited by the scope of this indemnity. Such indemnity obligation includes, without limitation, each of the following: (a) claims of infringement or violation of any copyrights, patent rights or similar rights; (b) claims of injury or damage to property or persons, including death; (c) claims based on acts, omissions, or presence at the Project by Seller, or any of Seller's officers, agents, employees, or servants; (d) claims arising from defects, actual or alleged, in materials, products or services furnished or supplied by, or on behalf of, Seller; (e) attachments, executions, and liens by the creditors of Seller, or others claiming to have acquired rights of or against Seller; and (f) any liens, stop notices or bond claims asserted by anyone claiming a right to payment for work, labor, equipment or materials supplied to or at the request of Seller. If this Purchase Order is subject to the section 2782.05 of the Civil Code, this Section 14 shall apply to the greatest extent permitted by law, but no greater, and Contractor shall be entitled to all of the rights and remedies available under section 2782.05, by contract and/or under applicable law.

**15. ASSIGNMENTS, SETOFF.** Any delegation, subletting or assignment by operation of law or otherwise, of all or any portion of Seller's obligations without the prior written consent of Contractor shall be void. In the event of any transfer or assignment by Seller, without Contractor's consent, of the right to receive all or any part of any payments due or to become due hereunder, Contractor may, at any time thereafter, withhold any or all payments due or to become due until final payment is due and all conditions precedent to such payment are satisfied. Contractor may, at its option, setoff any amounts otherwise due from Contractor to Seller under this Agreement against any delinquent amounts or liabilities which are due to Contractor from Seller.

**16. APPLICABLE LAW - DEFINITIONS.** The definitions of terms used, interpretation of this Agreement and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California. Any legal action commenced by Seller to enforce, relating to, or arising out of, this Agreement shall be brought only in an appropriate court, State or Federal, located within Sonoma County, California. Whenever Contractor is not the ultimate consumer of the Materials, all rights, benefits and remedies conferred upon Contractor hereunder shall accrue and be available to and are for the express benefit of any successors in interest to the Materials, including the ultimate consumer of the Materials. As used in this agreement the term "Materials" includes the supplies, drawings, data and other property actually delivered, and all services, including design, delivery, installation, inspection and testing specified or required to furnish the Materials.

**17. INSURANCE AND CLAIMS.** If Seller or its employees or agents come onto Contractor's premises or Project in connection with this Agreement, Seller agrees to carry (i) Comprehensive General Liability Insurance covering personal injuries (including death) in the amount of \$1,000,000 per occurrence, and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of \$1,000,000 per person, and \$1,000,000 per occurrence, property damage in the amount of \$1,000,000. Contractor, its partners, officers, directors and employees shall be named as "Additional Insureds" (GC 2010 11 85 Form B or other endorsement form reasonably acceptable to Contractor) under the Comprehensive General Liability policy. The policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by Contractor, its partners, officers, directors and employees will be excess only and will not contribute with this insurance. Seller further agrees to provide and maintain Workers' Compensation Insurance in conformity with the laws of the state in which such premises or Project is located and Employer's Liability Insurance in the amount of \$1,000,000 per occurrence. If requested by Contractor, Seller shall submit written proof of such insurance to Contractor prior to entrance on Contractor's premises or Project. Seller shall supply such bonds as required by Contractor.

**18. COMPLIANCE WITH LICENSE LAW.** CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

**19. DISPUTE RESOLUTION.** "Claims" (demands for monetary compensation or damages or time extensions) arising from or relating to the Project shall be decided by the parties in accordance with this section. Initially, and promptly after identification of a Claim, Contractor's project manager and Seller's project representative shall meet face-to-face at the Project to review and consider the Claim. This meeting

shall occur at the earliest practicable date and shall be for the express purposes of: (1) exchanging and reviewing all pertinent documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each party's position, and (3) reaching agreement upon a reasonable, compromised resolution of the Claim.

If the project representatives are unable to resolve the Claim and if the Claim is not one that Contractor believes should be submitted to Owner, a senior representative from Contractor and a senior representative from Seller each shall review the Claim in detail and then meet to discuss and resolve the matter. This meeting of senior management representatives shall occur no later than fifteen (15) calendar days after the meeting of the project representatives, unless the parties both agree upon a longer period of time. The parties shall promptly designate a senior representative for purposes of this section. Either party may, if necessary, designate a different senior representative at any time during the course of the Project.

If any Claim not involving the Owner remains unresolved after the meeting of the senior management representatives, Contractor and Seller agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator. Unless the parties both agree upon a longer period of time, the mediation shall be held no later than one hundred twenty (120) calendar days after the meeting of the senior management representatives. No later than thirty (30) calendar days prior to the mediation date, the parties shall exchange in a cooperative and forthright manner all documents, data and information relating to the Claim, excepting only those items protected by the attorney/client or other applicable privilege. The parties shall share equally the mediator's fee for the mediation.

If any dispute or Claim between Contractor and Owner directly or indirectly involves the Materials, or if any dispute or Claim between Contractor and Seller concerns the Owner, Seller agrees to be bound to Contractor and Contractor agrees to be bound to Seller by the terms of the Contract, including the dispute resolution process, and by all decisions, findings or determinations made thereunder by the person so authorized in the Contract Documents, by an administrative agency or court of competent jurisdiction or arbitration board, whether or not Seller is a party to the proceedings. If any dispute or Claim is prosecuted or defended by Contractor, Seller agrees that it may be joined in any such proceeding. If Seller is not directly a party or litigant, Seller agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose, and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Seller's interest in such claim or dispute. Seller shall be bound by any settlement of which it has notice and which is made in good faith. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all materials supplied by Seller, and as to any and all damages, if any, incurred by Seller in connection with the Project, Contractor shall never be liable to Seller to any greater extent than Owner is liable to Contractor.

No claim, dispute or controversy shall interfere with Seller's obligations, and Seller shall proceed as directed by Contractor in all instances. Any failure of Seller to comply and to proceed in accordance with Contractor's directions shall automatically be deemed a material breach of this Agreement and an incident of default under Section 8.

**20. LABOR DISPUTES.** Should there be picketing at Contractor's job site and Contractor establishes a reserved gate for Seller's use, Seller shall continue the proper performance of this agreement. Seller agrees to continue the proper performance of this agreement and meet all delivery requirements notwithstanding the presence of pickets at the gate established for Seller's use.

**21. NOTICE.** Any notice required or permitted hereunder may be served personally, by mail, or by facsimile, directed to the address of the party shown on the face of this Agreement. Notice shall be effective upon receipt; facsimile notices shall be effective on the date of transmission, as evidenced by a transmission confirmation showing transmission on a business day before 5 p.m. Pacific Time, otherwise on the next business day after the transmission confirmation.

**22. COORDINATION OF EQUIPMENT.** If coordination with or assimilation of equipment provided by others is necessary for the proper installation or operation of the Materials, Seller shall coordinate and ensure compatibility of equipment.

**23. PREVAILING WAGE REQUIREMENTS FOR FIRMS DELIVERING OR REMOVING MATERIAL FROM JOBSITES.** It is the Seller's responsibility to pay prevailing wages, if applicable, for fabrication, delivery or installation of materials and/or equipment supplied to the Project.

**24. COMMUNICATION.** Seller shall not communicate directly with the Owner or the Owner's representatives without Contractor's knowledge and consent.

**25. READY-MIXED CONCRETE.** This section shall apply if Seller is engaged in the hauling and delivery of ready-mixed concrete; for this section Seller is also referred to as Subcontractor. Section 1720.9 of the Labor Code (AB 219) requires that any person or entity that engages in "the hauling and delivery of ready-mixed concrete" must: (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; and (2) register with the Department of Industrial Relations, even if the person or entity is not a licensed contractor. Subcontractor agrees strictly to comply with these requirements. Subcontractor agrees to comply with Division 2, Part 7, Chapter 1 of the California Labor Code, Section 1720 et seq.

**26. AMERICAN SOURCING PROVISIONS.** Seller acknowledges and understands that this project may be funded with money provided pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA), Clean Water State Revolving Fund or Drinking Water State Revolving Fund which have American Iron and Steel (AIS) requirements, and that such laws/regulations provide for certain "Buy America(n)" requirements. Seller represents and warrants that Seller has reviewed and understands the "Buy America(n)" requirements of this Project and the Contract Documents.

Seller warrants and agrees that if this project has ARRA, AIS, or other "Buy America(n)" requirements then all of the iron, steel and manufactured goods being furnished by Seller for incorporation in the project will be (or have been) produced in the United States in a manner that complies with the applicable regulations, orders, citations, rules or standards, unless and to the extent the funding agency approves a waiver of any of such requirements. Moreover, Seller agrees to provide, at no additional cost to Contractor, any verified information, certifications or other assurances of compliance with these laws/regulations as may be requested by Contractor or an agency having jurisdiction in connection with the requirements (or any waiver thereof).

Notwithstanding any other provisions of the Agreement, and without limiting the generality of the indemnity obligations in Section 14, Seller shall indemnify and defend Contractor and Owner, and each of their respective officers, employees, successors, assigns, sureties and agents, from and against any and all losses, liabilities, damages, claims, demands, causes of action, civil penalties, criminal penalties, fines, costs or other expenses (including actual attorney's fees and expert witness fees) incurred by or imposed on Contractor or other indemnified party arising out of or connected with Seller's failure to comply with the provisions of this Section 26. Seller, however, shall not be obligated under this Agreement to indemnify any indemnified party to the extent the loss or expense arises from the sole negligence or willful misconduct of such indemnified party.

In connection with Seller's defense obligation under this Section 26, Seller shall give the indemnified parties copies of documents served in any legal proceeding (including any mediation or arbitration) and shall keep the indemnified parties apprised as to the status of such legal proceeding. If Seller fails to defend diligently any such legal proceeding with counsel reasonably satisfactory to Contractor, Contractor shall have the right (but no obligation) to defend the same at Seller's expense. Seller shall not settle any such legal proceeding without Contractor's prior written consent (unless the effect of such settlement shall be to release Contractor and the other indemnified parties from all liability whatsoever with respect to such legal proceeding, without cost or contribution).

The provisions of this Section 26 survive the expiration or termination of this Agreement.

Seller shall include the substance of this Section 26 in all subcontracts, purchase orders or other agreements that require the provision of iron, steel and manufactured goods to be used in the project.





**EXHIBIT A**

**SCOPE OF WORK DESCRIPTION**

**Specification Sections:**

[Enter applicable spec sections]

**Scope:**

[Enter scope description or items from Sellers's proposal quote as needed]

**Clarifications:**

[Enter inclusions/exclusions from Seller's proposal quote as needed]

**Deliverables Schedule:**

ITEM	MATERIAL(S)	DELIVERY DATE(S)**	PER CALENDAR DAY LIQUIDATED DAMAGE RATE IF LATE**
1	Complete Submittal Package Per Section 2	_____ Weeks from Finalized PO	
2			
3			
4			

\*\*If Material is ready for shipment to meet these delivery dates, yet not released by Contractor for shipment, then Seller shall not be liable for liquated damages.