

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

BID PROPOSAL

For the purchase of:

**COMMERCE STREET SUBSTATION
TRANSFORMERS**

For

**THE BOROUGH OF CHAMBERSBURG
ELECTRIC DEPARTMENT**

ISSUED

May 10, 2019

Bids for Commerce Street Substation - Transformers
as covered by attached specifications must be received by Town Council of the Borough of Chambersburg before
2:30 p.m., EST, Thursday, June 13, 2019 at the office of the Borough Secretary, 100 South Second Street,
Chambersburg, Pennsylvania 17201.

TOWN COUNCIL OF THE BOROUGH OF CHAMBERSBURG

For further information, please contact:

Jeff Heverley, Assistant Electric Superintendent
jheverley@chambersburgpa.gov (717) 251-2418

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INVITATION TO BID

NOTICE – SEEKING BIDS

Project: Commerce Street Substation Transformers: Project generally comprises the design, manufacture, and installation of Two (2) three-phase, two winding, step down, outdoor, 60 Hertz, 65°C rise, oil insulated, air cooled, power transformers with on-load tap changer.

The Borough of Chambersburg (the “Borough” or “Owner”) is accepting sealed Bids to Purchase Two (2) three-phase, two winding, step down, outdoor, 60 Hertz, 65°C rise, oil insulated, air cooled, power transformers with on-load tap changer (the “Transformers”) for the Commerce Street Substation from qualified Bidders (the “Bidder” or “Seller”). A complete set of Bidding Documents may be obtained free of charge during regular business hours of 8:00 a.m. to 5:00. p.m. Monday through Friday at the location below:

Jamia L. Wright, Borough Secretary,
Borough of Chambersburg, 100 South Second Street,
Chambersburg, PA 17201
Phone: (717) 251-2437

The Bidding Documents may also be obtained electronically at www.borough.chambersburg.pa.us. All prospective Bidders who obtained the Bidding Documents electronically must fax or email the “Receipt of Confirmation” form no later than Monday, June 10, 2019 at 4:00 p.m. EST to: Jamia L. Wright, Borough Secretary, at (717) 264-0224 or boroughsecretariesoffice@chambersburgpa.gov. There will not be a pre-bid conference, but Bidders will be required to schedule a Facility visit.

The Town Council intends to award the Contract to the overall lowest responsible Bidder, as determined by Town Council in the best interest of the Borough.

Bids shall be submitted **only** on the Bid Form included in the specifications. While Bidders may make comments to clarify their Bid, **Bidders cannot change, modify, delete, or make additions to the wording to any of the Bidding Documents**, including the Agreement or Standard General Conditions. **Unauthorized conditions, exceptions, limitations, or provisions attached to a Bid may be cause for rejection of the Bid.** Alterations by erasure or interlineation must be explained or noted in the Bid over the signature of the Bidder. Any questions regarding the Bidding Documents shall be submitted as Requests for Interpretation and the Bidding Documents may only be modified by Addendum issued by the Borough prior to the Bid opening date.

The Town Council of the Borough of Chambersburg reserves the rights to reject any or all Bids; to waive any defects, errors, omissions, irregularities, or informalities in a Bid or the Bid procedure; and to accept any Bid which it may deem to be for or in the best interest of the Borough.

Bids will be received by Jamia L. Wright at the above address until **Thursday, June 13, 2019 at 2:30 p.m. EST. Bids will be opened on June 13, 2019 at 2:30 p.m. EST in the Borough Hall Community Room.** Any Bid received after said date and time will be returned unopened. All Bids must be in a sealed envelope clearly marked “Bid for Borough of Chambersburg,” bearing the name of the Bidder and “Commerce Street Substation Transformers.” If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation “BID ENCLOSED” on the face of it. Please mail bids to Attention: Jamia L. Wright, Borough Secretary.

Any Bidder and any member of the public may be present at the Bid opening.

Bids may be taken under advisement. The Town Council reserves the rights to formally accept a Bid and award a Contract by public announcement at a regular meeting of the Town Council. Town Council intends to award a Contract on June 24, 2019.

The successful Bidder will be required to provide performance and payment bonds each equal to one hundred percent (100%) of the amount of the Contract Price within fifteen days following the award of the Contract.

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The Borough is an Equal Opportunity Employer. Minority and women owned business and those defined as SERB's under State regulations are encouraged to submit Bid proposals.

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GENERAL INSTRUCTIONS TO BIDDERS

Article 1 –Project Overview

1.01 The Commerce Street Substation, owned and operated by the Borough of Chambersburg, PA (the “Borough”), is a 69-12.47kV substation serving a mixture of industrial, residential, and commercial load. The existing substation apparatus is capable of a maximum sustained load of 25MVA, *except* for the two (2) existing transformers which are base-rated 7.5MVA units. The intent of this Project is to increase the substation capacity to its full 25MVA potential by replacing the existing transformers. As such, the Borough requires two (2) new, fully assembled transformers to be provided by the successful Bidder.

ARTICLE 2 - DEFINED TERMS

2.01 Terms used in these Instructions to Bidders will have the meanings indicated in the Agreement, the Specifications, and the Standard General Conditions. To the extent that any definition conflicts, the definitions set forth in the Agreement shall prevail.

ARTICLE 3 — BIDS RECEIVED

3.01 Refer to Advertisement/Invitation to Bid for information on receipt of Bids.

ARTICLE 4 — COPIES OF BIDDING DOCUMENTS

4.01 A complete set of the Bidding Documents may be obtained by the Bidder at:
Borough of Chambersburg, 100 S. Second Street, Chambersburg, PA 17201.

4.02 The Bidding Documents may also be obtained electronically at www.borough.chambersburg.pa.us. All prospective Bidders who obtained the Bidding Documents electronically must fax or email a “Receipt of Confirmation” form no later than Monday, June 10, 2019 at 4:00 p.m. EST to:

Jamia L. Wright, Borough Secretary, at (717) 264-0224 or boroughsecretariesoffice@chambersburgpa.gov.

4.03 Complete sets of the Bidding Documents shall be used in preparing Bids; The Borough assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

4.04 Borough in making copies of Bidding Documents available on the above terms does so only for the purpose of obtaining Bids for furnishing Goods and Special Services and does not confer a license or grant for any other use.

4.05 Reproduction of the Bidding Documents, or their placement on web sites of prospective bidders and other entities, is not permitted.

ARTICLE 5- QUALIFICATIONS OF BIDDERS

5.01 To demonstrate Bidder’s qualifications to furnish Goods and Special Services, Bidder shall submit with the Bid the qualification data as indicated in the Bidding Documents. Bidders shall also be prepared to submit, within five (5) calendar days of Borough’s request, written evidence, such as financial data, previous experience, and such other data as may be deemed pertinent to by the Borough.

5.02 It is a requirement of this Contract that Bidders and Subcontractor(s) shall have the minimum documented experience. Certification of such experience shall be submitted with the Bid.

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- A. Bidder or proposed Manufacturer shall have experience in providing the same or similar materials, equipment, and services projects of equal or greater size than that specified herein.

5.03 Each Bid must contain evidence of Bidder's and its Subcontractor(s) qualification to do business in the Commonwealth of Pennsylvania, or covenant to obtain such qualification prior to and as a condition for award of the Contract.

5.04 To obtain information concerning qualifications of a Bidder, the Borough requires that a completed Experience Questionnaire(s) be submitted on the form included in the Bidding Documents. Bidder shall include the completed Experience Questionnaire(s) with the Bid.

5.05 Submission of financial information is not required with the Bid, but the Borough reserves the right to request such information as part of the bid evaluation process.

5.06 Failure or refusal to submit documentation required by the Instructions to Bidders, Bid Form, and Experience Questionnaire(s) may be reason for rejection of the Bid at the discretion of the Borough.

ARTICLE 6 - EXAMINATION OF BIDDING DOCUMENTS AND DELIVERY POINT

6.01 Upon advance request Borough will provide Bidder access to the Commerce Street Substation, 421 Commerce Street, Chambersburg, Pennsylvania 17201, (the "Delivery Point") to conduct such investigations, examinations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder, by submitting a bid represents that Bidder is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work. Bidder shall have documented proof of having at minimum one representative investigate the Facility in person on their behalf in preparation of their Bid.

6.02 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, including any Addenda or Memorandum and the related data identified in the Bidding Documents;
- B. visit the Delivery Point to become familiar with the local conditions;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or the furnishing of Goods and Special Services;
- D. carefully study and correlate the information known to Bidder, and information and observations obtained from Bidder's visits to the Delivery Point, with the Bidding Documents;
- E. promptly give Borough written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Borough is acceptable to Bidder; and
- F. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

6.03 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 6, that without exception the Bid is premised upon furnishing Goods and Special Services required by the Bidding Documents, that Bidder has given Borough written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Borough are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

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ARTICLE 7 - PRE-BID SITE VISIT

7.01 Bidder shall be required to arrange a site visit at the Facility prior to submitting a Bid. Oral statements made during the site visit by the Borough, its officers, employees, agents, and consultant may not be relied upon and will not be binding or legally effective. The Borough may release an Addendum in response to questions arising at the site visit if deemed necessary or desirable by the Borough. Site visits must be coordinated with Jeff Heverley at email address provided.

ARTICLE 8 – INTERPRETATIONS

8.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Borough in writing, by e-mail, no later than Wednesday, May 29, 2019 at 4:00 p.m. EST. Interpretations or clarifications considered necessary by Borough in response to such questions will be issued by Addenda or Memorandum mailed or delivered to all parties recorded by Borough as having received the Bidding Documents. Questions received after that date may not be answered. Only answers in the Addenda or Memorandum will be binding. Oral and other interpretations or clarifications will not be binding or legally effective.

A. Direct inquiries concerning technical questions and inquiries relating to all other questions concerning the Bidding Documents to Jeff Heverley, Borough of Chambersburg Assistant Electric Superintendent, by e-mail at jheverley@chambersburgpa.gov or at the office of the Borough at the above address.

8.02 Addenda or Memorandum may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Borough. Last Addenda will be issued no later than Friday, June 7, 2019.

8.03 In the event of any discrepancy between the Contract Documents (the Agreement, Technical Specifications, Transformer Shipment, Assembly, and Commission Specifications, Bid Proposal, and Standard General Conditions) the requirements set forth in the documents shall prevail in the order here listed.

ARTICLE 9 - BID SECURITY

9.01 A Bid must be accompanied by Bid security made payable to Borough, in an amount of ten (10) percent of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond [on form attached] issued by a surety meeting the requirements of Paragraph 4.01.B of the General Conditions.

9.02 The Bid security of the apparent Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the apparent Successful Bidder fails to execute and deliver the Agreement, and furnish the required contract security within fifteen (15) days after the Notice of Award, Borough may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid security of other Bidders whom Borough believes to have a reasonable chance of receiving the award may be retained by Borough until the earlier of seven days after the Effective Date of the Agreement or sixty one (61) days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

9.03 Bid security of other Bidders whom Borough believes do not have a reasonable chance of receiving the award will be returned within seven (7) days after the Bid opening.

ARTICLE 10 - CONTRACT TIMES

10.01 See applicable provisions in the Agreement.

ARTICLE 11 - DAMAGES

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11.01 Provisions for liquidated damages are set forth in the Agreement.

ARTICLE 12 – SHIPPING AND DELIVERY

12.01 Provisions concerning Shipping and Delivery are included in the Agreement and Standard General Conditions. The Bidder shall take these Shipping and Delivery provisions into consideration when submitting a Bid. In general, the successful Bidder (the “Seller”) shall deliver the Goods F.O.B. Chambersburg Commerce Street Substation – substation pads, 421 Commerce Street, Chambersburg, Pennsylvania 17201 (the “Delivery Point”), select the carrier, and bear all costs of packaging, transportation, insurance, special handling, and any other cost associated with shipment and delivery.

ARTICLE 13 – “OR-EQUAL” ITEMS

13.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those “or-equal” materials and equipment approved by Borough and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed “or-equal” item. No item of material or equipment will be considered by Borough as an “or-equal” unless written request for approval has been submitted by Bidder and has been received by Borough no later than Wednesday, May 29, 2019 at 4:00 p.m. EST. Each such request shall conform to requirements of Paragraph 5.04 of the Standard General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Borough’s decision of approval or disapproval of a proposed item will be final. If Borough approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 14 - PREPARATION OF BID

14.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from the Borough.

14.02 All blanks on the Bid Form shall be completed by printing in ink or by typewriter and the Bid signed. If the Guaranteed Loss Values portion of the Bid form is incomplete, the Bid shall not be considered. A Bid price shall be indicated for each Bid item, alternative, or unit price item listed therein, or the words “No Bid”, “No Change,” or “Not Applicable” entered.

14.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

14.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature) accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

14.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state in which the firm was formed, and the official address of the firm shall be shown below the signature.

14.06 A Bid by an individual shall show the Bidder’s name and official address.

14.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown below the signature.

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14.08 The Bid shall include a list of significant Subcontractors (Subcontractors who are performing 10% or more of the work, based on value or scope) as well as the proposed Manufacturer of the Transformers.

14.09 All names must be typed or printed in ink below the signature.

14.10 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

14.11 The address and telephone number for communications regarding the Bid shall be shown.

14.12 The Bid shall contain evidence of Bidder's authority and qualification to do business in the Commonwealth of Pennsylvania or covenant to obtain such qualification prior to award of the Contract.

14.13 Do not change the wording of the Bid Form and do not add words to the wording of the Bid Form. Bidders cannot change, modify, delete, or make additions to the wording of any of the Bidding Documents, including the Agreement or Standard General Conditions. Unauthorized conditions, exceptions, limitations, or provisions attached to the Bid may be cause for rejection of the Bid. Any questions regarding the Bidding Documents shall be submitted as Requests for Interpretation and the Bidding Documents may only be modified by Addendum issued by the Borough prior to the Bid opening date.

ARTICLE 15 - BASIS OF BID; COMPARISON OF BIDS

15.01 Unit Prices

- A. For each unit price item on the Bid Form, Bidder shall enter the unit price Bid, and shall enter the computation of the respective quantity times the Bidder's unit price for that item. Bidder shall compute and enter in the space provided on the Bid Form, the total of the products of quantity and unit price Bid for each unit price item.
- B. For determination of the apparent low Bidder, Bids will be compared on the basis of the total of the products of the quantity of each item and unit price Bid for that item, the load, no-load, and auxiliary losses for the item, or Borough-desired set of collective options. In addition, Bid will be evaluated on the basis of Bid and engineer's estimate cost for any potential transformer pad modifications.
- C. Discrepancies between the indicated result of the multiplication of the units of an item and the unit price for that item will be resolved in favor of the arithmetically correct result. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the arithmetically correct sum. Discrepancies between words and figures will be resolved in favor of the words.

ARTICLE 16 - SUBMITTAL OF BID

16.01 Each prospective Bidder is furnished one copy of the Bidding Documents. Bidders shall submit the following with their Bid:

- Bid Form
- Proposal Bond (or other Bid security)
- Bidder's Questionnaire with supporting data
- Non-Collusion Affidavit
- Bidder Affidavit

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- Non-Discrimination Affidavit

- Affidavit of Compliance with Pennsylvania Steel Products Procurement Act

16.02 A Bid shall be submitted no later than **Thursday, June 13, 2019 at 2:30 p.m. EST** to the address indicated below and shall be enclosed in an opaque sealed envelope plainly marked with “**COMMERCE STREET SUBSTATION TRANSFORMERS**”, the name and address of the Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation “**BID ENCLOSED.**” A mailed Bid shall be addressed to:

Borough of Chambersburg
100 S. Second Street
Chambersburg, PA 17201
Attn: Jamia Wright

ARTICLE 17 - MODIFICATION OR WITHDRAWAL OF BID

17.01 A Bid may be modified or withdrawn by a document executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

17.02 If, within 24 hours after Bids are opened, any Bidder files a signed written notice with Borough and promptly thereafter demonstrates to the reasonable satisfaction of Borough that there was a material and substantial mistake in the preparation of its Bid, it may withdraw its Bid, and its Bid security will be returned. Thereafter, if the Goods and Special Services are rebid, that Bidder may be disqualified from further bidding on the Goods and Special Services to be furnished under the Contract Documents.

ARTICLE 18 - OPENING OF BIDS

18.01 Bids will be opened at the time and place indicated in the Advertisement/Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the Base Bids and Alternate Bids, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 19 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

19.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Borough may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 20 - AWARD OF CONTRACT

20.01 Borough reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Borough further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Borough may also reject the Bid of any Bidder if Borough believes that it would not be in the best interest of the Borough to make an award to that Bidder. The following are additional reasons for which the Borough may reject the Bid:

- A. Failure to submit the Bid and other Bidding Documents, on the forms provided.
- B. Failure to sign the Bid Form or any of the required affidavits and other documents attached to it.

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- C. Failure to furnish the required Bid Security.
- D. Failure to include a unit/lump sum price for each item on the Bid Form, including Alternates.
- E. The inclusion by Bidder of conditions or qualifications not provided for in the Bidding Requirements and Bidding Documents.
- F. Submission of an incomplete Bid Form or other required documents.
- G. If the Bid Form contains any omissions, erasures, alterations, additions not called for, or irregularities of any other kind.
- H. If any Bid prices are obviously unbalanced.
- I. The inclusion of any changes, modifications, deletions, or additions to the wording to any of the Bidding Documents, including the Agreement or Standard General Conditions.

Borough reserves the right to waive all informalities not involving price, time, or changes in the Goods and Special Services.

20.02 More than one Bid for the same Goods and Special Services from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Goods and Special Services shall be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

20.03 In evaluating Bids, Borough will consider whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices and other data, as may be requested in the Bid Form or may be requested from Bidders prior to a Notice of Award.

20.04 In evaluating Bids, Borough will consider the qualifications of the Bidders, delivery time, functionality of the Goods to be bid, and the load, no-load, and auxiliary losses of the transformers.

20.05 Borough may conduct such investigations as Borough deems necessary to establish the responsibility, qualifications, and financial ability of Bidder's proposed Subcontractors, Suppliers, individuals, or entities to furnish parts of the Goods and Special Services in accordance with the Contract Documents. As part of its evaluation of the bids submitted, the Borough or its Representatives may interview the Bidder. In the event that a Bidder does not provide the Borough with information within five (5) business days of request by Borough, the Bidder shall be deemed to be disqualified.

20.06 If a Contract is to be awarded, Borough will award a Contract to the Bidder whose Bid the Borough deems is in the best interest of Borough.

ARTICLE 21 - CONTRACT SECURITY AND INSURANCE

21.01 Article 4 of the General Conditions sets forth Borough's requirements as to performance and other bonds and insurance. When the Successful Bidder delivers the executed Agreement to Borough, it must be accompanied by the required performance and other bonds.

ARTICLE 22 - SIGNING OF AGREEMENT

22.01 If the Borough finds the documents submitted by the apparent Successful Bidder acceptable, the Borough may elect to issue a Notice of Award to Successful Bidder. If Borough gives a Notice of Award to Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are to be identified in the Agreement and attached thereto. Within fifteen (15) days thereafter,

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Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Borough. If the Borough finds the documents submitted by the apparent Successful Bidder acceptable, within ten (10) days thereafter, Borough shall deliver one (1) fully signed counterpart to Successful Bidder.

ARTICLE 23 - SALES AND USE TAXES

23.01 Borough is exempt from state sales and use taxes on materials and equipment to be incorporated in the Project (Exemption No. 23-6002979). Said taxes shall not be included in the Bid.

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BID FORM

ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to Borough:

Borough of Chambersburg
100 S. Second Street
Chambersburg, PA 17201
Attn: Jamia Wright

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Borough in the form included in the Bidding Documents to furnish the Goods and Special Services as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement/Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for thirty (30) days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Borough.

2.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of its failure to furnish the Goods and Special Services in accordance with the schedule set forth in the Agreement.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Delivery Point and become familiar with and is satisfied as to the local conditions that may affect cost, progress, or the furnishing of Goods and Special Services.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of Goods and Special Services.

D. Bidder has carefully studied and correlated the information known to Bidder, and information and observations obtained from Bidder’s visit(s) to the Delivery Point with the Bidding Documents.

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E. Bidder has given Borough written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Borough is acceptable to Bidder.

F. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing the Goods and Special Services for which this Bid is submitted.

G. Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Borough.

ARTICLE 4 - BASIS OF BID

4.01 Bidder will furnish the Goods and Special Services as noted below in accordance with the Contract Documents (indicate quantity where none is currently given) at the following FIRM prices:

As per the following unit price(s):

Item	Description	Unit	Unit Price	Quantity	Total Price	Delivery Weeks	Transformer Manufacturer
1	Three-phase, two winding, step down, outdoor, 60 Hertz, 65°C rise, oil insulated, air cooled, power transformer with on-load tap changer fully assembled and tested located on Owner's Substation Pads	Ea		2			

Guaranteed No-Load Loss Guarantee (kW): _____

Guaranteed Load Loss Guarantee (kW): _____

Guaranteed Auxiliary Loss Guarantee (kW): _____

NOTE 1: Load, no-load, and auxiliary losses for the three-phase, two winding, step down, outdoor, 60 Hertz, 65°C rise, oil insulated, air cooled, power transformers with on-load tap changer will be evaluated as followed:

No-Load Losses	Load Losses	Auxiliary Losses
3,508 \$/kW	958 \$/kW	180 \$/kW

The cost of losses for each transformer will be calculated by multiplying the appropriate dollars/kW values above by the guaranteed load losses at Sixty-Five Degrees Celsius (65°C) rating and no-load losses at One Hundred (100%) percent voltages. This cost will be added to the Bid price for evaluation.

NOTE 2: In addition to the loss evaluation value there will be a liquidated damages value charge for every kilowatt by which the actually tested transformer losses exceed the guaranteed losses upon which the bids are evaluated. The liquidated damage value is evaluated as followed:

No-Load Losses	Load Losses	Auxiliary Losses
4,210 \$/kW	1,150 \$/kW	216 \$/kW

The calculation will be the same as in Note 1 and will be calculated following submission of the official transformer test report by Seller. This liquidated damage value charge shall be taken as a net deduct to the final remittance (payment) to successful Bidder.

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

Transformer Dimensions

Bidder to provide minimum pad size requirements in inches (length and width): _____

Bidder to provide estimated overall dimensions of transformer in inches (length, width, and height): _____

TOTAL LUMP SUM BID PRICE (words):

Total of Item 1:	BID PRICE (Figures)	\$ _____
------------------	---------------------	----------

ARTICLE 5 — TIME OF COMPLETION

5.01 Bidder agrees that the furnishing of Goods will conform to the schedule set forth in the Agreement. The Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

ARTICLE 6 - ATTACHMENTS TO THIS BID

6.01 The following documents are attached to and made a condition of this Bid:

- A. Required Bid security in the form of a Certified or bank check or a Proposal Bond;
- B. Required Bidder qualifications statement with supporting data;
- C. List of Proposed Subcontractors;
- D. Required Subcontractor qualifications statement with supporting data;
- E. Required Non-Collusion Affidavit, Bidder Affidavit, Non-Discrimination Affidavit, and Affidavit of Compliance with Pennsylvania Steel Products Procurement Act.

ARTICLE 7 - DEFINED TERMS

7.01 The terms used in this Bid have the meanings indicated in the Contract Documents. The significance of terms with initial capital letters is described in the Standard General Conditions.

SIGNATURES APPEAR ON FOLLOWING PAGES

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

ARTICLE 8 - BID SUBMITTAL

8.01 This Bid is submitted by: (If Bidder is an Individual)

Signature of Witness

Signature of Individual

Trading and doing business as:

Name of Business

Address of Business

Phone and Fax

State here the names and addresses of all partners, if a partnership, or of three principal officers, if a corporation.

(If Bidder is a Partnership - All General Partners Must Sign)

Name of Partnership

Address of Partnership

Phone and Fax

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

(If Bidder is a Corporation or Limited Liability Company)

Attest:

	Name of Corporation
_____	_____
Signature of Secretary or Assistant Secretary	Address of Principal Office
(Corporate Seal)	_____
	State of Incorporation

	Signature of President or Vice President

	Phone and Fax

Type or print name below each signature.

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

(If Bidder is a Joint Venture)

Seal

_____ Signature of Joint Venture Partner (attach evidence of authority to sign)	_____ Name of Joint Venture
_____ Name & Title	_____ Business Address
	_____ Phone and Fax

Seal

_____ Signature of Joint Venture Partner (attach evidence of authority to sign)	_____ Name of Joint Venture
_____ Name & Title	_____ Business Address
	_____ Phone and Fax

END OF BID FORM

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____
_____ as principal, and _____
_____ as surety, are jointly and severally held and firmly bound unto
The Mayor and Town Council of the Borough of Chambersburg, a municipal corporation of the Commonwealth of
Pennsylvania, hereinafter call the Borough, in the sum of _____
_____ (\$ _____)*
lawful money of the United States of America to be paid to the Borough, to which payment well and truly made we
do bind ourselves, and each of us, our successors, assigns, heirs, executors and administrators, jointly and severally,
firmly by these presents.

SEALED with our seals, dated the _____ day of _____
in the year of our Lord, Two Thousand and _____.

WHEREAS, said _____ is (are) about to submit
a proposal to the Borough bearing date of _____, 20____ for furnishing

and do all other things required to complete the work in accordance with the Proposal, a copy of which is hereto
attached.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH that if said _____
_____ shall be awarded a contract by the Borough on the basis of said Proposal
and shall decline to execute said contract in the form and manner provided for in the Specifications and Contract
Forms, but shall pay to the Borough the sum above mentioned or such part of it as may be represented by the added
price which the Borough may be obligated to pay, then this obligation shall be void, otherwise it shall be in full force
and virtue.

Signed, sealed and delivered in the presence of:

_____	_____ Seal
Witness for Principal	By _____
_____	_____ Seal
Witness for Surety	By _____
* Ten percent of Bid Price	

END OF PROPOSAL BOND

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

BIDDER'S QUESTIONNAIRE

All questions must be answered and the dates given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. The Bidder may submit additional information if (s)he desires. The signer of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

For: Borough of Chambersburg
100 South Second Street
Chambersburg, PA 17201

Project: **Commerce Street Substation Transformers**

Submitted by:

(Bidder's Full Name) _____

(Full Address) _____

(Phone Number) _____

1. State the name of the transformer manufacturer.

If the transformer manufacturer is different from the Bidder, please respond to the questions based on transformer manufacturer's experience. If the question contains an * answer for both the Bidder and Transformer Manufacturer.

2. State the number of years your organization has been in business under your present business name and engaged in the type of work called for in this Bid.

3. List three (3) similar contracts your organization has completed in the last three (3) years. Include project description, completion date, contract amount, Owner, and name and phone number of Owner's representative.

	Project	Project Description	Completion Date	Contract Amount	Owner	Owner's Representative Name & Phone Number
1						
2						

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

3						
---	--	--	--	--	--	--

4. Organization has successfully fabricated at least five hundred (500) transformers within the United States.
Y _____ N _____

5. Organization has a minimum of ten (10) years manufacturing transformers within the United States.
Y _____ N _____

6. Have you ever failed to complete any work awarded to you?* Y _____ N _____

If so, where and why? _____

7. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a construction contract?* Y _____ N _____

If so, state the name of the individual, the other organization, and the reason therefore.

8. Has any officer or partner of your organization ever failed to complete a contract handled in his own name?* Y _____ N _____

If so, state the name of the individual, name of the Owner, and the reason therefore.

9. Have you or any officer or partner of your organization ever requested protection under Federal Bankruptcy Laws?* Y _____ N _____

If so, state the name of the organization and/or individual and when protection was requested.

10. Will you, upon request, fill out a detailed financial statement and furnish other background and / or financial information that may be required by Borough? Y _____ N _____

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

11. Are you or your company involved in any litigation concerning any projects you or your company has worked on in the past five years? * If so provide citations to the relevant filings.
Y _____ N _____
12. The undersigned hereby authorizes the Borough and its representatives to contact former clients and / or references to discuss the Bidder's performance and / or qualifications. Bidder hereby expressly releases the Borough of Chambersburg, its agents, attorneys, engineers, representatives, board members, heirs, and assigns from any and all rights, losses, damages, claims, actions or causes of action, whether in contract or tort, law or equity, whether known or unknown, suspected or unsuspected, which the Bidder ever had, now has, or will have against the Borough of Chambersburg, former clients and / or references related to the discussion in any manner of the Bidder's performance and / or qualifications.

Dated at this _____ day of _____ 20____.

Name of Bidder, Corporation, Firm or Individual

By: _____

Authorized Representative
(Please Print)

(Signature)

Title

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF BIDDER'S QUESTIONNAIRE

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

**TRANSFORMER COMMISSIONING
SUBCONTRACTOR'S QUESTIONNAIRE**

All questions must be answered and the dates given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. The Subcontractor may submit additional information if (s)he desires. The signer of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

For: Borough of Chambersburg
 100 South Second Street
 Chambersburg, PA 17201

Project: **Commerce Street Substation Transformers**

Submitted by:

(Subcontractor's Full Name) _____

(Full Address) _____

(Phone Number) _____

1. State the number of years your organization has been in business under your present business name and engaged in the type of work called for in this Bid.

2. List three (3) similar contracts your organization has completed in the last three (3) years. Include project description, completion date, contract amount, Owner, and name and phone number of Owner's representative.

	Project	Project Description	Completion Date	Contract Amount	Owner	Owner's Representative Name & Phone Number
1						
2						
3						

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

3. Subcontractor included in the Bid has successfully commissioned at least fifty (50) transformers within the United States.
Y _____ N _____

4. Subcontractor has a minimum of ten (10) years commissioning transformers within the United States.
Y _____ N _____

5. Have you ever failed to complete any work awarded to you? Y _____ N _____

If so, where and why? _____

6. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a construction contract? Y _____ N _____

If so, state the name of the individual, the other organization, and the reason therefore.

7. Has any officer or partner of your organization ever failed to complete a contract handled in his own name? Y _____ N _____

If so, state the name of the individual, name of the Owner, and the reason therefore.

8. Have you or any officer or partner of your organization ever requested protection under Federal Bankruptcy Laws? Y _____ N _____

If so, state the name of the organization and/or individual and when protection was requested.

9. Will you, upon request, fill out a detailed financial statement and furnish other background and / or financial information that may be required by Borough? Y _____ N _____

10. Are you or your company involved in any litigation concerning any projects you or your company has worked on in the past five years? If so provide citations to the relevant filings.

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

11. The undersigned hereby authorizes the Borough and its representatives to contact former clients and / or references to discuss the Subcontractor's performance and / or qualifications. Subcontractor hereby expressly releases the Borough of Chambersburg, its agents, attorneys, engineers, representatives, board members, heirs, and assigns from any and all rights, losses, damages, claims, actions or causes of action, whether in contract or tort, law or equity, whether known or unknown, suspected or unsuspected, which the Subcontractor ever had, now has, or will have against the Borough of Chambersburg, former clients and / or references related to the discussion in any manner of the Subcontractor's performance and / or qualifications.

Dated at this _____ day of _____ 20__.

Name of Subcontractor, Corporation, Firm or Individual

By: _____
Authorized Representative
(Please Print)

(Signature)

Title

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF SUBCONTRACTOR'S QUESTIONNAIRE

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

NON-COLLUSION AFFIDAVIT

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this bid. According to the Pennsylvania Antirigging Act, 73 P.S. 1611 *et seq.*, governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the bidder who makes the final decision on prices and the amount quoted in the bid.

Bid-rigging, and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids, are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.

In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents and an Affidavit must be submitted separately on behalf of each party.

3. The term “complementary bid”, as used in the Affidavit, has the meaning commonly associated with that term in the bidding process and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or non-competitive bid and any other form of bid submitted for the purpose of giving a false appearance of competition.
4. Failure to file an Affidavit, in compliance with these instructions, will result in disqualification of the bid.

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

NON-COLLUSION AFFIDAVIT

I state that I am _____ of _____
(title) (firm)

and that I am authorized to make this affidavit on behalf of my firm and its owners, directors, and officers. I am the person responsible in my firm for the prices and the amount of this Bid.

I state that:

(1) The prices and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder, or potential bidder.

(2) Neither the price nor the amount of this Bid, and neither the approximate price nor approximate amount of this Bid, have been disclosed to any other firm or person who is a bidder or a potential bidder, and they will not be disclosed before Bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this Bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The Bid of my firm is in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____, its affiliates, subsidiaries, officers
(name of firm)

directors and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract except as follows:

I state that _____ understands and acknowledges
(name of firm)

the above representations are material and important and will be relied upon by the **Borough of Chambersburg** (the "Owner" or "Borough") in awarding the contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Owner the true facts relating to the submission of bids for this Contract.

(name of firm)

By: _____

Title: _____

Sworn to before me this _____ Day of _____, 20 _____

My commission expires:

Signature of Notary Public

Type or print name below each signature.

END OF NON-COLLUSION AFFIDAVIT

AFFIDAVIT OF COMPLIANCE WITH PENNSYLVANIA STEEL PRODUCTS PROCUREMENT ACT

State of _____

County of _____

I state that I am _____ of _____
(title) (firm)

and that I am authorized to make this affidavit on behalf of my firm and its owners, directors, and officers. I am the person responsible in my firm for conditions of this Bid.

I state that:

(1) My firm shall comply with the provisions of the Act of March 3, 1978 (P.L. 6, No. 3) as amended, known as the "*Steel Products Procurement Act*" in response to the conditions set forth in the Contract Documents, for which this Bid is submitted.

(2) _____ understands and acknowledges the
(Name of my Firm)
above representations are material and important, and will be relied upon by the **Borough of Chambersburg** in awarding the Contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this affidavit shall be treated as fraudulent concealment from the **Borough of Chambersburg** of the true facts relating to the submission of Bids for this Contract. I further understand, and my firm understands and agrees to indemnify and defend the **Borough of Chambersburg** against any and all claims, including paying in full, all costs, including attorney's fees and engineering fees to defend any claim as a result of lack of compliance with the "*Steel Products Procurement Act*."

Dated this _____ day of _____, 20_____.

(Name of Firm)

By: _____

Officer Title: _____

State of _____

County of _____

_____ being duly sworn, disposes and says that he/she is the
_____ of _____ and that the answers to the foregoing questions and all statements
therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, _____.

(Notary Public)

My commission expires _____, _____.

END OF AFFIDAVIT OF COMPLIANCE

BIDDER AFFIDAVIT

The Specifications and all papers required by it and submitted herewith, the Contract, and all papers made a part hereof by its terms, are hereby made a part of this Bid.

The undersigned bidder hereby represents as follows:

- A. That (s)he has carefully examined the bid, the Contract, and the Specifications.
 - B. That no officer, agent, or employee of the Borough of Chambersburg is personally interested directly or indirectly in this bid and the accompanying Contract or the compensation to be paid herein under.
 - C. That the bid is made without connection with any person, firm or corporation making a bid for the same work, and is in all respects fair and without collusion or fraud.
-

Name of Bidder, Corporation, Firm or Individual

By: _____

Authorized Representative

Please Print Signature

Title

Business Address of Bidder

Phone Number

END OF BIDDER AFFIDAVIT

**AGREEMENT FOR THE PURCHASE AND COMMISSIONING OF
TRANSFORMERS**

THIS AGREEMENT FOR THE PURCHASE AND COMMISSIONING OF TRANSFORMERS (“Agreement”) entered into this ___ day of _____, 2019 (the “Effective Date”) is made and entered into by and between the BOROUGH OF CHAMBERSBURG, a borough existing by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office at 100 South Second Street, Chambersburg, Franklin County, Pennsylvania 17201 (hereinafter referred to as “Owner”) and _____, a _____, with a business address of _____ (hereinafter referred to as “Seller”) (collectively the “Parties”).

WHEREAS, Owner wishes to purchase two Transformers from Seller and further wishes for Seller to deliver, assemble, and commission the Transformers and to provide certain technical direction in connection with the initial operation of such transformers, and certain other services as described herein; and

WHEREAS, Seller wishes to provide the Transformers and technical direction and services to Owner in accordance with the terms and conditions hereof.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties set forth herein and other valuable consideration, the Parties agree as follows:

1. TRANSFORMER DEFINITIONS

- 1.1. “Affected Party” has the meaning set forth in Section 11.1.
- 1.2. “Agreement” means this Agreement for the Purchase and Sale of Transformers, consisting of the Terms and Conditions, Appendices A through E, and all written amendments thereto.
- 1.3. “Applicable Laws” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority and rules, regulations, orders, interpretations and permits of any national, federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Facility, the Transformers, the Work, or either Party’s obligations under this Agreement, as may be in effect from time to time.
- 1.4. “Applicable Permits” means all valid consents, waivers, franchises, variances, permits, authorizations, concessions, licenses or orders of or from any governmental agency, body, instrumentality, court or other body which are required to be obtained or maintained in connection with the Facility, the Transformers, the performance of the Work, or either Party's obligations under this Agreement, as may be in effect from time to time.
- 1.5. “Auxiliary Loss Guarantees” has the meaning set forth in Section 7.3.2(a).
- 1.6. “Bidder” means, as used in the Specification, Seller.

- 1.7. "Bidder's Response" means Seller's bid submitted in response to the Owner's "Invitation to Bid". The Bidder's Response is on file with the Owner and is hereby incorporated herein by reference.
- 1.8. "Business Day" means any calendar day other than Saturday, Sunday or national holidays in the United States of America.
- 1.9. "Commissioned" means when the transformer(s) are fully assembled on-site by Seller, filled with oil, set on the Owner's substation pads, and fully tested.
- 1.10. "Confidential Information" has the meaning set forth in Section 17.1.
- 1.11. "Contract Price" has the meaning set forth in Section 23.
- 1.12. [Intentionally Omitted]
- 1.13. "Delivery Point" means the Commerce Street Substation, Chambersburg, Pennsylvania.
- 1.14. "Drawings" mean those drawings, schematics, diagrams, plans, descriptive literature, illustrations or other representations of the Transformers identified as in the Specifications.
- 1.15. "Drawing Delivery Schedule" means the document submittal schedule set forth in 2.06 of the Standard General Conditions.
- 1.16. "Facility" means the electricity distribution facility in which the Transformers will be installed, known as the "Commerce Street Substation".
- 1.17. "Field Performance Tests" has the meaning set forth in Section 7.2.2.
- 1.18. "Final Acceptance" has the meaning set forth in Section 8.2.
- 1.19. "Guaranteed Commission Date" means May 31, 2020 or such later date specified in writing by Owner.
- 1.20. "Liabilities" means liability, monetary losses, penalties, fines, judgments, expenses (including reasonable attorneys' fees and court costs) and other damages incurred.
- 1.21. "Load Loss Guarantees" has the meaning set forth in Section 7.3.2(a).
- 1.22. "Manufacturer" means any individual, firm, partnership, corporation, or contractor at any tier having an agreement with Seller to perform the primary portion of Bidder's manufacturing obligations under this Agreement.
- 1.23. "No-Load Loss Guarantees" has the meaning set forth in Section 7.3.2(a).
- 1.24. "Performance Deficiency Notice" has the meaning set forth in Section 7.2.2.
- 1.25. "Performance Guarantees" has the meaning set forth in Section 7.1.
- 1.26. "Performance Values" has the meaning set forth in Section 7.1.
- 1.27. "Personnel" means, with respect to a Party, the employees, directors, officers, agents, representatives and any third party independent contractors with whom such Party contracts.
- 1.28. "Punch-List" has the meaning set forth in Section 8.1.
- 1.29. "Owner Event of Default" has the meaning set forth in Section 14.3.1.
- 1.30. "QA/QC Program" has the meaning set forth in Section 4.1.
- 1.31. "Receiving Party" has the meaning set forth in Section 17.2.
- 1.32. "Specifications" means the Technical Specifications included in Appendix C.
- 1.33. "Supplier" or "Subcontractor" means any individual, firm, partnership, corporation or contractor at any tier having an agreement with Seller to perform a portion of Seller's obligations under this Agreement.

- 1.34. “Technical Direction” means any instruction, direction, information or assistance provided by Seller or its Personnel to Owner, either in writing or orally, concerning the initial operation of the Transformers.
- 1.35. [Intentionally Omitted]
- 1.36. “Transformers” means Three-phase, two winding, step down, outdoor, 60 Hertz, 65 degree Celsius rise, oil insulated, air cooled, power transformers with on Load-Tap-Changer.
- 1.37. “Warranty” has the meaning set forth in Section 9.1.1.
- 1.38. “Warranty Period” has the meaning set forth in Section 9.1.2.
- 1.39. “Work” means all work and services which Seller is to perform in connection with it fulfilling its obligations under this Agreement. The Work is further described in Specifications.

2. SCOPE OF SUPPLY

2.1. Purchase, Supply, and Delivery of Transformers

2.1.1. Delivery of Transformers

- (a) Pursuant to the provisions of this Agreement Seller will design, manufacture, test, pack, supply, and deliver the Transformers to the Delivery Point. Seller will install and test the Transformers at Delivery Point. Seller shall provide Owner at least fourteen (14) calendar days’ written notice prior to shipment of any Transformer.
- (b) Notwithstanding anything to the contrary in this Section 2.1.1, if Owner is not able to take delivery of any item comprising Transformer within thirty (30) days after receiving written notification from Seller that such Transformer is ready for delivery, after May 31, 2020, Owner shall be responsible for all reasonable expenses incurred by Seller related to the delayed delivery (which such expenses must be reasonable), such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Owner upon submission of Seller’s invoices and documentation therefor.
- (c) Without prejudice to Section 6.3, if any of the Transformers cannot be delivered to Owner when ready due to any cause attributable to Seller, Seller shall be responsible for all costs incurred by Seller. When conditions permit, Seller shall resume delivery of such Transformer to the Delivery Point.

2.1.2. Packing. Seller shall pack the Transformers as deemed necessary by Seller to deliver the Transformers for Commissioning.

2.2. INTENTIONALLY OMITTED

- 2.3. Contract Price and Payment. In consideration for the Work and the Transformers, Owner will pay Seller a total amount of _____ **DOLLARS** (\$) (the “Contract Price”). Subject to the terms of this Agreement, Owner will pay the Contract Price in accordance with and subject to the provisions set forth in Appendix A. All taxes applicable to the Transformers, the Work or the Technical Direction, including without limitation all taxes related to any services provided by Seller and all sales, use, excise, property or similar taxes on the Transformers are included in the Contract Price. The Contract Price also includes (and Seller will bear without reimbursement) any import duties, fees or other charges incurred to perform the Work.
- 2.4. Materials and Workmanship: This Agreement, including the Specifications, may describe certain specific materials, processes, and products of manufacturers which will be required unless equivalent materials, processes, or products are specifically approved in writing by Owner. The Transformers shall be manufactured using only the kind, make, and quality of components and materials described in this Agreement. The Transformers furnished shall be (a) new and (b) manufactured and tested in accordance with the technical testing schedules and standards for manufacture set forth in the Specifications (including ANSI/IEEE), and where specific standards are not referenced, in accordance with the highest standards of the industry. Should Seller propose to furnish equivalent materials, processes, or products, either in substitution for or as an alternate to those materials, processes, and products required under the Specifications, Seller will submit full details thereof and obtain Owner’s prior written approval in accordance with the Standard General Conditions. Owner’s decision as to the suitability of any such equivalent materials, processes, or products will be final, but the approval of Owner will not relieve Seller from its responsibility concerning the Work and will not affect the Warranty or the Performance Guarantee.
- 2.5. Compliance with Laws and Permits. Seller will, at its cost, comply with all Applicable Laws and all Applicable Permits. Seller will, at its cost, obtain and maintain any permits required for Seller to perform the Work.
- 2.6. Transfer of Title and Risk of Loss. Title (legal and beneficial ownership) and risk of loss in the goods comprising the Transformers shall pass to Owner upon the Transformers being Commissioned. Notwithstanding any transfer of title or risk of loss as described herein, Seller shall at all times remain responsible for any damage to Owner’s property or Transformers caused by Seller or its Personnel. Notwithstanding anything to the contrary in the foregoing, Seller shall retain the ownership of its studies, shop drawings and models communicated to Owner, or of which Owner may have had knowledge in fulfillment of the Agreement; provided, that Owner will have a right to use the same for execution of the Agreement and operation, ownership and maintenance of the Transformers.

3. DRAWINGS AND SUBMITTAL REQUIREMENTS.

- 3.1. Submittal of Drawings. Seller will, in accordance with the Specifications and Standard General Conditions furnish to Owner all necessary Drawings, including necessary details for the design of proper supporting structures, as required and with such detail as necessary for Owner to be able to operate, maintain, and obtain replacement parts for the Transformers. Seller will identify in such documentation the originator of the same if the originator is other than Seller.
- 3.2. Submittal of "Outline/Arrangement" Drawing(s). On or before August 28, 2019 or four weeks after Award of Bid, whichever is later, Seller will provide a reasonably detailed Transformer Outline/Arrangement submittal drawing or drawings to Owner for Owner's review and use. These drawing(s) shall include, as a minimum:
- 3.2.1. Seller's estimated weight of the transformer fully assembled and filled with oil at a +/- 10% tolerance.
- 3.2.2. Dimensioned outline of the transformer base for Owner's use in assessing and/or modifying existing transformer foundation. Final measurements shall not vary by more than +/- 2 inches in any direction after submission without written agreement with Owner.
- 3.2.3. Dimensioned outline of the transformer in its entirety, in all elevational views, including all oil-containing appurtenances for Owner's use in assessing and/or modifying existing transformer oil containment area. Final measurements shall not vary by more than +/- 6 inches in any direction after submission without written agreement with Owner.
- 3.3. Limits of Owner's Review. Review and comment by Owner of Seller's submittals will not relieve Seller of its responsibility to meet this Agreement's requirements (including schedule requirements). All Drawings will be submitted to Owner for comment or approval of general design, general dimensions, and apparent suitability. Owner will review in an expeditious manner taking no more than 5 Business Days per review cycle. Owner's approval will not relieve Seller of any responsibility for furnishing the Transformers which meets the requirements of this Agreement, and which will operate as guaranteed by Seller, nor will it relieve Seller from responsibility for detail dimensions.

4. QUALITY CONTROL, TRANSFORMER TESTING, EXPEDITING, INSPECTION, AND REJECTION

- 4.1. Quality Assurance/Quality Control. Seller shall develop a quality assurance and quality control program which shall be capable of providing assurance that design, purchasing, manufacturing, shipping, storage, assembly, testing, installation, and examination of the Transformers, materials, and services shall comply with the requirements of this Agreement. Seller will similarly require its Suppliers and

Subcontractors to provide and maintain quality control systems where applicable. Seller's QA/QC Program will provide for controlling its Suppliers and Subcontractors and for assuring that their quality control systems are appropriate for the scope of their supply and are in compliance with the requirements of this Agreement.

- 4.2. Component Testing. Seller will provide at its own expense, and will cause its Suppliers and Subcontractors to provide at their own or Seller's expense, the equipment, facilities, and personnel necessary for the performance of the tests specified in this Agreement to determine that each component comprising the Transformers conform to the requirements of this Agreement. Owner will have the right, but shall not be obligated, to be present or represented during the performance of such tests. Seller shall notify Owner not less than fourteen (14) days prior to the performance of any such tests so that Owner may attend and observe if it so chooses. Witness of at most each standard test on either individual Transformer will be acceptable to Owner.
- 4.3. Owner's Right to Inspect. All components comprising the Transformers will be subject to inspection by Owner and its Representatives (and by third parties as may be required by Applicable Laws); prior to Owner's acceptance thereof Owner and its Representatives and such third parties may test the Transformers or have the Transformers tested in Seller's or its Suppliers' facilities to determine whether the Transformers conform to the requirements of this Agreement. If Owner is required to make additional or extended inspection visits as a result of Seller's or its Supplier's non-readiness to perform scheduled tests or Seller's or its Suppliers' failure to achieve satisfactory test results, all costs and expenses incurred by Owner in connection therewith will be to Seller's account.
- 4.4. RESERVED
- 4.5. Limitation on Shipping; Rejection/Acceptance of Components. No component comprising a Transformer will be shipped before all factory tests and inspections have been performed in accordance with this Agreement and the results of such tests or inspections have been accepted in writing by Owner. Seller will transmit certified copies of the test results and inspection reports to Owner in accordance with the required schedule date therefor. If any component comprising the Transformers are found to be defective or not in conformance with this Agreement, Owner will have the right, upon giving notice to Seller, to reject or accept such component of the Transformers as follows. If Owner rejects any component of the Transformers, such component will be returned to Seller, at Seller's risk, for (at Owner's option) repair, replacement or credit, as directed by Owner. However, Owner will first allow Seller an opportunity to develop a plan to correct any defective goods not in conformance with the specifications herein and prior to going to a third party. All costs and expenses incurred in such return will be to Seller's account. If Owner elects to accept a defective or nonconforming component comprising the Transformers, all costs and expenses incurred by Owner

in connection with such election, including those incurred as a result of the modification or alteration of the Transformers necessary to make the Transformers conforming, will be to Seller's account.

- 4.6. Effect of Inspections. Any inspection or acceptance of the Transformers at Seller's or its Suppliers' facilities will not preclude subsequent inspection and/or rejection of any component of the Transformers if such component is later discovered to be defective or nonconforming or if Owner has reasonable grounds upon which to believe that such component may be defective or nonconforming. Any inspection of the Transformers or any component thereof or any witnessing of tests conducted by Seller or its Suppliers or any performance of testing by Owner or its Representatives or third parties shall in no event be deemed to constitute final acceptance thereof by Owner and will not discharge Seller from its obligation to meet this Agreement's schedule requirements and to supply Transformers that conform to the requirements of this Agreement. Inspection by Owner or its Representatives shall not be deemed to be supervision by Owner of Seller, its Suppliers, or their agents, Representatives, servants, employees, or Subcontractors, but shall be only for the purpose of assuring that the Transformers comply with this Agreement.

5. TECHNICAL DIRECTION

- 5.1. In consideration for the Contract Price, Seller shall provide Technical Direction to Owner. Such Technical Direction shall be accurate and free from errors, omissions, faults or defects. Within the parameters of the Warranty purchased, if Owner gives Seller written notice within a reasonable time after discovery of any defective or inaccurate Technical Direction, Seller shall (at such times as requested by Owner) re-perform work or make the repair or replacement necessary to remedy any nonconformity in the Transformers which is a result of defective or inaccurate Technical Direction, with the expenses thereof, including the cost of supervision and labor, to be borne by Seller. If Seller, after notice, fails to proceed promptly to correct any non-conformity in the Transformers which is a direct result of defective or inaccurate Technical Direction in accordance herewith, Owner may correct such non-conformity, or have such nonconformity corrected by others, and Seller shall be liable for all expenses so incurred. Owner shall, at no charge, provide reasonable facilities at the Site for office space, restroom, and parking, if needed, to Seller's personnel providing Technical Direction.

6. INSTALLATION DELAYS

- 6.1. Time is of the Essence. Time is of the essence of Seller's obligations under this Agreement, and Seller acknowledges that Owner relies upon Seller's timely performance hereunder. The Seller will continuously monitor, report, forecast, and control the progress of the Work in accordance with the schedule set forth in this Agreement. If such activities indicate a delay or potential for delay, Seller will take

appropriate corrective measures and will make all reasonable efforts to avoid such delay.

- 6.2. Notification of Delays. With the exception of delays resulting from Force Majeure events (which are governed by Section 11), in the event of any delay or anticipated delay in Seller's performance, Seller will give Owner notice of such delay or anticipated delay in writing within three (3) Business Days after the occurrence of the event giving rise to the delay or anticipated delay became known to, or, with the exercise of reasonable diligence on the part of Seller, should have become known to, Seller. The notice to Owner will include a description of the source or cause of the delay or anticipated delay and of the actions Seller intends to undertake to avoid or recover from the delay, which actions will be subject to Owner's approval. If Seller fails to take steps that Owner determines are necessary to avoid or recover from the delay or fails to bring its performance into compliance with the requirements of this Agreement, Owner may request Seller accelerate its Work by supplying additional labor, including, but not limited to, overtime or additional shifts, and/or additional supervision and equipment as Seller may reasonably require, in order to recover and maintain the schedule set forth in this Agreement. All costs incurred by Seller to accelerate its Work will be to the account of Seller. Owner's receipt of Seller's notice of delay and/or Owner's approval of Seller's proposed action to recover the delay and/or Owner's directive to accelerate the Work will not constitute a waiver of any right or remedy available to Owner under this Agreement or at law or in equity, nor will be deemed a waiver of any other requirements of this Agreement.
- 6.3. Late Commissioning of Transformer: Liquidated Damages. Owner will suffer large financial losses if the Transformers are not delivered, installed, and meeting the Performance Guarantees at the Delivery Point on or before its respective Guaranteed Commission Date, including by virtue of the loss of revenue to Owner due to the inability to transmit power and/or the loss or use of money invested in the Transformers. It would be impracticable or extremely difficult to fix the actual damages resulting from such delay of commissioning. Therefore, with the exception of delays resulting from Force Majeure (which are governed by Section 11), if Seller commissions either of the Transformers at the Delivery Point after the Guaranteed Commission Date, then Seller will pay to Owner, as liquidated damages and not as a penalty, the following amounts for each calendar day of such delay.

Calendar Days After Guaranteed Commission Date	Liquated Damages Per Day
1-14	\$2,000.00
15-21	\$2,500.00
>21	\$3,000.00

Notwithstanding the foregoing, Seller's aggregate liability under this Section 6.3 for liquidated damages for delays in commissioning of the Transformers shall not exceed twenty percent (20%) of the amount that is equal to (a) the Contract Price,

less (b) all shipping costs. The Parties acknowledge that the sums for liquidated damages as set forth above represent a reasonable endeavor by the Parties to estimate a fair compensation for the foreseeable losses resulting from late commissioning of the Transformers (but assuming delivery prior to the dates described in Section 14.2.1(a)), and shall, without prejudice to Section 14.2, be applicable regardless of the actual losses incurred. Such amounts, or part thereof, may be deducted by Owner from the balance, if any, due Seller under this Agreement.

7. TESTING AND PERFORMANCE GUARANTEE

7.1. Performance Guarantees. The Parties acknowledge that (a) Seller has submitted in its bid Performance Values for the Transformers; (b) in the Specifications, Owner outlined certain performance characteristics for the Transformers with respect to which Bidder would be required to propose guaranteed values; (c) via its bid, Seller has proposed, and Owner has now accepted, such values (collectively, the “Performance Values,” and each a “Performance Value,” as the context may require). In this regard, in addition to the Warranty, Seller guarantees that each Transformer will be capable, with respect to each of the performance characteristics set forth in the Bid Form, of achieving the respective Performance Value applicable thereto, as well as all other performance guarantees set forth in the Technical Specifications (collectively, the “Performance Guarantees,” and each a “Performance Guarantee,” as the context may require). Seller will demonstrate the Performance Guarantees during Performance Tests as described in Section 7.2. Except as set forth in Section 7.3, Seller’s obligation to meet the Performance Guarantees is absolute and is not limited by any provision of this Agreement. In this regard, subject to Section 7.3, Seller shall do all things necessary or appropriate to achieve the Performance Guarantees including, without limitation, exercising each and every repair or replacement alternative, regardless of cost to Seller or difficulties associated therewith. Subject to Section 7.3, if Seller fails to cause a Transformer to meet all of the Performance Guarantees within thirty (30) days of its receipt of the Performance Deficiency Notice (or such longer period as the Parties may agree to in writing), then such failure shall constitute default of material obligation Section 14.2.1(f).

7.2. Performance Testing.

7.2.1. Factory Testing. Prior to shipment of each Transformer, Seller will perform tests as required by Section 7 of the Specifications on such Transformer at its factory that demonstrate whether such Transformer is compliant with the Performance Guarantees. Seller will provide Owner with at least 14 days prior notice of any such tests and will allow Owner and/or its representatives to be present at the factory for the same (if they so elect). In any event, Seller will provide to Owner a written report describing the results of such tests on each Transformer. Except as provided in the next Section, if any such factory test indicates that a Transformer will not meet the Technical

Specifications, then Seller will not ship such Transformer to Owner unless and until compliance with the Performance Guarantees is demonstrated via a subsequent factory test (with report of same delivered to Owner).

7.2.2. Field Performance Testing. After site assembly and installation of each Transformer is completed, Seller shall carry out comprehensive performance tests, in a manner consistent with the testing guidelines and criteria as described in Section 3 of the Transformer Shipment, Assembly, and Commissioning Specifications, to verify that such Transformer performs in accordance with the Performance Guarantees (such tests, collectively, the “Field Performance Tests”). If a Transformer fails to so comply with any of the Performance Guarantees, then Seller will notify Owner in writing of this fact (such notice the “Performance Deficiency Notice”). Upon its issuance of the Performance Deficiency Notice with respect to any Transformer, except as set forth in Section 7.3, Seller shall immediately take, at its own expense, all steps necessary to correct any deficiencies in such Transformer and shall also, at its own expense, take such actions and re-perform the Field Performance Tests as necessary to demonstrate compliance with the Performance Guarantees with respect to which the Transformer had previously failed to comply.

7.3. Transformer Loss Performance Guarantees:

7.3.1. Defined Terms.

- (a) the “No-Load Loss Guarantees” comprise the Performance Guarantees for the performance criteria set forth in the Bid Form (and each of them, a “No-Load Loss Guarantee”);
- (b) the “Load Loss Guarantees” comprise the Performance Guarantees for the performance criteria set forth in the Bid Form (and each of them, a “Load Loss Guarantee”);
- (c) the “Auxiliary Loss Guarantees” comprise the Performance Guarantees for the performance criteria set forth in the Bid Form (and each of them, an “Auxiliary Loss Guarantee”).

7.3.2. Amounts Payable:

- (a) if a Transformer fails to meet a No-Load Loss Guarantee, then Seller shall pay liquidated damages to Owner in an amount equal to Four Thousand Two Hundred Ten Dollars (\$4,210) per kW for each kW that the tested No-Load Loss exceeds the applicable No-Load Loss Guarantee;

- (b) if a Transformer fails to meet a Load Loss Guarantee, then Seller shall pay liquidated damages to Owner in an amount equal to One Thousand One Hundred Fifty Dollars (\$1,150) per kW for each kW that the tested Load Loss exceeds the applicable Load Loss Guarantee;
- (c) if a Transformer fails to meet an Auxiliary Loss Guarantee, then Seller shall pay liquidated damages to Owner in an amount equal to two hundred sixteen dollars (\$216) per kW for each kW that the tested auxiliary loss exceeds the applicable Auxiliary Loss Guarantee.

7.3.3. Payment, Timing:

The Parties acknowledge and agree that the Amounts Payable, identified in Section 7.3.2, are fixed as liquidated damages and constitute a reasonable estimate of damages (and not a penalty), considering the actual increased costs and reduction in the value of the Transformer that Owner will sustain in the event of the Transformer's failure to achieve the applicable Performance Guarantees in the Bid Form and the Technical Specifications. Such fixed amounts are agreed upon and fixed hereunder by the Parties as liquidated damages because of the difficulty of ascertaining the exact amount of such increased costs and reduction in value that will actually be sustained by Owner in the event of any such failure, and they shall be applicable regardless of the amount of such reduction in value actually sustained by Owner.

8. FINAL ACCEPTANCE PAYMENT

8.1. Punch-List. At any time after commissioning of a Transformer, Owner may provide Seller with a list of items remaining to be completed upon or in connection with such Transformer in order for Final Acceptance to occur (the "Punch List").

8.2. Final Acceptance.

8.2.1. Tests and Check-Outs. Once the Transformer has been commissioned by Seller, Seller shall thereafter perform such tests and check-outs as described in the Specifications as necessary to demonstrate that the Transformer performs as represented and/or guaranteed in this Agreement.

8.2.2. Final Acceptance Criteria. Subject to Section 8.2.3, "Final Acceptance" will occur once:

- (a) Seller has, as with respect to each Transformer, demonstrated compliance with and supplied all Drawings and documentation as identified in the Specifications;

(b) Seller has completed all Punch-List items; and

(c) Owner has delivered to Seller a written certification that all the requirements of Sections 8.2.2(a) and (b) have been satisfied or waived.

8.2.3. Certification Process. When Seller believes that the requirements set forth in Section 8.2.2(a) and (b) have been achieved, Seller shall deliver a certificate to Owner indicating the same. Owner will within thirty (30) days following Owner's receipt thereof, either: (a) deliver a written certification as described in Section 8.2.2(c); or (b) notify Seller in writing that such requirements have not been achieved, stating the reasons therefor. In the event Owner notifies Seller that such requirements have not been met, Seller shall promptly take such action as necessary to achieve such requirements, and shall then issue to Owner another certificate indicating the same. Such procedure shall be repeated until Final Acceptance is achieved.

8.2.4. Delayed Certificate. Notwithstanding the foregoing, if (a) Owner fails to issue a Final Acceptance Certificate within ninety (90) days of energization of a Transformer despite such Transformer's having demonstrated performance as represented and/or guaranteed and (b) the Transformer is thereafter utilized by Owner in its normal business operations, and (c) Seller has completed all Punch-List Items, then Final Acceptance shall be deemed to have occurred.

8.2.5. Final Payments. Upon the occurrence of Final Acceptance (or deemed Final Acceptance, as applicable), Seller will invoice Owner for any amounts of the Contract Price that remain unpaid. Final Acceptance and Final Payment may be made per Commissioned Transformer. Seller must substantiate entitlement to payment in accordance with the Contract Documents. Owner will pay Seller such invoiced amounts within thirty (30) days of such invoice following said substantiation. Final payment to Seller shall not relieve Seller of its continuing obligations under this Agreement, including, without limitation, Seller's Warranty and indemnity obligations.

9. WARRANTY

9.1. Standard Warranty.

9.1.1. Terms of Warranty. Seller warrants that, for the duration of the Warranty Period, the Transformers will be (a) new and of good quality, (b) free from defects in design, workmanship, manufacturing, and materials, and (c) provided in accordance with the requirements of this Agreement, and in compliance with all Applicable Laws (the "Warranty").

9.1.2. Warranty Period. Subject to Section 9.1.4, the Warranty will remain in full force and effect for a period beginning on the date the Transformer is

Commissioned and ending three (3) years thereafter (such period, the “Warranty Period”). Warranty Period for each Transformer will begin upon the individual Transformer being Commissioned. In the event any particular component has a standard warranty in excess of three (3) years, Seller shall assign such warranties to Owner.

- 9.1.3. Warranty Obligations. If during the Warranty Period a Transformer or any portion of a Transformer fails to conform to the Warranty, then Seller will, as promptly as practicably possible (but at such times as agreed to by Owner), in the manner it deems appropriate and that is reasonably acceptable to Owner, take all actions necessary to cure such failure. Any such redesign, repair, or replacement Work requiring any portion of the Facility to be off-line will be coordinated with Owner’s operating Personnel to minimize disruption of Owner’s ongoing operations, such coordination to include, at Owner’s option, around-the-clock Work, including weekends and holidays. Seller will, at Seller’s expense, perform such tests as Owner may reasonably require and that are normal industry practice to demonstrate that the redesign, repair, or replacement of the defective or nonconforming Transformer complies with this Agreement. All costs incurred to remove, disassemble, reassemble, reinstall, re-construct, re-inspect, and retest the Transformer hereunder as originally provided for by Seller (including the costs of mobilization and demobilization of Seller’s Personnel) will be to the account of Seller. Owner will likewise perform its original install functions of high-side, low-side, and control wiring disconnections/reconnections as needed at Owner’s expense.
- 9.1.4. Warranty Period Extensions. Any item of the Transformer that is the subject of re-work in satisfaction of Seller’s obligations in connection with the Warranty will be re-warranted by Seller pursuant to the same Warranty set forth in Section 9.1.1, and Seller will have the same obligations in relation thereto as set forth in Section 9.1.3, for a period equal to longer of (a) one (1) year from the date such re-performance, rework, repair, or replacement is completed, or (b) the remaining period under the Warranty Period.
- 9.1.5. Warranty Exclusions. Notwithstanding anything in this Section 9.1 to the contrary, Seller shall have no warranty obligations with respect to a given condition or defect to the extent that it can demonstrate that the condition or defect constitutes or results from any of the following:
- (a) damages to the Transformer directly caused by material error or gross negligence of Owner or Owner’s Personnel;
 - (b) failure by Owner to materially comply with the Seller’s written instructions regarding the operation or maintenance of the Transformer;
 - (c) normal Transformer wear and tear; or

(d) vandalism to the Transformer not attributable to Seller.

- 9.2. Warranty of Title; Lien Waivers. Seller warrants that the Transformer will be free of defects in title and that the title to the Transformer is marketable and clear and free of any liens, charges, or encumbrances whatsoever. Seller will indemnify, defend, and hold Owner harmless for any claims, demands, or Liabilities arising out of any breach of the foregoing warranty. Seller will furnish, as deemed reasonably necessary by and in format acceptable to Owner, partial and/or final lien waivers, affidavits, or other documents required to keep the Facility and the Transformer free from liens or claims for liens arising out of the furnishing of the Transformer. If any such lien is filed or claim is made, Seller will remove the lien or defend against any such claim. If Seller fails to remove such lien or claim within seven (7) Business Days after receipt of written notice from Owner, Owner may proceed to remove such lien or claim, and Seller will pay Owner any and all costs and expenses incurred by Owner in so doing, including reasonable attorneys' fees and court costs so incurred.
- 9.3. Warranty Against Infringement of Intellectual Property Rights. Seller represents and warrants that the Transformer or any portion thereof does not infringe any patent, copyright, trademark, or trade secret (as the same may be defined by applicable law).

10. CHANGES

Except as authorized by the design-review process in the Specifications, no change shall be made or extra work done without the prior written approval of Owner's Purchasing Agent, the Borough Manager. The Owner's Purchasing Agent may authorize minor changes from the Specifications that involve no extra cost. The Owner's Town Council must approve any order for changes and/or extra work which exceed the foregoing limitation.

11. FORCE MAJEURE

- 11.1. Definition of Force Majeure. For purposes hereof, a "Force Majeure" event means any event that (a) is beyond the reasonable control of the Party affected by such event (the "Affected Party") or its Personnel; (b) is not the fault of the Affected Party or its Personnel; (c) could not have been prevented by the Affected Party's or its Personnel's exercise of reasonable diligence. For purposes of Section 11.1, the following events shall be considered to be beyond the reasonable control of an Affected Party or its Personnel: war; civil insurrection; floods; hurricanes; tornadoes; typhoons; lightning strikes; landslides; earthquakes; epidemics and other Acts of God; quarantines; embargoes; riots; sabotage; malicious acts of damage; requirements of or actions or failures to act on the part of governmental authorities preventing performance (but excluding normal business acts of Owner relative to

this Agreement); the Owner's failure to timely perform its obligations; the refusal or withdrawal of any import or export licenses; and labor conflicts or lockouts (except as expressly prohibited below). For the sake of clarity, in no instance will any event that is caused by the intentional act, error, omission, or negligence of Seller, its affiliates, or their Personnel be considered Force Majeure entitling Seller relief under this Section 11. In no instance will the following be considered events beyond Seller's reasonable control; (i) strikes or labor disturbances involving employees of Seller or its Suppliers, or (ii) price fluctuations with respect to materials, supplies, or components of equipment related to the Transformer or the Work.

11.2. Notification and Mitigation Requirements. If a Force Majeure event occurs that will delay a Party from the performance of its obligations under this Agreement, such Affected Party will notify the other Party in writing of such condition and the cause thereof no later than three (3) calendar days after the commencement of the event of Force Majeure, describing in detail the event, the effect thereof upon the Work, and the length or potential length of delay and the measures to be taken to minimize the delay. An Affected Party will use all reasonable efforts to remedy its inability to perform under this Agreement and to minimize any delay and mitigate any damages caused by an event of Force Majeure. An Affected Party's failure to do so will prevent such Party from claiming that a Force Majeure event has occurred. Unless otherwise directed by the other Party in writing, an Affected Party will continue to perform its obligations under this Agreement so far as reasonably practical, and will seek all reasonable alternative means for performance not prevented by Force Majeure, including utilizing alternative means for performance not prevented by the Force Majeure event. To the extent not already resumed via alternative means, the Affected Party will promptly resume its performance at the cessation of the event. The Affected Party will give the other Party written notice of the cessation of a Force Majeure event within no later than three (3) calendar days after such suspension.

11.3. Effect of Force Majeure.

11.3.1. Obligations Temporarily Suspended. Neither Seller nor Owner will be responsible or liable for or deemed in breach of this Agreement because of any delay in the performance of their respective obligations under this Agreement if and to the extent that such delay in performance is directly and solely caused by a Force Majeure event.

11.3.2. Schedule Adjustments. If Seller experiences a delay caused directly and solely by a Force Majeure event, and provided Seller has given Owner the written notices and has taken the prescribed actions as required under Section 11.2, the required schedule date(s) for delivery of the Transformers and any other required dates for performance by Seller will be equitably adjusted to reflect the delay caused by such Force Majeure event. Failure of Seller to provide such written notice or to take such prescribed actions will

be deemed a waiver by Seller of its right to an extension of time for its performance.

- 11.4. Extended Force Majeure. If Seller experiences an event of Force Majeure that has continued for a period of sixty (60) calendar days, then Owner will be entitled to serve upon Seller in writing a thirty (30) calendar day notice to terminate this Agreement. If at the expiration of said thirty (30) day period, the event of Force Majeure is continuing, Owner may terminate this Agreement or may elect to further equitably extend the required schedule dates set forth in this Agreement. If Owner elects to terminate this Agreement pursuant to this Section 11.4, Seller will be entitled to receive: (a) payment for that portion of the Transformers that conforms to the requirements of this Agreement and that has been delivered and accepted by Owner and (b) the cost of materials ordered for the Transformers or for use in connection with the Transformers that has been delivered to Seller or for which Seller is legally liable to accept delivery as and to the extent such costs are approved by Owner. Such materials will become the property of Owner when paid for by Owner and Seller has delivered the materials to a location specified by Owner.
- 11.5. Limited Remedies. Except for the payments identified in Section 11.4, and notwithstanding any other provision to the contrary, Seller's sole and exclusive remedy in the event of a Force Majeure event will be limited to an equitable adjustment to the delivery schedule in accordance with this Section 11, unless otherwise agreed to in writing with Owner. Any additional costs incurred by Seller by reason of a Force Majeure event or in complying with the obligations of this Section 11 will be borne by Seller, without reimbursement from Owner.

12. INDEMNIFICATION

The Indemnification provisions of this Agreement are contained in Appendix D, attached hereto and incorporated herein by reference.

13. SUSPENSION

- 13.1. Right to Suspend. Owner will have the right, at any time and at its sole discretion, to direct Seller to suspend performance of the Work, in whole or in part, by giving written notice to Seller specifying the extent to which the performance of Work is suspended pursuant to this Section 13 and the effective date of such suspension. The suspension will continue for the period of time specified in the written notice. Seller will suspend performance of the Work under this Agreement, to the extent that the notice so specifies, on the effective date of the suspension, but will continue to perform any portion of the Work not so suspended.
- 13.2. Actions Upon Suspension. In the event of suspension by Owner under this Section 13, Seller will, at Owner's request, preserve and protect the Transformers committed to or purchased for the suspended Work (whether completed or in progress), pending Owner's instructions.

- 13.3. Affect of Suspension on Schedule. If suspension under this Section is due to causes not related to Seller's failure to perform its obligations under this Agreement, then Owner will equitably adjust the scheduled date(s) for Seller's performance of the suspended Work, as set forth in this Agreement, to reflect the length of the suspension, and Owner will reimburse Seller for the reasonable and direct additional costs incurred by Seller as a result of the suspension that are documented to the satisfaction of Owner and that are attributable solely to: (a) the safeguarding or storing of the Work, including the Transformers at Seller's facilities or the facilities of its Suppliers, or in transit; and (b) any resultant demobilization and remobilization at the Facility in connection with such suspension. Adjustment to Seller's scheduled dates for performance and reimbursement of the costs specified in this Section 13.3 will constitute Seller's sole and exclusive remedies for any suspension directed by Owner. Any claim for additional time for performance or for compensation relating to a suspension of Work under this Section will be presented in writing by Seller within ten (10) Business Days after the suspended Work has been either resumed or terminated at the direction of Owner. The failure of Seller to submit a written claim within such period of time will constitute a waiver of Seller's right to submit a claim relating to suspension hereunder.
- 13.4. Resumption of Work. At any time after the effective date of the suspension, Owner may require Seller to promptly resume performance of all or any portion of the suspended Work by giving written notice to Seller authorizing resumption of such suspended Work.

14. TERMINATION

14.1. [INTENTIONALLY OMITTED]

14.2. Termination for Seller Event of Default

14.2.1. Seller Events of Default. Upon the occurrence of a Seller Event of Default, Owner will have the right, at its sole discretion and without prejudice to any other remedy under this Agreement or at law or in equity, to withhold further payments to Seller and/or to terminate this Agreement, in whole or in part, after having given Seller written notice of such default and Seller not providing an acceptable remediation plan within ten (10) Business Days, specifying the extent to which this Agreement is terminated for default. For purposes hereof; a "Seller Event of Default" means any of the following events have occurred:

- (a) If the Commissioning of a Transformer is delayed by more than one hundred twenty (120) days beyond its Guaranteed Commission Date;

- (b) if the delivery of any Drawing is delayed by more than sixty (60) days beyond the deadline for the same as set forth in the Drawing Delivery Schedule;
- (c) a case or action is commenced by or against Seller under applicable bankruptcy law, or Seller makes a general assignment for the benefit of its creditors, or a receiver is appointed to take charge of Seller's assets;
- (d) Seller attempts to assign this Agreement or any part thereof without the written consent of Owner;
- (e) Seller fails or refuses to comply with any Applicable Law or Applicable Permit and such failure or refusal has a material impact on Owner;
- (f) Seller defaults in its performance of any other material obligation under this Agreement, and Seller does not provide an acceptable plan to cure its default in performance within a period of ten (10) Business Days after Seller's receipt of such a written notice of default from Owner; or
- (g) Seller's failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage as set forth in Section 16.

14.2.2. Actions Upon Default. In the event of termination by Owner under this Section 14.2, Seller and its Suppliers will place no further orders or enter into any further agreements or other commitments for equipment, facilities, or services in connection with terminated Transformer(s) under this Agreement. Upon request by Owner, Seller will promptly provide Owner a listing of all outstanding agreements and other commitments which pertain to the performance of the Work, and will furnish Owner with complete copies thereof.

14.2.3. Assignment of Transformers. In the event of termination by Owner under this Section 14.2, Seller, if and to the extent requested to do so by Owner, will promptly assign to Owner, in form and content satisfactory to Owner, Seller's rights, title, and interest to the Transformers (whether completed or in progress) and to those Supplier agreements and other commitments so designated by Owner. Owner, at its option and without waiving any other available remedy under this Agreement or at law or in equity, may take possession of any or all of the Transformers (whether delivered to the Delivery Point or on order), or may obtain goods similar to those ordered under this Agreement on terms and conditions that Owner deems appropriate, and may complete the terminated Work by whatever method Owner deems necessary.

14.2.4. Remedies. In the event of a termination of this Agreement under this Section 14.2, Owner will be entitled to all rights under applicable law or equity. Without limiting the foregoing, if such termination results from the Seller Event of Default described in Section 14.2.1(a), in addition to any liquidated damages payable to Owner under Section 6.3, Owner may reject and/or rescind its order for the delayed Transformers (in which case, Seller may retrieve them, at its expense), and receive a full refund of the purchase price therefor.

14.3. Termination for Owner Event of Default

14.3.1. Owner Events of Default. Upon the occurrence of an Owner Event of Default, Seller will have the right, at its sole discretion and without prejudice to any other remedy under this Agreement or at law or in equity to terminate this Agreement, in whole or in part, after having given Owner written notice of such default and Owner not providing an acceptable remediation plan within ten (10) Business Days, specifying the extent to which this Agreement is terminated for default. For purposes hereof, an “Owner Event of Default” means any of the following events have occurred:

- (a) a case or action is commenced by or against Owner under applicable bankruptcy law, or Owner makes a general assignment for the benefit of its creditors, or a receiver is appointed to take charge of Owner’s assets;
- (b) Owner attempts to assign this Agreement or any part thereof without the written consent of Seller (to the extent so required under Section 15.2.2);
- (c) Owner fails to make an undisputed payment within sixty (60) days after its due date under this Agreement and after ten (10) days written notice to cure; or
- (d) Owner defaults in its performance of any other material obligation under this Agreement, and Owner does not provide a plan to cure its default in performance within a period of ten (10) Business Days after Owner’s receipt of such a written notice of default from Seller.

14.3.2. Remedies. In the event of a termination of this Agreement under this Section 14.3, Seller will be entitled to all rights under law or equity.

15. SUBCONTRACTING AND ASSIGNMENT

15.1. Subcontracting. Except for expendable materials and minor component parts, and except for any portion of the Work for which a Manufacturer or Subcontractor is specifically named in this Agreement, Seller will not subcontract all or any portion

of the Work without first notifying Owner in writing of its intention to do so and obtaining Owner's written consent of the proposed subcontracting. If Seller fabricates, manufactures, assembles, or commissions the Transformers without such consent Seller will be subject to subsequent rejection at Owner's sole discretion. If Owner gives written consent to Seller to subcontract all or any portion of the Work, no contractual relation will exist between Seller's Manufacturer or Subcontractor and Owner. Seller will, upon request of Owner, provide Owner with unpriced copies of Seller's purchase orders with its Subcontractors. Notwithstanding such written approval, Seller will be responsible for the full and complete performance of this Agreement. Seller guarantees that its Manufacturer or Subcontractors will comply fully with the terms of this Agreement applicable to the portion of the Work performed by them, whether or not such Agreement terms include a reference to Seller's Manufacturer or Subcontractors. In the event Owner terminates this Agreement pursuant to Article 14, Seller will assign to Owner, as Owner may direct, any of Seller's agreements with Subcontractors, as may be requested by Owner. Seller will ensure that all its Manufacturer or Subcontractor agreements contain provisions therein permitting assignment to Owner and to its successors and assigns.

15.2. Assignment.

15.2.1. Assignment by Seller. Seller will not assign this Agreement wholly or in part, voluntarily, by operation of law (including change of control), or otherwise, without first obtaining Owner's prior written consent.

15.2.2. Assignment by Owner. Owner reserves the right, at its sole discretion, to assign this Agreement to any financial institution(s) participating in the financing of the Facility with notice to Seller. Upon its receipt of such notice, if Owner so requests, then Seller will execute a written release that releases Owner from its obligations under this Agreement. Owner may also assign this Agreement or any part hereof to any other third parties with the prior consent of Seller (which will not be unreasonably withheld or delayed).

15.2.3. Successors and Assigns. Subject to Sections 15.2.1 and 15.2.2, the provisions of this Agreement will extend to the benefit of and will be binding upon the successors and assigns of the Parties.

16. INSURANCE

Seller will, at its sole expense, obtain and maintain in full force and effect during the term of this Agreement the insurance described as being Seller's responsibility in, and in accordance with, and meeting the requirements set forth in, Appendix B.

17. NON-DISCLOSURE

- 17.1. “Confidential Information” means, with respect to a Party hereto, all information or material which either (1) is marked or identified as “Confidential,” “Restricted,” or “Proprietary Information” or other similar marking or identification, or (2) the other Party knew, as recipient, or under the circumstances, should have known, was considered confidential or proprietary by the Disclosing Party (as defined below). Confidential Information shall consist of all information, whether in written, oral, electronic, or other form, furnished in connection with this Agreement by one Party or its Representatives (“Representative” is defined as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor or consultant of a Party or any of its subsidiaries or affiliates) to the other Party or to its Representatives, and specifically includes but is not limited to Owner’s individually identifiable customer information, and Owner’s customer usage data and financial data.
- 17.2. Seller and Owner shall each hold the other’s Confidential Information in confidence, unless required under the Pennsylvania Right to Know Law (the “RTKL”) to disclose such information. Neither Party shall make the other’s Confidential Information available in any form to any third party or use the other’s Confidential Information for any purpose other than as specified in this Agreement and as required by the RTKL. The Party providing Confidential Information (“Disclosing Party”) to the other Party (“Receiving Party”) shall remain the sole owner of such information. Except as provided elsewhere within this Agreement, nothing contained in this Agreement shall be construed as granting or conferring any right or license in any Confidential Information or in any patents, copyrights, software or other technology, either expressly or by implication to the other Party, or to its Representatives or to others. The term Confidential Information shall not include any of the following: (1) information already in possession of; or already known to, the Receiving Party as of the Effective Date without an obligation of confidentiality; (2) information in the public domain at the time of the disclosure, or which, after such disclosure, enters into the public domain through no breach of this Agreement by the Receiving Party or its Representative(s); (3) information lawfully furnished or disclosed to the Receiving Party by a non-party to this Agreement without any obligation of confidentiality and through no breach of this Agreement by the Receiving Party or its Representative(s); (4) information independently developed by the Receiving Party without use of any Confidential Information of the Disclosing Party; (5) information authorized in writing by the Disclosing Party to be released from the confidentiality obligations herein; or (6) information that is not exempt from disclosure under the RTKL, as determined by the Borough’s Right to Know Officer.
- 17.3. [INTENTIONALLY OMITTED]
- 17.4. [INTENTIONALLY OMITTED]
- 17.5. If the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative

demand, or similar process) to disclose any Confidential Information of the Disclosing Party, the Receiving Party will provide the Disclosing Party with written notice of such an occurrence (if so permitted) as soon as possible. Thereafter, at its sole costs and expense, the Disclosing Party may seek a protective order or other appropriate remedy, or waive compliance with the provisions of this Agreement. So long as it is consistent with applicable law, the Receiving Party will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing Party waives compliance with the requirements of the preceding sentence, the Receiving Party will disclose only that Confidential Information that it is legally required to disclose, and will exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

17.6. In the event the Receiving Party discloses, disseminates or releases any Confidential Information, except as expressly permitted by this Agreement, such disclosure, dissemination or release will be deemed a material breach of this Agreement and the Disclosing Party may demand prompt return of all Confidential Information previously provided to the Receiving Party. As soon as the Receiving Party becomes aware that it has made an unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all necessary actions to recover the improperly disclosed Confidential Information and immediately notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective measures being taken. Each Party agrees that any breach of their confidentiality obligations could cause irreparable harm to the other Party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for any material breach of this Agreement and that specific performance and injunctive relief in addition to monetary damages shall be appropriate remedies for any breach or any threat of such breach. The provisions of this Paragraph are in addition to any other legal rights or remedies the Receiving Party may have.

17.7. [INTENTIONALLY OMITTED]

17.8. Notwithstanding the termination of this Agreement, this Confidentiality Section shall survive the expiration or earlier termination of this Agreement.

18. WITHHOLDINGS AND SET-OFFS

18.1. Withholding Rights. Owner may reasonably withhold payments for a Transformer otherwise due to Seller under this Agreement on the following grounds:

- 18.1.1. defective Work not remedied after written notice to cure and Seller's failure to do so;
- 18.1.2. notice of claims or filing of liens or reasonable evidence indicating probable notice of such claims or filing of liens;
- 18.1.3. failure of Seller to make payments properly to Suppliers;
- 18.1.4. reasonable evidence that the Commissioning of the Transformer will not be completed by its Guaranteed Commission Date;
- 18.1.5. any failure to furnish final approved Drawings and documentation, including but not limited to, quality assurance documentation, Seller erection, assembly and other required Drawings, spare parts lists, and instruction and operating manuals; or
- 18.1.6. any failure of the Transformer to meet any requirements of the Specifications or other requirements of this Agreement.

18.2. Set-Off Rights. Any and all payments due Seller hereunder may, at the discretion of Owner, be offset or charged against any outstanding obligations of Seller to Owner under this Agreement.

19. INTENTIONALLY OMITTED.

20. LIMITATIONS OF LIABILITY

20.1. No Consequential Damages. Neither Party shall be liable to the other Party under this Agreement, whether by way of indemnity or in contract, guarantee, tort, or otherwise for any special, incidental, indirect or consequential loss or damages, including but not limited to loss of profit, loss of production, loss of revenue or loss of use. The foregoing will not apply to (a) limit a Party's liability for liquidated damages that are expressly payable pursuant to the terms of this Agreement, (b) limit any damages under third party claims for which a party has an indemnity obligation hereunder, (c) damages arising as a result of a breach of any non-disclosure or non-use obligations of a Party pursuant to Section 17, and (d) damages arising as a result of willful misconduct, fraud or gross negligence.

20.2. Caps on Liquidated Damages. Notwithstanding anything to the contrary elsewhere in this Agreement, Seller's maximum liability for liquidated damages of every kind payable by Seller to Owner under this Agreement shall not exceed twenty-five percent (25%) of the Contract Price.

21. MISCELLANEOUS

21.1. Priority of Documents: Interpretation. Seller will promptly notify Owner in writing of any real or apparent conflicts, discrepancies, errors or omissions among the documents comprising this Agreement. All documents comprising this Agreement, including any modifications or additions thereto, will be read in a complementary manner. Any Work affected by such conflict, discrepancy, error, or omission performed by Seller prior to resolution of the same by Owner will be at Seller's risk. In the event of an irreconcilable conflict, discrepancy, error, or omission, the following descending order of precedence will govern:

- (a) The Agreement
- (b) Appendix C; Technical Specifications and Transformer Shipment, Assembly, and Commissioning Specifications;
- (c) Bidder's Bid Proposal
- (d) the Standard General Conditions; Appendix B (Insurance Requirements) and Appendix D (Indemnification); and
- (e) Appendix A; Payment Schedule;

Subject to the foregoing, if any provisions in any Contract Document is in conflict with any other provisions in such Contract Document, the provision setting forth the higher standard of conduct for or more onerous obligations upon Seller will prevail. Nothing contained in the Specifications or Drawings will be construed as relieving Seller from the responsibility for designing, fabricating, manufacturing, or assembling the Transformers to meet the requirements specified in this Agreement. Seller undertakes full responsibility and liability for the consequences of its failure to comply with all Agreement requirements.

21.2. Severability. The invalidity or unenforceability of any provision of this Agreement will in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision will be enforced to the greatest extent permitted by law. If any such provision is unenforceable, then such provision shall be deemed severed from this Agreement, and the balance of this Agreement will be reformed and construed in such a manner as to effect to the maximum extent possible the original intent of the Parties.

21.3. Notices. Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed duly given when sent by facsimile transmission, by overnight courier, by personal delivery, on the seventh (7th) day following the date on which such notice is deposited in the mail, postage prepaid, certified, return receipt requested, or electronic mail, read-receipt requested. "Electronic mail" shall not be considered a "writing" for purposes of formal notices of defaults, notices to cure, and notices of assignment. All notices shall be delivered or sent to the Parties at their respective address(es) or number(s) shown below or to such other

address(es) or number(s) as a Party may designate by prior written notice given in accordance with this provision to the other Party:

TO OWNER:

Borough of Chambersburg
Attn: Electric Department Superintendent
100 South Second Street
Chambersburg, PA 17201
jheverley@chambersburgpa.gov

WITH COPY TO:

G. Bryan Salzman, Esquire
79 St. Paul Drive
Chambersburg, PA 17201
GBSalzman@salzmannhughes.com
Borough of Chambersburg Solicitor

TO SELLER:

Where electronic mail is provided for as a means of communication under the Contract Documents, the Sender is responsible for confirming receipt by the Recipient.

- 21.4. Section Headings. The Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties. References to “Sections” in these Terms and Conditions shall mean the Sections of these Terms and Conditions unless otherwise expressly noted.
- 21.5. Duties and Remedies Not Limited Except as Provided for Herein. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to, and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law or in equity.
- 21.6. English Language. Seller hereby represents that it has sufficient knowledge of the English language to fully understand this Agreement. This Agreement is in the English language and all documentation related hereto, including without limitation, any documentation and Drawings to be provided by Seller or its

Suppliers will also be in the English language. Seller will bear all costs of translation and assumes all risk of such translation.

- 21.7. Governing Law: Choice of Forum. The applicable laws of the Commonwealth of Pennsylvania shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in Franklin County, Pennsylvania.
- 21.8. No Waiver of Rights. Except as may be specifically agreed in writing, the failure of Owner or Seller to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement or to exercise any right herein contained or provided by law or equity, shall not be construed as, or constitute in any way, a waiver, modification or relinquishment of the performance of such provision or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and all such rights shall continue unchanged and remain in full force and effect. “Electronic mail” shall not be considered a “writing” for purposes hereof.
- 21.9. Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought. “Electronic mail” shall not be considered a “writing” for purposes hereof.
- 21.10. Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent, or legal representative of the other Party, or to create any fiduciary relationship between the Parties. Seller is and shall remain an independent contractor in the performance of this Agreement, maintaining complete control of its Personnel, Suppliers, workers, Subcontractors, and operations required for performance of the Work.
- 21.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 21.12. Entire Agreement. This Agreement constitutes the complete, integrated agreement between the Parties relating to the Transformers, superseding all other prior agreements or undertakings regarding the subject matter hereof.

SIGNATURES APPEAR ON FOLLOWING PAGE

(If Seller is an Individual)

Signature of Witness

Signature of Individual

Trading and doing business as:

Name of Business

Address of Business

(If Seller is a Partnership - All General Partners Must Sign)

Name of Partnership

Address of Partnership

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

Signature of Witness

Signature of Partner

(If Seller is a Corporation or Limited Liability Company)

Attest:

Name of Corporation

Signature of Secretary or
Assistant Secretary

Address of Principal Office

(Corporate Seal)

State of Incorporation

Signature of
President or Vice President

(Owner)

Attest:

BOROUGH OF CHAMBERSBURG

Owner's Organizational Name

100 South 2nd Street
Chambersburg, PA 17201

Owner's Address

Signature

Signature

Title

Title

Type or print name below each signature.

END OF AGREEMENT

APPENDIX A
PAYMENT SCHEDULE

1. Owner will release 30% of the Contract Price after Owner's approval of Seller's Shop Drawing submittals. Owner will pay Seller such invoiced amounts within thirty (30) days of such invoice; provided Seller has met Agreement requirements as determined by Owner.
2. Owner will release 20% of the Contract Price after successful factory testing. This provision applies to each individual Transformer.
3. Owner will release 20% of the Contract Price one week prior to shipping. This provision applies to each individual Transformer (Owner recognizes that the Transformers may not ship on the same date and payment will be released based on the individual Transformer's shipping date).
4. Owner will release 20% of the Contract Price upon completion of Field Performance Tests after Commissioning in accordance with Section 7 of this Agreement. Owner will pay Seller such invoiced amounts within thirty (30) days of such invoice; provided Seller has met Agreement requirements as determined by Owner. This provision applies to each individual Transformer (Owner recognizes that the Transformers may not complete the Field Performance Test on the same date and payment will be based on the individual Field Performance Tests).
5. Owner will release 10% of the Contract Price in accordance with Section 8.2.5 of the Agreement.

APPENDIX B
INSURANCE AND BONDING REQUIREMENTS

Without limiting Owner's right to indemnification, it is agreed that Seller shall secure and maintain, during the term of this Agreement, insurance coverage as follows:

Workers' Compensation Insurance as required by the statutes of the Commonwealth of Pennsylvania and Employers Liability in an amount not less than \$1,000,000 per occurrence.

Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, and Independent Contractor's Liability, in an amount not less than \$2,000,000 per occurrence, \$5,000,000 annual aggregate, written on an occurrence form. Such insurance shall be written on a primary basis (i.e., without a self-insured retention), but may include a deductible of not more than \$10,000 per occurrence, provided that such deductible is disclosed to Owner, in writing, prior to the execution of this Agreement.

Comprehensive Automobile Liability Coverage including — as applicable — owned non-owned and hired autos, in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit.

Each insurance policy required by this Agreement shall contain the following clause or shall otherwise provide for the following conditions:

“This insurance shall not be cancelled or non-renewed until after five (5) business days prior written notice has been received by the Borough of Chambersburg.” If Seller's insurer will not commit to this requirement, then Seller shall assume the obligation of notifying Owner of such pending development(s) within the stated time frame.

Each insurance policy required by this Agreement, except policies for Workers' Compensation, shall be subject to the condition that any insurance maintained by Seller pursuant to this Agreement shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Borough of Chambersburg.

The Borough of Chambersburg, its officers, agents, employees, and Representatives shall be added as additional insureds on an Acord form for the insurance policies required by this Agreement, except policies for Workers' Compensation.

Within fourteen (14) days after the execution of this Agreement Seller shall deliver to Owner insurance certificates confirming the existence of the insurance required under this Agreement, including the applicable clauses and/or provisions referenced above. Also, Seller shall provide Owner (i) endorsements to the insurance policies which add to these policies the applicable clauses referenced above, or (ii) in lieu of said endorsements, documentation acceptable to Owner evidencing that the coverage, terms, and conditions set forth in the above-referenced clauses are otherwise provided for in said insurance policies.

Insurance and Bonding required hereunder shall be placed with insurers (i) authorized to write insurance in the Commonwealth of Pennsylvania and (ii) possessing an *A. M. Best* rating of A VII or higher, or (iii) otherwise acceptable to Owner (but only with prior written permission from Owner). In the event that a claim or other legal action is filed against Owner, and if Owner, in its good faith opinion, believes it may have coverage under any of the insurance required herein, then Owner has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance; provided; however, that this provision shall not apply if the parties agree that Seller shall fully defend, hold harmless, and indemnify Owner against any such claim or other legal action.

In addition to other remedies Owner may have if Seller fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Owner may, at its sole option:

- A. Order Seller to stop work under this Agreement and/or withhold any payment(s) which become due to Seller hereunder until Seller demonstrates compliance with the requirements hereof;
- B. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies Owner may have and is not the exclusive remedy for Seller's failure to maintain insurance or secure appropriate endorsements.

The insurance limits stated herein are minimum requirements only, and their existence shall in no way limit any rights Owner may have under Seller's insurance policies, including but not limited to Owner's status as an additional insured as required herein.

Nothing contained in this Insurance Section shall be construed as limiting in any way the extent to which Seller may be held responsible for payments of damages to persons or property resulting from Seller's, (or Seller's contractors/Subcontractor, if any) performance of the work covered under this Agreement.

Owner's Borough Manager is hereby authorized to reduce the requirements set forth herein in the event he determines that such reduction is in Owner's best interest.

APPENDIX C
SPECIFICATIONS
[ATTACHED BEHIND THIS PAGE]

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

TECHNICAL SPECIFICATIONS

1. SCOPE

- 1.1. These specifications describe TWO (2) three-phase, two winding, step down, outdoor, 60 Hertz, 65°C rise, oil insulated, air cooled, power Transformers with on-load tap changer (“LTC”).

2. GENERAL REQUIREMENTS

- 2.1. The Transformers shall be new, three-phase, two winding, 60 Hertz, oil immersed, outdoor units manufactured in the United States.
- 2.2. The equipment covered in these specifications shall be designed, built, and tested in accordance with the latest applicable manufacturing and testing standards of IEEE, ANSI, and NEMA unless otherwise modified herein.
- 2.3. Workmanship and materials utilized in construction of the Transformer shall be new and of highest quality.
- 2.4. Multiple Transformers purchased in the same order or contract shall be both electrically and mechanically interchangeable with one another. Auxiliary apparatus shall be entirely interchangeable so that when interchanged shall perform their intended function in a manner consistent with the transformer’s design basis.

3. ELECTRICAL DESIGN REQUIREMENTS

- 3.1. The transformer(s) shall be rated:
- 3.1.1. High Voltage Winding: 68,800V (nominal)
 - 3.1.2. Low Voltage Winding: 12,470V (nominal)
 - 3.1.3. 15/20/25 MVA at 65°C rise and nominal tap position
 - 3.1.4. 7.8%Z on ONAN rating; impedance tolerance shall be ANSI standard of +/-7.5%
- 3.2. The transformer(s) shall be connected HV – Delta, LV – Solidly Grounded Wye, and shall be designed for step-down operation.
- 3.3. The transformer(s) shall be designed with the following minimum Basic Insulation Levels:
- 3.3.1. HV Winding: BIL = 350kV
 - 3.3.2. HV Bushing: BIL = 350kV
 - 3.3.3. LV Winding: BIL = 150kV
 - 3.3.4. LV Bushing: BIL = 150kV
- 3.4. The transformer(s) shall have standard phase polarity and relationship consistent with ANSI standards.
- 3.5. The transformer(s) shall be designed for parallel operation; transformers shall be operated at times in parallel with each other.
- 3.6. The transformer(s) shall be designed so that with the transformer at maximum core flux density the average sound level shall be:
- 3.6.1. ONAN: 5dB below NEMA TR-1 level
 - 3.6.2. ONAF: At NEMA TR-1 level
 - 3.6.3. ONAFAP: At NEMA TR-1 level
- 3.7. Transformer Core & Windings

**PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA**

- 3.7.1. The core shall be of high-grade electrical silicon steel.
- 3.7.2. The core shall be of circular (cruciform) configuration and shall be tightly clamped.
- 3.7.3. The core ground of the main transformer core shall be brought out. A ground pad and a grounding cable for each core ground, and nameplates stating "Transformer Core Ground" and "LTC Transformer Core Ground" shall be provided. The nameplates shall be mounted adjacent to the core ground bushings. See On-load Tap Changer Section related to Preventative Autotransformer Core Ground.
- 3.7.4. 14 mega pixel digital photographs of each core and coil assembly shall be furnished with the instruction book. The photographs shall be taken just prior to placing the completed core and coil assembly into the tank. Five different views shall be provided as follows: top view, front view, left side view, right side view, and rear view.

3.8. Windings

- 3.8.1. Conductor in windings shall be copper. Conductor in leads to bushings shall be copper. The nameplate shall indicate the winding conductor material used.
- 3.8.2. Thermally upgraded paper and/or netting tape (for CTC if necessary) shall be used for coil conductor insulation.
- 3.8.3. Windings shall be circular wound using a disc or helical wound winding design.
- 3.8.4. All permanent current-carrying joints, except threaded connections and compression joints, shall be welded or soldered with silver solder or silver alloy.
- 3.8.5. Bolted clamp-type connections may be used at bushings if required, tap changers, and terminal boards provided that devices are used to prevent loosening of these connections.
- 3.8.6. All leads from the windings to the terminal board and bushing shall be rigidly supported to prevent damage from vibration or normal installation flexing.
- 3.8.7. Insulating materials, varnishes, and compounds in contact with oil shall not affect the oil nor be affected by it.

4. GENERAL MECHANICAL DESIGN REQUIREMENTS

4.1. Tank and Fittings

- 4.1.1. The tank and cover of the transformer shall be of commercial grade low-carbon steel suitable for welding unless otherwise approved by Owner. All seams shall be welded to have adequate mechanical strength, and to be and remain oil tight. The tank corners shall be folded with no welds within 6 inches of the corners.
- 4.1.2. The tank shall have sufficient strength to withstand without permanent deformation a continuous internal gas pressure of 10-psi gauge with oil at the operating level. The tank shall be built to withstand filling with oil by full vacuum without buckling or permanent deformation.
- 4.1.3. All tank covers shall be manufactured to ensure complete drainage of precipitation.
- 4.1.4. Interior surfaces shall be clean and smooth and shall be treated according to the Manufacturer's standard method of ensuring rust inhibition. The tank interior shall be painted with white primer which does not interact with transformer oil.

PROJECT: Commerce Street Substation - Transformers
Borough of Chambersburg, PA

- 4.1.5. Exterior surfaces shall be clean and smooth and shall be finished with two (2) coats of zinc rich epoxy primer (total minimum thickness 2.5 mils), one (1) intermediate coat of epoxy paint, and one (1) top coat of urethane paint with a minimum total thickness of 4 mils. The tank finish shall be ANSI-70 Sky Gray.
- 4.1.6. External fasteners such as the bolts for bushing flanges, radiator flanges, manway bolts, etc. shall be SAE standard and be made of non-corrosive stainless steel (300 series). All other external fasteners such as the bolts for radiator fans, gauges, brackets, arrestors, etc. shall be SAE standard and be zinc-coated carbon steel.
- 4.1.7. Base of the transformer shall be designed to permit continuous support of the transformer by the transformer pad; skidding rails on the transformer base are NOT permitted. The base of the transformer shall be designed such that it is supported by the Pad as shown in Drawing No. 2440-XF0, attached hereto and incorporated herein as Exhibit A. Designs where the transformer outline does not exceed the containment dimensions shown in Drawing No. 2440-XF0 shall be evaluated in accordance with the Bid Specifications.
- 4.1.8. Transformers shall be equipped with lugs for lifting entire transformer. The lugs shall be designed and positioned on the tank such that the fully outfitted transformer can be lifted with a four-point lifting sling only. Spreader bars or other accessories shall not be required to lift the transformer.
- 4.1.9. Transformer shall be equipped with four (4) copper-faced steel ground pads conforming to the latest revision of ANSI C57.12.10. Ground pads shall be welded to *each* lower corner of the tank. Furnish terminals for #4/0 AWG copper cable. These pads shall be welded to the side of the tank in a vertical line at each corner.
- 4.1.10. Guide clips for the routing of ground conductors from the transformer neutral bushing and surge arrestors to the transformer base shall be provided on opposite corners of the transformer and in two (2) locations at *each* corner along the transformer tank wall. Clips shall allow routing of a #4/0 AWG copper ground cable from the lighting arrestors to the ground connection at the bottom of the tank. The clips shall also permit the routing of two (2) #4/0 AWG copper cables from the transformer neutral bushing.
- 4.1.11. Suitable manhole(s) with bolted covers shall be provided in the top of the transformer to afford access to the bottom of the bushings and to permit replacement of current transformers without removing the tank cover.
- 4.1.12. The main tank oil drain valve shall be 2" with plug and shall be in a readily accessible location. The main tank fill shall be 2", side-mounted with plug.
- 4.1.13. All cover seats, flange joints, threaded connections, and pipe fittings shall be properly machined, fitted, and gasketed to be gas tight and oil tight. All gaskets shall be nitrile. All gasket joints shall have steel stops to prevent over compression of gaskets and shall have provisions to assure even and effective pressure and to avoid over stressing the gasket. All mating surfaces where gaskets are to be applied shall have two coats of Glyptol (or equal) paint applied and dried prior to gasket installation.
- 4.1.14. All conduit supplied on the transformer shall be rigid metal conduit. PVC conduit or other types will not be acceptable except in areas where excessive vibration may occur as approved by Owner. Additionally, no cable shall be routed in open air for a distance exceeding 12" *except* as may be required for cooling fan connections.
- 4.1.15. A permanent plate and anchor post shall be provided. The plate shall be welded to the top of the transformer (as close to the center of the unit as practical) to provide anchorage for a fall arrest system. The system shall be a DBI-Sala portable fall arrest post model #8516691 with anchor plate model #8510816 and storage bag model #8517565 or Owner-approved equivalent.

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4.2. Control Cabinet

- 4.2.1. All devices, alarms, controls, and power supplies (EXCEPT Current Transformers) shall be connected to GE EB-25 or equal terminal blocks utilizing a minimum of #14 AWG SIS conductor and insulated crimp-type ring-tongue terminals. No more than two (2) wires per terminal screw shall be permitted. All wiring shall be neatly routed, organized, and supported.
- 4.2.2. All devices, alarms, controls, and power supplies shall be labeled, and wiring marked both ends in accordance with control diagrams. Markings shall be clearly legible.
- 4.2.3. Phenolic nameplates shall be included in control cabinet for all devices and all terminal blocks.
- 4.2.4. Heaters shall be provided in the control cabinet that are thermostatically controlled. Heaters shall be carefully located such that they do not interfere with or negatively impact any other wiring, devices, or logical interconnection cable locations.
- 4.2.5. Cabinet light and convenience outlet shall be provided.
- 4.2.6. Provisions for padlocking the cabinet closed and wind-props for cabinet doors and panels shall be provided.

4.3. Auxiliary Devices

4.3.1.1. Qualitrol level gauge

- 4.3.1.1.1. Gauge shall visually indicate nominal oil level at 25°C as well as high level, low level, and critical low level.
- 4.3.1.1.2. Gauge shall be provided with high, low, and critical low alarm contacts wired to the transformer auxiliary control cabinet.
- 4.3.1.1.3. Gauge must be able to be read from ground level; at least 5" dial face.

4.3.1.2. Qualitrol pressure relief device. Standard-type with visual (yellow) relief flag and alarm contact wired to the transformer auxiliary control cabinet.

4.3.1.3. Qualitrol rapid pressure rise relay. Series 900 with valve for transformer vacuum filling.

4.3.1.4. The element for top oil temperature shall be a 100-ohm platinum RTD mounted in a well in the transformer tank

4.3.1.5. The element for ambient temperature shall be a 100-ohm platinum RTD securely mounted on the transformer and encased in a rugged protective screen.

4.4. Cooling Equipment

- 4.4.1. Radiators, as required for proper cooling, shall be furnished and shall be designed to withstand the vacuum and pressure conditions specified for the tank.
- 4.4.2. Radiators shall be detachable and suitable shut-off valves shall be provided top and bottom, between flange connection and tank. Drain plugs shall be furnished at bottom and top of each detachable radiator.
- 4.4.3. Radiators shall be hot dipped galvanized.

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4.4.4. Single-stage and double-stage force cooling shall be provided. Fans shall be equipped with cage type blade guards. Fan location and guards shall comply with OSHA requirements. Fan motors shall be 230 VAC, single phase and shall be individually thermal protected. Each stage of forced-cooling shall be individually protected with thermal-magnetic circuit breakers mounted in the control cabinet.

4.4.5. Each cooling stage shall be controlled individually from winding temperature and shall include necessary equipment for automatic control. A manually operated switch shall be provided for each stage of cooling connected in parallel with the automatic control contacts and shall be mounted in the control cabinet.

4.5. Oil Preservation System

4.5.1. Oil preservation in the main tank shall be an Inert Gas Pressure System.

4.5.2. A gas cylinder filled with high pressure gas, an automatic reducing valve, a one-way breathing regulator and a self-sealing pressure relief valve shall be furnished. The pressure relief valve shall be designed to maintain a pressure of 3.5 psi or less.

4.5.3. The system shall be automatic in operation and shall provide for expansion and contraction of oil through a daily oil temperature range of 20 degrees C without discharging gas and shall seal the interior from atmosphere within the limits prescribed in this specification.

4.5.4. All components of the inert gas system, including the gas cylinder, shall be contained in a weatherproof enclosure. The enclosure shall have a full-length hinge, be gasketed, contain a rain shield, and be padlockable. The enclosure door shall contain a window suitable for viewing of the tank and gas cylinder pressure gauges without opening the door.

4.5.5. All tubing for the inert gas preservation system outside of the protective steel cabinets shall be stainless steel.

5. AUXILIARY APPARATUS & EQUIPMENT

5.1. Surge Arrestors

5.1.1. Surge arrestors shall be provided and mounted to the transformer.

5.1.2. Surge arrestors shall have a clamp-type grounding terminal which will accept 4/0 copper grounding cable.

5.1.3. Surge arrestors shall be positioned to direct vented matter away from the transformer.

5.1.4. The surge arrestors shall be mounted such that the surge arrester terminals are aligned below the transformer bushing terminals. The surge arrester terminals shall also be aligned with and at the same horizontal spacing as the bushing terminals.

5.1.5. Surge arrestors shall be:

5.1.5.1. Station class and shall be manufactured by Ohio Brass (or equal).

5.1.5.2. High voltage arrestors shall be polymer-housed model EVP 004200

5.1.5.3. Low voltage arrestors shall be porcelain-housed VL 8.4kV MCOV model 219509-3001

5.2. Bushings

5.2.1. Bushings, excepting the core ground bushing(s), shall be manufactured by PCore Electric (Hubbell) or ABB.

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- 5.2.2. Porcelain used in bushings shall be wet-process, homogeneous, nonporous, and free from cavities or flaws. The glazing shall be uniform in color and free from blisters, burns, and other defects. Porcelain to be ANSI-70 Sky Gray in color.
- 5.2.3. All power (H1,H2,H3,X1,X2,X3,X0) bushings shall use porcelain and oil impregnated paper, and shall be condenser-type with oil sight glass and power factor test tap.
- 5.2.4. The high voltage bushings shall use a draw lead connection. The draw lead conductor shall be sized such that the ampacity of the high voltage winding is in no way limited by the draw lead conductor.
- 5.2.5. The high voltage bushings shall be top-mounted in segment 1 of the transformer. The low voltage bushings shall be top-mounted in segment 3 of the transformer.
- 5.2.6. The low voltage bushings shall utilize bottom-bolted connection; other connections to bushings are unacceptable. All low voltage bushings (X1,X2,X3,X0) to be of same size and construction.
- 5.2.7. Furnish tinned copper stud connectors to NEMA four-hole pad for the all bushings.

5.3. Current Transformers

- 5.3.1. Provide current transformers as follows:

- 5.3.1.1. On each high voltage bushing (H1, H2, H3) provide 600:5 10C400 MRCT

- 5.3.1.2. On each low voltage terminal bushing (X1, X2, X3) provide 2000:5 10C400 MRCT

- 5.3.1.3. On neutral bushing (X0) provide 600:5 10C400 MRCT

- 5.3.2. All BCTs shall be five (5) lead multi-ratio and shall be sized (de-rated) as required to meet the maximum thermal rating of the transformer.
- 5.3.3. Secondary leads from a multi-ratio current transformer shall be minimum #12AWG, be a continuous run from the CT junction block (no intermediate splice points), and shall terminate to GE Type EB short-circuiting terminal blocks located in the transformer auxiliary control cabinet.
- 5.3.4. Bushing current transformer nameplates listing turn ratio connection shall be stainless steel and mounted via stainless steel screws in a location adjacent to the transformer nameplate.
- 5.3.5. Performance curves for all BCTs shall be provided to the Owner.
- 5.3.6. All BCTs shall be shorted using terminal block shorting screws and, additionally, all unused BCTs shall be shorted and grounded with separate wire jumpers (do not use shorting block screws) when delivered to the Delivery Point.

5.4. Nameplate

- 5.4.1. A stainless steel diagrammatic nameplate shall be furnished with the transformer and shall be mounted with stainless steel screws at a height of between 5 feet and 7 feet from the bottom of the transformer main tank. The nameplate shall show information in accordance with the latest applicable standards. This information shall include the year of the unit's manufacture.

5.5. Oil

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- 5.5.1. A sufficient quantity of new oil shall be furnished with the transformer for filling the tank, radiators and bushings to the proper level.
- 5.5.2. Insulating oil shall be mineral oil specifically designated for use as an insulating and cooling medium in oil filled electrical apparatus.
- 5.5.3. The oil furnished shall conform to the latest EPA guidelines regarding PCB-free oil. Seller to provide certification that ALL oils used in the transformer (in the main tank, LTC tank, bushings, radiators, etc.) is free of PCB's.
- 5.5.4. Owner reserves the right to use any oil that meets the above requirements and this shall not affect any transformer guarantees or warranties.
- 5.6. De-energized Tap Changer
 - 5.6.1. The transformer shall be equipped with a manual, de-energized tap changer connected with two (2) 2 ½ % full capacity taps above and below rated high voltage for de-energized operation.
 - 5.6.2. The mechanism shall be such that it will be impossible to leave a winding open-circuited when the operating handle is placed in a "locked" position and shall be provided with means for padlocking in any tap position.
 - 5.6.3. The tap changer shall be able to be operated and indicator shall be able to be read by a person standing at ground level.
 - 5.6.4. The de-energized tap changer shall be provided in the high voltage windings.
- 5.7. On-load Tap Changer (LTC)
 - 5.7.1. The on load tap changer shall be a Reinhausen Manufacturing model RMV-II.
 - 5.7.2. The LTC shall have a range of 10 percent above and 10 percent below nominal voltage in 32 equal steps.
 - 5.7.3. The LTC shall in no way limit the transformer MVA regardless of tap position.
 - 5.7.4. The tap changer shall be mounted in a separate oil filled compartment which must be sealed to prevent transfer of any liquid to the main tank or any other compartment and shall be equipped with:
 - 5.7.4.1. Qualitrol liquid level gauge
 - 5.7.4.1.1. Gauge shall visually indicate nominal oil level at 25°C as well as high level and low level.
 - 5.7.4.1.2. Gauge shall be provided with high and low alarm contacts wired to the transformer auxiliary control cabinet.
 - 5.7.4.1.3. Gauge must be able to be read from ground level; at least 5" dial face.
 - 5.7.4.2. Qualitrol pressure relief device. Standard-type with visual (yellow) relief flag and alarm contact wired to the transformer auxiliary control cabinet.
 - 5.7.4.3. RTD located in RTD well for LTC oil temperature; 100ohm platinum.
 - 5.7.4.4. 2" drain valve with sampling device and plug.
 - 5.7.4.5. 2" fill port, side-mounted, with plug.
 - 5.7.4.6. Maintenance free dehydrating breather connected via separate port with shut-off valve.

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5.7.5. The on load tap changer shall be provided with:

5.7.5.1. Necessary electrical and mechanical operating mechanism(s) and 230V motor drive.

5.7.5.2. Local position indicator

5.7.5.3. Operation counter

5.7.5.4. Remote position indication via 4-20mA output

5.7.5.5. Manual operating handle interlocked with LTC motor power input.

5.7.5.6. Resistive-type mechanism cabinet heater with thermostat; rated 240VAC.

5.7.6. The on-load tap changer position shall be automatically controlled via the SEL 2414 Transformer Controller described in subsequent sections.

6. INSTRUMENTS

6.1.1. An SEL 2414 Transformer monitor model 241421ABA3A745X1841 with SEL 2600 RTD model 2600D01X shall be provided.

6.1.1.1. It shall operate at 125VDC (nominal) input power.

6.1.1.2. The SEL 2414 shall be mounted in the transformer control cabinet.

6.1.1.3. Input and output wiring shall be configured as shown in Drawing No. 2440-XF1 attached hereto and incorporated herein as Exhibit B.

6.1.1.4. It shall include a fiber optic Ethernet communications port with IEC61850 and DNP 3.0 communications protocol and a fiber optic serial port for use with the SEL 2600 RTD.

6.1.1.5. Seller shall work with Owner/SEL to establish SEL input(s), output(s), soft I/O, and programming as required to meet functions defined below. Final programming of the SEL shall be performed by the Owner.

6.1.1.6. The SEL 2414 shall measure top oil temperature, LTC oil temperature, and ambient temperature for transformer temperature modeling through the SEL 2600RTD.

6.1.1.7. The element for current flow shall be the low voltage bushing (X1, X2, X3) current transformers, tapped at 1200:5. It is understood that this ratio "limits" the transformer output at lower LTC positions.

6.1.1.8. Seller shall provide all parameters necessary for transformer monitor calculated winding temperature and estimate loss-of-life calculations.

6.1.1.8.1. Monitor shall provide (soft) analog temperature data:

6.1.1.8.1.1. Winding Temperature

6.1.1.8.1.2. Top Oil Temperature

6.1.1.8.2. Monitor shall provide (soft) digital data:

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- 6.1.1.8.2.1. Alarm when the difference between the LTC oil temperature and the Top oil temperature is greater than Seller-established setpoint via DNP/IP.
- 6.1.1.8.3. Monitor shall control (turn on power/turn off power) cooling fans based on calculated winding temperature and top oil temperature per Seller requirements.
- 6.1.1.9. The SEL 2414 monitor shall monitor and control cooling fans as required
 - 6.1.1.9.1. Each bank of cooling shall be independently controlled via SEL2414 outputs based on winding and oil temperature.
 - 6.1.1.9.2. Each bank of cooling shall be “exercised” for 2 minutes once every month automatically via the SEL 2414.
 - 6.1.1.9.3. Each bank of cooling shall have its current flow monitored to provide (soft) digital data for each bank:
 - 6.1.1.9.3.1. Each bank current shall be monitored by a current transducer; Automation Direct ACT050-42L-S or Owner approved equal.
 - 6.1.1.9.3.2. Each bank shall alarm when the fan bank current is greater than 0.1 amps to indicate “fan bank on” via DNP/IP.
 - 6.1.1.9.3.3. Each bank shall alarm when the fan bank current is greater than 0.1 amps but less than 90% of maximum fan current draw to indicate “fan failure in fan bank” via DNP/IP.
- 6.1.1.10. The SEL 2414 shall provide (soft) digital data from main tank pressure-related devices and LTC pressure relief device as required
 - 6.1.1.10.1. Alarm when the main tank pressure relief device operates via DNP/IP.
 - 6.1.1.10.2. Alarm when the LTC tank pressure relief device operates via DNP/IP.
 - 6.1.1.10.3. Alarm from main tank sudden pressure auxiliary seal-in relay via DNP/IP.
- 6.1.1.11. The SEL 2414 shall provide (soft) digital data from main tank and LTC oil level devices as required
 - 6.1.1.11.1. Alarm when the main tank level is low via DNP/IP.
 - 6.1.1.11.2. Alarm when the main tank level is high via DNP/IP.
 - 6.1.1.11.3. Alarm when the LTC tank level is low via DNP/IP.
 - 6.1.1.11.4. Alarm when the LTC tank level is high via DNP/IP.
- 6.1.1.12. The SEL 2414 shall read oil preservation system pressures and shall provide (soft) digital data on oil preservation system as required.
 - 6.1.1.12.1. Read nitrogen blanket pressure via pressure to analog transducer; Dwyer Instruments model #628-06-GH-P1-E2-S1 or Owner approved equal.
 - 6.1.1.12.2. Read nitrogen cylinder pressure via pressure to analog transducer; Dwyer Instruments model #628-18-GH-P1-E2-S1 or Owner approved equal.
 - 6.1.1.12.3. Alarm when nitrogen blanket pressure exceeds 4.5 PSI via DNP/IP

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- 6.1.1.12.4. Alarm when nitrogen blanket pressure is below 0.1 PSI via DNP/IP
- 6.1.1.12.5. Alarm when nitrogen cylinder pressure is below 150 PSI via DNP/IP
- 6.1.1.13. The SEL 2414 shall provide miscellaneous reporting functions as follows:
 - 6.1.1.13.1. LTC motor current flow monitored to provide (soft) digital data by a current transducer; Automation Direct ACT050-42L-S or Owner approved equal.
- 6.1.1.14. The SEL 2414 shall read LTC position and provide LTC control as follows
 - 6.1.1.14.1. Read 4-20mA position input and provide (soft) analog LTC position data via DNP/IP.
 - 6.1.1.14.2. Read statuses required to determine transformer paralleling conditions.
 - 6.1.1.14.3. Operate LTC based on:
 - 6.1.1.14.3.1. Owner shall provide three-phase, 120V(L-G) metering voltage source to transformer control cabinet terminal block.
 - 6.1.1.14.3.2. In isolated operation, operate to maintain bus voltage based on typical criteria.
 - 6.1.1.14.3.3. If transformer is electrically disconnected, LTC shall be blocked from operation. This shall be based on SEL status inputs provided by Owner.
 - 6.1.1.14.3.4. If paralleled, shall operate in master-follower operation. Master or follower shall be selected via a Kirk-Key selector switch, model SPPS22A10, on each transformer such that only one transformer may be the “master”.
- 6.1.1.15. The SEL 2414 shall utilize the four (4) pushbuttons located on the front of the device as follows:
 - 6.1.1.15.1. Pushbutton #1: shall be labeled “Remote/Local” and shall allow (or preclude) the remote control of the LTC via soft interface (DNP)
 - 6.1.1.15.2. Pushbutton #2: shall be labeled “Auto/Manual” and shall allow (or preclude) the automatic control of the LTC via the SEL 2414 voltage control logic.
 - 6.1.1.15.3. Pushbutton #3: shall be labeled “Raise” and shall raise the LTC tap one position when pressed; LTC control must be in “Local” and “Manual”
 - 6.1.1.15.4. Pushbutton #4: shall be labeled “Lower” and shall lower the LTC tap one position when pressed; LTC control must be in “Local” and “Manual”
- 6.1.1.16. The SEL 2414 shall utilize the eight (8) LEDs on the front of the device as follows:
 - 6.1.1.16.1. LED #1: shall be labeled “Raise” and shall illuminate any time the input voltage is below the lower out-of-band threshold.
 - 6.1.1.16.2. LED #2: shall be labeled “Lower” and shall illuminate any time the input voltage is above the upper out-of-band threshold
 - 6.1.1.16.3. LED #3: shall be labeled “Nitrogen System Trouble” and shall illuminate for any oil preservation system alarm.
 - 6.1.1.16.4. LED #4: shall be labeled “Main Tank Temperature” and shall illuminate for any main tank temperature alarm.

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- 6.1.1.16.5. LED #5: shall be labeled “Main Tank Pressure” and shall illuminate for any main tank pressure alarm
- 6.1.1.16.6. LED #6: shall be labeled “LTC Trouble” and shall illuminate for any LTC tank pressure or temperature alarm.
- 6.1.1.16.7. LED #7: shall be labeled “Fan Bank No. 1 On” and shall illuminate when Fan Bank No. 1 is on.
- 6.1.1.16.8. LED #8: shall be labeled “Fan Bank No. 2 On” and shall illuminate when Fan Bank No. 2 is on.

7. FACTORY TESTS

- 7.1. All tests shall be made in accordance with the latest revision of ANSI C57.12.90. The Seller shall state by which method the test was made where more than one (1) test method is indicated in the test code.
- 7.2. The Seller shall provide test results including impulse test oscillograms for the Owner’s review and approval.
- 7.3. Perform the following tests:
 - 7.3.1. Resistance measurements of all windings.
 - 7.3.2. Ratio test at rated voltage and all tap connections, including all LTC steps.
 - 7.3.3. Polarity and phase relation test.
 - 7.3.4. Losses
 - 7.3.4.1. No load at rated voltage.
 - 7.3.4.2. Total losses at full load.
 - 7.3.5. Exciting current at rated voltage and 105% and 115% of rated voltage.
 - 7.3.6. Impedance at based rated MVA between all windings.
 - 7.3.7. Temperature tests for one (1) of the two units.
 - 7.3.8. Applied potential test.
 - 7.3.9. Induced potential test.
 - 7.3.9.1. Partial discharge measurements shall be made in five-minute intervals during the induced potential test on each 69kV terminal.
 - 7.3.9.2. The results shall be considered acceptable under the following conditions:
 - 7.3.9.2.1. The magnitude of the partial discharge level does not exceed 100 μv .
 - 7.3.9.2.2. The increase in partial discharge levels during the one hour does not exceed 30 μv .
 - 7.3.10. Impulse test consisting of one (1) reduced full-wave, two (2) chopped-waves, and one (1) full wave.

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- 7.3.11. Insulation power factor test using Doble Test Set with DTA results provided to Owner in electronic format.
 - 7.3.12. Sound level measurement test for one (1) of the two units at ONAN, ONAF, and ONAFAP operating modes.
 - 7.4. Before and after all factory tests have been completed, an oil sample shall be drawn from the transformer and following tests performed on the sample:
 - 7.4.1. Moisture in Oil; Interfacial Tension; Acid Number; Dielectric Breakdown Voltage;
 - 7.4.2. Dissolved Gas Analysis
 - 7.4.3. PCB's
 - 7.5. The Owner shall witness all or part of the standard tests at the Owner's option. Witness of each standard test on either individual Transformer will be acceptable to Owner. The Seller shall notify the Owner at least two (2) weeks in advance of the scheduled tests. The tests shall be performed in an orderly and timely fashion and last no more than four (4) days. Tests can be prepared for witness on either Transformer as Seller deems most efficient.
8. DOCUMENTATION
- 8.1.1. The Seller shall furnish complete assembly drawings, wiring and schematic diagrams, instructions, parts lists, and test reports as necessary for installation, operation, and maintenance of the equipment and for demonstrating that it complies with the requirements of this specification. All weights and dimensions on drawings shall be given in US units of weight and measure.
 - 8.1.2. Before manufacture, the drawings shall be submitted electronically in PDF format to the Owner for approval as soon as possible after notice of award of contract. Owner will review in an expeditious manner taking no more than 5 Business Days per review cycle.
 - 8.1.3. Work performed or materials ordered prior to receipt of Approved drawings will be at Seller's risk.
 - 8.1.4. Approval by the Owner shall not relieve the Seller of the responsibility for the correctness of the drawings furnished by the Seller nor for their compliance with the specification unless so stated at the time of approval. If, at any time before the completion of the work, changes are made necessitating revisions of approved drawings, the Seller shall make revisions and shall proceed in the same routine as for the original approval.
 - 8.1.5. The Seller shall furnish three (3) complete sets of hardcopy certified final prints and three (3) final instruction books in hardcopy. In addition, a full set of drawings shall be furnished electronically in DWG and PDF format. Instruction manuals shall be submitted electronically in PDF format.

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Exhibit A
Drawing No. 2440-XF0

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Exhibit B
Drawing No. 2440-XF1

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TRANSFORMER SHIPMENT, ASSEMBLY, AND COMMISSIONING SPECIFICATIONS

1. SCOPE

- 1.1. These specifications describe the Complete On-Site Assembly and Testing Requirements of two (2) three-phase, two winding, power Transformers with on-load tap changer (“LTC”).
- 1.2. These specifications describe the Field Service Engineering Requirements of two (2) three-phase, two winding, power Transformers with LTC.

2. GENERAL REQUIREMENTS

- 2.1. The Seller shall provide all tools, equipment, personnel, and supplies necessary to perform the assembly and engineering requirements described below.
- 2.2. Assembly and testing of the equipment shall be performed in accordance with the latest applicable manufacturing and testing standards of IEEE, ANSI, and NEMA.
- 2.3. Workmanship and materials utilized in assembly of the transformer shall be new and of highest quality.
- 2.4. Field Service Engineering personnel shall have the knowledge necessary to identify and correct conditions which preclude successful transformer energization and operation as per the Technical Specifications.
- 2.5. Field Service Engineering personnel shall represent the Seller’s interest and shall have the authority to act on Seller’s behalf while on-site.
- 2.6. At all times while a Seller’s Representative is at the Facility, Owner will have a qualified Representative at the Facility.
- 2.7. Owner will provide a restroom at Facility.

3. ON-SITE ASSEMBLY REQUIREMENTS

- 3.1. The transformer(s) shall be shipped FOB substation pads at Delivery Point.
- 3.2. Seller shall coordinate shipment with Owner to a timeframe that best suits Owner’s operational conditions. The Seller shall notify the Owner of shipment:
 - 3.2.1. Anticipated shipment minimum of fourteen (14) calendar days prior to shipment.
 - 3.2.2. Impending delivery a minimum of seventy-two (72) hours before the transformer arrives.
- 3.3. A three (3) element impact recorder shall be installed on each transformer. It is the responsibility of the Seller’s Representative to interpret the impact recorder data, inspect the transformer, and determine whether the transformer will be off-loaded and put into service or returned to the factory.
- 3.4. If utilized, Seller shall provide, unload, and stage temporary transformer foundation of suitable size and structure to allow for offloading of new transformer. Temporary foundation shall be located in an area agreed to by Owner. Seller may choose to complete their assembly responsibilities on the permanent foundation if deemed the best approach by Seller.
- 3.5. The Seller shall unload and stage the transformer at the substation site to permit assembly. Seller shall unload and stage transformer auxiliary apparatus as well as any tools, equipment, or other materials necessary to assemble the transformer.

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- 3.6. The Seller shall install the transformer's auxiliary apparatus including but not limited to radiators, fans, bushings, arrestors, etc. The Seller shall be responsible for all labor, tools, and equipment necessary to perform these installation tasks.
- 3.7. The Seller shall place the transformer on its permanent foundation. The Seller shall be responsible for all labor, tools, and equipment necessary to perform these installation tasks.
- 3.8. The Seller shall test the transformer once fully assembled on its permanent foundation. Tests shall include:
 - 3.8.1. Oil Quality Screen and DGA
 - 3.8.2. Transformer Insulation Resistance
 - 3.8.3. Transformer Core Ground and Preventative Autotransformer Core Ground Insulation Resistance
 - 3.8.4. TTR of each position of the DETC at neutral LTC position
 - 3.8.5. TTR of each position of the LTC at nominal DETC position
 - 3.8.6. Insulation Power Factor Test of *each* bushing as well as overall transformer using Doble Test Set with DTA results provided to Owner in electronic format.
- 3.9. The Seller's responsibility for AND ownership of the transformer(s) shall end when the transformer(s) are fully Commissioned.

4. FIELD SERVICE ENGINEERING REQUIREMENTS

- 4.1. Seller's field service engineer shall be present during energization of each transformer.
- 4.2. Seller's field service engineer shall be at the substation site for at least eight (8) contiguous hours of support during each separate transformer energization.
- 4.3. Seller's field service engineer shall perform visual inspection and any final pre-energization tests of each transformer as deemed necessary by Seller. Seller shall not be held responsible for work of any party not carrying out the Work of Seller under the Agreement.
- 4.4. Seller's field service engineer shall provide Owner permission to energize each transformer following Seller's field service engineer's inspections and/or tests or shall take corrective actions to remedy any deficiencies of Seller's Work.
- 4.5. Seller's field service engineer shall not be responsible for actions, connections, or any functions attributed to Owner; Seller's field service engineer's responsibilities shall be limited to each transformer comprising of all of its provided accessories.
- 4.6. The cost of any services performed by Seller's field service engineer that are deemed necessary by Seller's field service engineer prior to transformer energization or immediately following transformer energization shall borne by the Seller.

5. ON-SITE ASSEMBLY, TESTING, AND ENERGIZATION SCHEDULE REQUIREMENTS

- 5.1. Owner and Seller to coordinate as required to support assembly, testing, and energization of each transformer.
- 5.2. Due to operational constraints, Owner will be prepared to accept the first transformer on its permanent foundation no earlier than March 9, 2020, unless otherwise agreed to in writing by Owner.
- 5.3. Schedule of Work shall be consistent in approach to the following outline
 - 5.3.1. Transformer No. 1 shall be shipped, off-loaded, staged by Seller.
 - 5.3.2. Transformer No. 1 shall be assembled by Seller.

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- 5.3.3. Transformer No. 1 shall be placed on Owner's pad by Seller if not assembled on pad.
 - 5.3.4. Transformer No. 1 shall be tested by Seller per Technical Specifications.
 - 5.3.5. Transformer No. 1 shall be connected by Owner
 - 5.3.5.1. Transformer shall be connected to high voltage bus work
 - 5.3.5.2. Transformer shall be connected to low voltage bus work
 - 5.3.5.3. Transformer shall be connected to auxiliary power systems
 - 5.3.5.4. Transformer shall be connected to substation control system
 - 5.3.5.5. Owner shall require twelve (12) calendar days to complete transformer connections
 - 5.3.6. Transformer No. 1 shall be energized by Owner with Seller's Field Service Engineer present
 - 5.3.7. Transformer No. 1 shall remain energized and loaded for a period of twenty (20) calendar days. During this time the second original transformer will stay in place and cannot be removed by Owner.
 - 5.3.8. Transformer No. 2 shall be shipped, off-loaded, staged by Seller.
 - 5.3.9. Transformer No. 2 shall be assembled by Seller.
 - 5.3.10. Transformer No. 2 shall be placed on Owner's pad by Seller if not assembled on pad.
 - 5.3.11. Transformer No. 2 shall be tested by Seller per Technical Specifications.
 - 5.3.12. Transformer No. 2 shall be connected by Owner
 - 5.3.12.1. Transformer shall be connected to high voltage bus work
 - 5.3.12.2. Transformer shall be connected to low voltage bus work
 - 5.3.12.3. Transformer shall be connected to auxiliary power systems
 - 5.3.12.4. Transformer shall be connected to substation control system
 - 5.3.12.5. Owner shall require twelve (12) calendar days to complete transformer connections
 - 5.3.13. Transformer No. 2 shall be energized by Owner with Seller's Field Service Engineer present
 - 5.3.14. Transformer No. 1 and Transformer No. 2 shall be operated in parallel with Seller's Field Service Engineer present
- 5.4. Schedule of Work may be conducted such that items 5.3.8 and 5.3.9 occur concurrent to other items with Owner's approval.
- 5.5. Seller's proposed work schedule to be reviewed with and approved by Owner in writing to ensure agreement with Owner.

APPENDIX D INDEMNIFICATION

A. The Seller shall defend, indemnify, and hold harmless Owner, its elected officials, appointed officials, managers, representatives, directors, agents, consultants, and employees from and against any and all claims, or liabilities for losses, costs, or expenses (including to third parties), damage to property, injury to or death of any person, or any other liability incurred by Owner, including reasonable attorney fees (each a “Covered Claim”), arising from willful misconduct or grossly negligent acts of the Seller except to the extent that the losses, expenses, or damages were caused wholly or in part by any gross negligence or willful misconduct by the Owner. The Seller does not in any manner waive its rights and immunities provided by applicable law and/or regulation by entering into this Agreement. The Owner agrees to provide the Seller with notice of any claim made against the Owner for which the Seller may be responsible under this Section. To the extent that the Owner and the Seller are jointly liable for a Covered Claim, then liability for such Covered Claim shall be allocated between them in accordance with applicable laws of comparative fault or joint liability in effect at the time liability under a Covered Claim arises.

B. The Owner shall defend, indemnify, and hold harmless the Seller, its board members, managers, representatives, directors, agents, and employees from and against any and all claims, or liabilities for losses, costs, or expenses (including to third parties), damage to property, injury to or death of any person, or any other liability incurred by the Seller, including reasonable attorney fees (each a “Covered Claim”), arising from willful misconduct or grossly negligent acts of the Owner related to the duties of the Owner under this Agreement except: (1) to the extent that the losses, expenses, or damages were caused wholly or in part by any gross negligence or willful misconduct by the Seller and (2) only to the extent that such Covered Claim arises from an action which can be properly brought against the Owner as an exception to governmental immunity in accordance with the Political Subdivision Tort Claims Act, 42. Pa.C.S.A. §8541 et. seq. and in accordance with such limits of liability set forth in the Act, as amended. The Owner does not in any manner waive its rights and immunities provided by applicable law and/or regulation by entering into this Agreement. The Seller agrees to provide the Owner with notice of any claim made against the Seller for which the Owner may be responsible under this Section. To the extent that the Owner and the Seller are jointly liable for a Covered Claim, then liability for such Covered Claim shall be allocated between them in accordance with applicable laws of comparative fault or joint liability in effect at the time liability under a Covered Claim arises.

C. This paragraph shall survive termination of this Agreement.

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**PERFORMANCE BOND
FOR PROCUREMENT CONTRACTS**

Any singular reference to Seller, Surety, Buyer or other party shall be considered plural where applicable.
SELLER (Name and Address): SURETY (Name and Address of Principal Place
of Business):

BUYER (Name and Address):
CONTRACT
Date:
Amount:
Description (Name and Location):

BOND
Date (Not earlier than Contract Date):
Bond Number:
Amount:
Modifications to this Bond Form:

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

Seller as Principal		Surety	
Company:	(Corp. Seal)	Company:	(Corp. Seal)
Signature:		Signature:	
Name and Title		Name and Title:	
		(Attach Power of	
		Attorney) Address:	
		Telephone Number:	

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

Seller as Principal		Surety	
Company:	(Corp. Seal)	Company:	(Corp. Seal)
Signature:		Signature:	
Name and Title:		Name and Title	
		Address:	
		Telephone Number:	

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1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer for the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. If Seller performs the Contract, Surety and Seller have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.
3. If there is no Buyer Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Buyer has notified Seller and Surety pursuant to paragraph 10 that Buyer is considering declaring a Seller Default and has requested and attempted to arrange a conference with Seller and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract (If Buyer, Seller and Surety agree, Seller shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Buyer's right, if any, subsequently to declare a Seller Default); and
 - 3.2. Buyer has declared a Seller Default and formally terminated Seller's right to complete the Contract Such Seller Default shall not be declared earlier than 20 days after Seller and Surety have received notice as provided in paragraph 3.1; and
 - 3.3. Buyer has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another seller selected pursuant to paragraph 4.3 to perform the Contract
4. When Buyer has satisfied the conditions of paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Seller, with consent of Buyer, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified sellers acceptable to Buyer for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Buyer and Seller selected with Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to Buyer the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by Buyer resulting from Seller Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances, either:
 1. determine the amount for which it may be liable to Buyer and, as soon as practicable after the amount is determined, tender payment therefor to Buyer; or
 2. deny liability in whole or in part and notify Buyer citing reasons therefor.
5. If Surety does not proceed as provided in paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Buyer to Surety demanding that Surety perform its obligations under this Bond, and Buyer shall be entitled to enforce any remedy available to Buyer. If Surety proceeds as provided in paragraph 4.4, and Buyer refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Buyer shall be entitled to enforce any remedy available to Buyer.
6. After Buyer has terminated Seller's right to complete the Contract, and if Surety elects to act under paragraph 4.1, 4.2, or 4.3, then the responsibilities of Surety to Buyer shall not be greater than those of Seller under the Contract, and the responsibilities of Buyer to Surety shall not be greater than those of Buyer under the Contract. To a limit of the amount of this Bond, but subject to commitment by Buyer of the

Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 6.1. The responsibilities of Seller for correction or replacement of defective Goods and Special Services and completion of the Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from Seller's Default, and resulting from the actions or failure to act of Surety under paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Seller.
7. Surety shall not be liable to Buyer or others for obligations of Seller that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Buyer or its heirs, executors, administrators, successors, or assigns.
 8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
 9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Goods and Services are located and shall be instituted within two years after Seller Default or within two years after Seller ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 10. Notice to Surety, Buyer or Seller shall be mailed or delivered to the address shown on the signature page.
 11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Goods were to be delivered and the Special Services were to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
 12. Definitions.
 - 12.1. Balance of the Contract Price: The total amount payable by Buyer to Seller under the Contract after all proper adjustments have been made, including allowance to Seller of any amounts received or to be received by Buyer in settlement of insurance or other Claims for damages to which Seller is entitled, reduced by all valid and proper payments made to or on behalf of Seller under the Contract.
 - 12.2. Contract: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Seller Default: Failure of Seller, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4. Buyer Default: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

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Borough of Chambersburg, PA**

**PAYMENT BOND
FOR PROCUREMENT CONTRACTS**

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

SELLER (Name and Address):

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

BUYER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Bond Number:

Amount:

Modifications to this Bond Form:

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

Seller as Principal

Company: (Corp. Seal)

Signature:
Name and Title

Surety

Company: (Corp. Seal)

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

Telephone Number:

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

Seller as Principal

Company: (Corp. Seal)

Signature:
Name and Title:

Surety

Company: (Corp. Seal)

Signature:
Name and Title

Address:

Telephone Number:

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1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.

2. With respect to Buyer, his obligation shall be null and void if Seller:

- 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- 2.2. Defends, indemnifies and holds harmless Buyer from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided Buyer has promptly notified Seller and Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Seller and Surety, and provided there is no Buyer Default.

3. With respect to Claimants, this obligation shall be null and void if Seller promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

- 4.1. Claimants who are employed by or have a direct contract with Seller have given notice to Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with Seller:

1. Have furnished written notice to Seller and sent a copy, or notice thereof, to Buyer, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
2. Have either received a rejection in whole or in part from Seller or not received within 30 days of furnishing the above notice any communication from Seller by which Seller had indicated the claim will be paid directly or indirectly; and
3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Seller.

5. If a notice required by paragraph 4 is given by Buyer to Seller or to Surety, that is sufficient compliance.

6. When a Claimant has satisfied the conditions of paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

- 6.1. Send an answer to the Claimant, with a copy to Buyer, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2. Pay or arrange for payment of any undisputed amounts.

7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Buyer to Seller under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By Seller furnishing and Buyer accepting this Bond, they agree that all funds earned by Seller in the performance of

the Contract are dedicated to satisfy obligations of Seller and Surety under this Bond, subject to Buyer's priority to use the funds for the completion of the furnishing the Goods and Special Services.

9. Surety shall not be liable to Buyer, Claimants or others for obligations of Seller that are unrelated to the Contract. Buyer shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Goods relevant to the claim are located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Buyer or Seller shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Buyer or Seller, however, accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Seller shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1. Claimant: An individual or entity having a direct contract with Seller or with a Subcontractor of Seller to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for furnishing the Goods and Special Services by Seller and Seller's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.

15.3. Buyer Default: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

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NON-DISCRIMINATION FORM

During the term of the Agreement, the Seller agrees as follows:

- A. Seller shall not discriminate against any employee, applicant for employment, independent Seller, or any other person because of race, color, religious creed, ancestry, national origin, age, sex or disability. Seller shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Seller shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- B. Seller shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex, or disability.
- C. Seller shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Seller.
- D. It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that contract has delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Seller was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- E. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Seller will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, Seller shall then employ and fill vacancies through other non-discrimination employment procedures.
- F. Seller shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Seller's non-compliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Seller may be declared temporarily ineligible for Commonwealth of Pennsylvania contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- G. Seller shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to ss 49.35 (relating to information concerning compliance by Seller). If Seller does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.
- H. Seller shall actively recruit minority third-party Sellers or third-party Sellers with substantial minority representation among their employees.

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- I. Seller shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each third-party Sellers.
- J. The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.
- K. Seller obligations under this clause are limited to the Seller's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Name of Corporation, Firm or Individual

By: _____
Authorized Representative

(Please Print Signature)

Title

Date

END OF NON-DISCRIMINATION FORM

STANDARD GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

1.01 Defined Terms

A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Those written or graphic instruments issued prior to the opening of Bids in accordance with the Bidding Requirements which clarify or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.

3. *Application for Payment*--The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such support documentation as is required by the Contract Documents.

4. *Bid*--An offer or proposal submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.

5. *Bidder*--A person who submits a Bid directly to Buyer.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Form of Bid security, if any, and Bid Form with any supplements.

8. *Buyer*--The person or public entity purchasing the Goods and Special Services.

9. *Change Order*--A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an

adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A written demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Terms, or both, or other relief with respect to the terms of the Contract.

11. *Contract*--The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--Those items listed in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Files in electronic media format of text, data, graphics, and the like are not Contract Documents, and may not be relied on by Seller. Approved Shop Drawings and other Seller's submittals are not Contract Documents.

13. *Contract Price*--The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.

14. *Contract Times*--The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.

15. *Drawings*--That part of the Contract Documents prepared or approved by Buyer or its Engineer which graphically shows the scope, intent, and character of the Goods and Special Services to be furnished by the Seller.

16. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

17. *Engineer*--The person designated as such in the Agreement.

18. *Field Order*--A written order issued by Buyer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.

19. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

20. *Goods*--The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.

20a. *Installer*--The Buyer or subsequent Contractor to Buyer to provide installation of Goods according to Seller's submittals and written requirements.

21. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

22. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.

23. *Notice of Award*--The written notice by Buyer to the apparent Successful Bidder stating that upon timely compliance by the apparent Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.

24. *Notice to Proceed*--A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.

25. *Point of Destination*--The specific address of the location where delivery of the Goods shall be made as stated in the Agreement.

26. *Project*--The total undertaking of which the Goods and Special Services to be provided under the Contract are a part.

27. *Project Manual*--The bound documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

28. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods or Special Services will be judged.

29. *Seller*--The person furnishing the Goods and Special Services.

30. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods or Special Services.

31. *Special Services*-- Services associated with the Goods to be furnished by Seller as required by the Contract Documents.

32. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative details applicable thereto.

33. *Successful Bidder*--The lowest responsible Bidder submitting a responsive Bid, to whom Buyer makes an award.

34. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

35. *Written Amendment*--A written statement modifying the Contract Documents, signed by Buyer and Seller on or after the Effective Date of the Agreement and normally dealing with the administrative aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Buyer or Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper,"

"satisfactory," or adjectives of like effect or import are used to describe an action or determination of Buyer or Engineer as to the Goods or Special Services. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Goods or Special Services for compliance with the requirements of an information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.

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

3. The word "non-conforming" when modifying the words "Goods" or "Special Services," refers to Goods or Special Services that fail to conform to the Contract Documents.

4. The word "receipt" when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.

B. Day

1. The "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

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

2.02 Copies of Documents

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

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the Effective Date of the Agreement or if a Notice to Proceed is given on the date indicated on the Notice to Proceed.

2.04 Designated Representatives

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

2.05 Before Starting Fabrication/Assembly of Goods

A. *Seller's Review of Contract Documents:* Before commencing performing of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent requirements therein and, if specified, all applicable field measurements. Seller shall promptly report in writing to Buyer any conflict, error, ambiguity or discrepancy which Seller may discover and shall obtain a written interpretation or clarification from Buyer before proceeding with any work affected thereby.

2.06 Progress Schedule

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

B. The progress schedule will be acceptable to Buyer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Buyer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefore. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

2.07 Preliminary Conference

A. Within 60 days after the Contract Times start to run, a conference attended by Seller, Buyer, and others as appropriate, will be held at the address of the Buyer, 100 S. Second Street, Chambersburg, PA 17201, to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND AMENDING

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided, whether or not specifically called for, at no additional cost to Buyer.

C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Buyer as provided in Article 9.

3.02 Laws and Regulations, Standards, Specifications and Codes

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

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

undertake responsibility inconsistent with the provisions of the Contract Documents.

C. All work under this Contract shall be performed in accordance with all applicable safety codes, ordinances, and other regulations. For purposes of this Contract, neither the Buyer nor Engineer, nor their respective officers, employees, consultants, and inspectors, are to be considered experts in safety, and all safety shall be the responsibility of the Seller. The Seller shall review its work for compliance with applicable safety requirements and notify the Buyer if there are specific requirements of the Goods that require modifications to the plans and specifications to address safety considerations of the Seller's Goods. This responsibility shall include public safety and worker's safety.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract or of any standard, specification, manual or code, or of any instruction of any supplier, Seller shall promptly report it to Buyer in writing. Seller shall not proceed with the furnishing of the Goods or Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued. Seller shall not be liable to Buyer for failure to report any such conflict, error, ambiguity, or discrepancy unless Seller knew or reasonably should have known thereof.

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

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Clarifying Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods or Special Services or to modify the terms and conditions thereof by a Written Amendment or a Change Order.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods or Special Services not affecting Contract Price or Contract Times may be authorized, by one or more of the following ways: 1) a Field Order; 2) Buyer's approval of a Shop Drawing pursuant to Paragraph 5.06.D.2; or 3) Buyer's written interpretation or clarification.

ARTICLE 4 - BONDS AND INSURANCE

4.01 Bonds

A. Seller shall furnish performance and payment bonds, each in an amount equal to the Contract Price, to Buyer. The bonds shall be delivered in accordance with Paragraph 2.01 and shall remain in effect at least one year after the date final payment is due, except as provided otherwise by Laws or Regulations.

B. The bonds shall be issued in the form prescribed by the Contract Documents, except as provided otherwise by Laws or Regulations and no other forms shall be acceptable without prior written approval by Buyer, and shall be executed by a surety 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 by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on a bond is declared bankrupt or becomes insolvent or its right to do business is terminated in the state where the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, Seller shall provide another bond and surety which comply with those requirements within 20 days, at Seller's expense.

D. If Contract Price or Contract Time are changed in accordance with Article 7, Buyer may require that Seller's bonds to be modified to reflect such changes.

ARTICLE 5 - SELLER'S RESPONSIBILITIES

5.01 Supervision and Superintendence

A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations. Seller shall be responsible to see that the completed Goods and Special Services confirm to the Contract Documents.

5.02 Labor, Materials and Equipment

A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.

B. All equipment, products and material incorporated into the Goods shall be as specified, or if not specified, shall be new, of good quality and protected, assembled, used, connected, applied, cleaned and conditioned in accordance with the original manufacturer's instructions, except as otherwise may be provided in the Contract Documents.

5.03 Compliance with Laws and Regulations, Standards, Specifications and Codes

A. Seller shall comply with all Laws and Regulations applicable to the furnishing of the Goods and Special Services, including but not limited to the following:

1. The Pennsylvania Steel Products Procurement Act of 1978, P.L. 6, as amended. The Act and amendments require that the Seller use or furnish only steel products (as defined in the Act and amendments) which have been produced in the United States in connection with this Project.

5.04 Or Equals

A. Whenever an item of material or equipment to be incorporated into the Goods (herein entitled the "Component" in section 5.04) is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item is permitted other items of material or equipment or material of other suppliers or manufacturers may be submitted to Buyer for review.

1. If in Buyer's sole discretion, or if Buyer elects to employ Preston Waller & Associates, Inc. in its sole discretion (herein, the "Reviewing Engineer") such an item of material or equipment

proposed by Seller is functionally equivalent in quality and durability to that named and sufficiently similar so that no change in related work will be required, it may be considered by Buyer as an "or-equal" item, in which case review and approval of the proposed item may, in Buyer's sole discretion, be accomplished without compliance with some or all of the requirements specified in the following Paragraphs 5.04.A.3 to 5.04.A.10.

2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment, Buyer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and

b. Seller certifies that: 1) there is no increase in any cost including capital, installation or operating to Buyer; and 2) the proposed item will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

3. Substitute Items: If in Buyer's or Reviewing Engineer's sole discretion a Component proposed by Seller does not qualify as an "or-equal" item under Paragraph 5.04.A.1, it will be considered a proposed substitute item. The determination as to whether the Component is an "or-equal" or a proposed substitute item will be made during Buyer or Reviewing Engineer's review of the Component Shop Drawing, as defined in Article 1 of the General Conditions. If the Component proposed by the Seller is not considered an "or-equal" Component, the Shop Drawing will be returned to the Seller with the notation "Returned for Correction". Seller will then be required to proceed as specified in the following Paragraphs 5.04.A.4 through 5.04.A.9.

4. Submit one copy of a request for substitution, plus the number required to be returned to the entity making the request, to the Buyer or Reviewing Engineer. Each request for substitution shall cover one Component only.

5. Requests for Equal or substitutions will be accepted only from Seller and, if requests are permitted during the Bidding period, from a Bidder as defined in the Instructions to Bidders.

6. Submit, with request for substitution, Shop Drawings, Component data, warranty information, case histories, lists of projects on which the Component has been successfully used, test reports, manufacturer's company profile, name and address of manufacturer's service organization, and other data as required to establish that proposed substitute Component is fully equivalent in quality to the Component of the named manufacturer(s) and meets all Specification requirements.

7. Submit, with request for Equal or substitution, the dollar amount which the Buyer will receive as a credit toward the Contract Price if the Equal or substitution is approved. The Buyer and Reviewing Engineer reserve the right to make an independent investigation of the cost savings, to negotiate with the Seller to increase the credit, and to reject a proposed Equal or substitution if the credit is considered insufficient.

8. If entities other than the Seller are under agreement to provide Goods for the Project, attach letters, provided by other seller(s) whose work may be affected by the proposed substitution, stating that the substitution will either have no effect on their work or that the substitution will affect their work and that the entity making the request for substitution has agreed to pay any extra costs which may be incurred if the substitution is approved.

9. The entity submitting the request for Equal or substitution shall include, on its transmittal letter, the signed statement: "The signer of this letter certifies that all requirements of General Conditions Paragraph 5.04.A have been or will be met". The signer of the transmittal letter, by making this statement, affirms that: the proposed substitute Component has been investigated and has been found to equal or exceed in quality and durability the Component of the named manufacturer(s) and, further, that it meets all Specification requirements; all other sellers, if entities other than the Seller are under agreement to provide Goods for the Project, have been contacted as to the effect of the proposed substitution on their Good and that letters from all other sellers are being submitted with the request; the same Component warranty, which would have been provided by the named manufacturer(s), will be provided for the substitute Component; the entity submitting the request for substitution will coordinate installation of the proposed substitute and make any required changes to the Goods at no additional cost to the Buyer; the entity submitting the request for substitution will not make claims for additional costs, including but not limited to costs

resulting from increases in purchase price(s), or additional time required to implement the substitution; the entity making the request for substitution will reimburse the Buyer for all costs associated with review of the request for substitution, all redesign costs, and all costs required to obtain re-approval from regulatory agencies; all licenses required for use of the proposed substitute Component will be obtained and paid for by the entity submitting the request for substitution and such license(s) will be transferred to the Buyer; if required by the Buyer, the entity submitting the request for substitution will provide a special performance warranty or bond (separate from the Contract Performance Bond) as a condition of Buyer's acceptance of the proposed substitute Component (such bond may be in an amount up to Two Hundred Percent (200 %) of the dollar value of the Component as determined by the Buyer or Reviewing Engineer).

10. Buyer or Reviewing Engineer will notify the entity submitting the request, in writing, of decision to accept or reject proposed "Equal" or substitute Component.

B. *Buyer's Evaluation:* Buyer or Reviewing Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraph 5.04.A. Buyer will be the sole judge of acceptability. No "or-equal" will be ordered, manufactured or utilized until Buyer's prior written approval, Buyer will advise Seller in writing of any negative determination. Notwithstanding Buyer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Contract Documents. Any time incurred by Buyer or Reviewing Engineer in evaluating substitutions, making any required revisions to Contract Documents, and / or obtaining re-approval from regulatory agencies will be recorded. Seller will be charged for the recorded man-hours at Buyer or Buyer's consultant's current hourly rate. Charges will be subtracted from the Seller's next progress payment.

C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposal "or-equal."

D. *Data:* Seller shall provide all data in support of any such proposed "or-equal" at Seller's expense.

5.05 Taxes

A. Seller shall be responsible for all taxes and duties arising out of the sale of the Goods and the furnishing of Special Services. All taxes are included in the Contract Price.

5.06 Shop Drawings

A. Seller shall submit Shop Drawings to Buyer for review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Buyer the services, materials, and equipment Seller proposes to provide.

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

C. *Submittal Procedures*

1. Before submitting each Shop Drawing, Seller shall have determined and verified:

a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and

b. that all materials are suitable with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.

2. Seller shall also have reviewed and coordinated each Shop Drawing with the Contract Documents.

3. Each submittal shall include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Buyer shall be entitled to rely on such certification from Seller.

4. With each submittal, Seller shall give Buyer specific written notice of any variations that the Shop Drawing may have from the requirements of the Contract Documents. This notice shall be both in

a written communication separate from the submittal and by specific notation on each Shop Drawing.

D. Buyer's Review

1. Buyer will provide timely review of Shop Drawings.

2. Buyer's approval of Shop Drawings will be subject to the standard of Paragraph 1.02.A.1. Buyer's approval will not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has in writing called Buyer's attention to each such variation at the time of each submittal as required by Paragraph 5.06.C.4 and Buyer has given written notation thereof incorporated in or accompanying the Shop Drawing approval.

E. Resubmittal Procedures

1. Seller shall make corrections required by Buyer and shall return the required number of corrected copies of Shop Drawings for review and approval. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Buyer on previous submittals.

5.07 Continuing Performance

A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement

B. Seller shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Buyer. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

5.08 Seller's Warranties and Guarantees

A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance.

B. Seller warrants and guarantees to Buyer that all Goods and Special Services will materially conform with the Contract Documents, the Goods will be of merchantable quality, and will be free from defects in material and workmanship. Buyer shall be entitled to rely on representation of Seller's warranty and guarantee.

C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, improper modification or improper maintenance, or operation by persons other than Seller, or
2. normal wear and tear under normal usage.

D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Goods or Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:

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

E. Buyer shall within warranty period, notify Seller of any breach of Seller's warranties or guarantees. If Seller provides such written notice within the Warranty Period, Seller shall, at its sole option and as Buyer's sole remedy, repair or replace the parts or equipment that are the subject of the claimed breach or refund the purchase price therefore. If Seller determines that any claimed breach is not covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. The warranties contained herein are conditioned upon the Buyer not being in material default of any obligation to Seller.

F. In the event that Buyer reasonably determines that the Goods may contain defects during the warranty period and provides notice to Seller of such defects as provided above, Buyer shall then provide access to Seller to the non-conforming defective Goods, including disassembly and reassembly for visual inspection at Buyer's earliest convenience for

purposes of determining the exact nature, extent and location of such defects, as well as proposing the remedy therefor. After such inspection, Seller shall be given adequate time and opportunity to repair or replace, or otherwise remedy the defective Goods or work. Buyer shall take reasonable steps to mitigate loss or damage caused by a defect.

G. The warranty period shall be tolled from the date Seller receives written notice of the breach of warranty. The warranty shall be extended as provided for in Section 9.1.4 of the Agreement.

5.09 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Reviewing Engineer, and their officers, directors, partners, employees, agents, consultants, contractors and subcontractors from any and all claims, costs, losses, and demands or judgments for damages for claims (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to a negligent act or omission or the breach of any obligation under this Contract by Seller, or its officers, directors, shareholders, partners, employees, agents, consultants, contractors or subcontractors, or anyone for whom Seller is responsible, provided that any such claim, cost, loss, or damage;

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods or Special Services themselves), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of Seller or any individual or entity directly or indirectly employed to furnish any of the Goods or Special Services or anyone for whose acts Seller may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. The indemnification obligations of Seller under Paragraph 5.09.A shall not extend to the liability of Engineer, Reviewing Engineer, and their consultants or to the officers, directors, partners, employees,

agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

Buyer shall promptly notify Seller in writing of all claims for which Buyer may be entitled to and indemnity hereunder. Seller shall have the right to participate in the defense of such claims, and Buyer shall give Seller such information and assistance as may be reasonably necessary in the conduct of such defense.

The Seller shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the providing of Goods and Special Services, throughout the performance of the Agreement and for a period of six (6) years following completion of the obligations, including any warranty requirements, under the Agreement. The Seller further agrees to allow the Buyer to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times. Upon request, the Seller agrees to provide the Buyer with backup copies for all electronic documents generated by the Seller in performing under the terms of this Agreement or to provide the Buyer with proof of insurance coverage for valuable papers and records. The Seller shall make available all requested data and records during normal business hours.

ARTICLE 6 - SHIPPING AND DELIVERY

6.01 Shipping

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

6.02 Delivery

A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times

set forth in the Agreement, or other date agreed to by Buyer and Seller.

B. Seller shall provide written notice to Buyer at least 14 days before shipment of the manner of shipment and the anticipated delivery date. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated hour of delivery.

C. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times set forth in the Agreement, or another date agreed to by Buyer and Seller.

D. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

E. Any additional costs arising from delivery prior to or after the delivery window will be the responsibility of Seller.

6.03 Risk of Loss

A. Risk of loss and insurable interests transfer from Seller to Buyer upon Commissioning. The Buyer may reject Goods that visually appear to have been damaged during shipment.

B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as nonconforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the nonconformity or Buyer accepts the Goods.

ARTICLE 7 - CHANGES: SCHEDULE AND DELAY

7.01 Changes in the Goods and Special Services

A. Buyer may at any time, without notice to any surety, make changes in the Contract Documents within the general scope of the Contract.

B. If any such change or action by Buyer affects the Contract Price or Contract Times, Seller shall notify Buyer within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Buyer within 45 days after such occurrence. If Seller fails to do so, Seller waives any Claim for such adjustment.

C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments.

D. When submitting a Change Order request, Seller shall provide such information as Buyer may require for the preparation of the Change Order. Such information may include but not be limited to:

1. Itemized description of the addition, deletion, or revision.
2. Itemized description of the change in the Contract Price, including itemized labor costs and materials pricing data to enable determination of the necessary and reasonableness of the costs.
3. Description of the change, if any, in the Contract Time. The Seller shall submit adequate documentation to satisfactorily prove that the nature of the delay actually and unavoidably will impact the Contract Times.

7.02 Changes in Laws and Regulations

A. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of furnishing the Goods and Special Services shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 9.06.A.

7.03 Changing Contract Price or Contract Times

A. The Contract Price or Contract Times may be changed by:

1. a Change Order;
2. a Written Amendment; or

B. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include fire, floods, epidemics, abnormal weather conditions, acts of God, acts of war, directions by government authority, and other like matters. If such an event occurs and delays Seller's performance,

Seller shall notify Buyer in writing within 15 days of the beginning of the event causing the delay, stating the reason therefor.

C. Contract Times will not be modified for delays within the control of Seller, including labor strife, transportation shortages or delays at Seller's facilities. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.

D. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.

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

ARTICLE 8 - BUYER'S RIGHTS

8.01 Inspections and Testing

A. General

1. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.

2. Seller shall bear all expenses, except for travel, lodging, subsistence expenses, and consultant labor of Buyer's representatives, for inspections and tests at Seller's facility, but Buyer shall be entitled to reimbursement from Seller of travel, lodging and subsistence expenses of Buyer's representatives if the Goods are non-conforming.

3. Seller shall bear all expenses for inspections and tests at the Point of Destination, but Seller shall be entitled to reimbursement from Buyer for Seller's expenses for re-inspection or retesting if, on the basis of an initial inspection or testing, the installation of the Goods outside of Seller's scope are determined to be improper or incomplete.

4. Seller shall provide Buyer 14 days written notice of the readiness of the Goods for all inspections, test, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.

5. Buyer will give Seller timely notice of all specified test, inspections and approvals of the Goods as required by the Technical Specifications.

6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provision of Paragraph 8.02.

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

B. Inspection on Delivery

1. Inspection on Delivery shall be covered by the Agreement.

C. Final Inspection

1. Final Inspection shall be covered by the Agreement.

8.02 Non-Conforming Goods or Special Services

A. If, on the basis of inspections and testing prior to delivery, the Goods appear to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Buyer determines that the Goods are non-conforming, Seller shall promptly, without cost to Buyer, and in response to written instructions from Buyer, either correct such nonconforming Goods, or, if rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

B. Buyer's Rejection of Non-Conforming Goods

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer,

Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.

2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the nonconforming Goods as provided in Paragraph 8.02.E.

3. Upon rejection of the Goods, Buyer retains a security interest in the Goods or to the extent of any payments made and expenses incurred in their testing and inspection.

C. Remedying Non-Conforming Goods

1. If Buyer elects to permit the Seller to modify the Goods to remove the non-conformance, Seller shall provide within 7 days the proposed remedy and a schedule that shall make the Goods conforming within a reasonable time.

2. In an emergency where delay would cause serious risk of loss or damage, the Buyer may take such action as necessary to avoid such risk of loss or damage without notice or waiting for action by the Seller.

D. Buyer's Acceptance of Non-Conforming Goods

1. Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the nonconforming Goods. Seller shall bear all costs, losses, and damage attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.

E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods or Special Services, including the correction or removal and replacement of property of Buyer and others destroyed by the correction or removal and replacement of the nonconforming Goods, or the obtaining of conforming Special Services from others.

1. With respect to breach of warranty claims by the Buyer, the following provisions shall apply:

a. Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a

breach of warranty has occurred. Seller shall have ten days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure the alleged breach. The provisions of this Article shall be in addition to all other rights and remedies available to the Buyer under the Agreement and any applicable laws.

ARTICLE 9 - ROLE OF BUYER

9.01 Duties and Responsibilities

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

9.02 Clarifications and Interpretations

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

9.03 Authorized Variations

A. Buyer may authorize minor deviations or variations in the Contract Documents by: 1) issuance of approved Shop Drawings when such change or deviation was duly noted by Seller as required in Paragraph 5.06.C.4, or 2) a Field Order

9.04 Rejecting Non-Conforming Goods and Special Services

A. Buyer will have the authority to disapprove or reject Goods or Special Services which Buyer believes to be nonconforming. The acceptance at any time of materials or equipment by or on behalf of Buyer shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality, not equal to the material or equipment specified, or are not as represented to Buyer.

9.05 Decisions on Requirements of Contract Documents

A. Buyer will be the interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes, and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be communicated in writing in accordance with this paragraph.

Article 10 – Payment

10.01 Applications for Progress Payments

A. Seller shall submit to Buyer Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.

1. The first Application for Payment will be submitted after review and approval by Buyer of all Shop Drawings required by the Contract Documents.

2. The second Application for Payment will be submitted upon documented successful completion of factory testing of a Transformer.

3. The third Application for Payment will be submitted one week prior to shipping. This provision applies to each individual Transformer (Owner recognizes that the Transformers may not ship on the same date and payment will be released based on the individual Transformer's shipping date).

4. The fourth Application for Payment will be submitted upon completion of Field Performance Tests after Commissioning in accordance with Section 7 of the Agreement. This provision applies to each individual Transformer (Owner recognizes that the Transformers may not complete the Field Performance Test on the same date and payment will be based on the individual Field Performance Tests).

10.02 Review of Applications for Progress Payments

A. Buyer will, within ten days after receipt of each Application for Payment, approve and present the application for payment, or return the Application to Seller indicating in writing Buyer's reasons for refusing to make payment. In the latter case, Seller

may make the necessary corrections and resubmit the Application.

10.03 Amount and Timing of Progress Payments

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

10.04 Suspension of or Reduction in Payment

A. Buyer may suspend or reduce the amount of progress payments under the following circumstances:

1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents,

2. Buyer has requested in writing assurances from Seller that the Goods or Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request

B. If Buyer refuses to make payment of the full amount, Buyer will provide Seller immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

10.05 Final Application for Payment

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

10.06 *Final Payment*

A. If, on the basis of the review of the final Application for Payment and accompanying documentation, Buyer is satisfied that the Goods and Special Services have been furnished in accordance with the Contract Documents, the Application and accompanying documentation are appropriate as to form and substance, and that Seller's other obligations under the Contract Documents have been fulfilled, Buyer shall, within 30 days after receipt thereof, pay Seller the final amount.

10.07 *Waiver of Claims*

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

1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens and Claims, from non-conformities in the Goods or Special Services appearing after final payment, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Seller against Buyer other than those previously made in accordance with the requirements herein and expressly noted in writing by Seller as still unsettled in its final Application for Payment.

ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION

11.01 *Cancellation*

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

1. Buyer shall pay Seller for Goods, specially manufactured for the Project, plus any documented reasonable direct and indirect costs incurred by Seller in producing such Goods not recovered by payment for the reasonable value of the Goods.

2. For Goods which are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

11.02 *Suspension of Performance by Buyer*

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

11.03 *Suspension of Performance by Seller*

A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:

1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract. ("Reasonable grounds" shall not include a pending dispute or disagreement with Buyer) and,

2. Seller has requested in writing assurances from Buyer that future payment will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

11.04 *Breach and Termination*

A. Buyer's Breach

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:

a. wrongful rejection or revocation of Buyer's acceptance of the Goods,

b. failure to make payments in accordance with the Contract Documents, or

c. wrongful repudiation of the Contract.

2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for

declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure the alleged breach.

B. Seller's Breach

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:

- a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
- b. wrongful repudiation of the Contract, or
- c. delivery or furnishing of non-conforming Goods or Special Services.

2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure the alleged breach.

b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

ARTICLE 12 - LICENSES AND FEES

12.01 *Intellectual Property and License Fees*

A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any

intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.

B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

12.02 *Seller's Infringement*

A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, and their officers, directors, partners, employees, agents, Engineer, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Goods delivered hereunder.

B. In the event of suit or threat of suit for intellectual property infringement, Buyer will notify Seller within a reasonable time of receiving notice thereof.

C. Upon written demand from Buyer, Seller shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Seller fails to defend such suit or claim after written demand by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.

2. If Buyer fails to provide Seller the opportunity to defend such suit or claim after written demand by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.

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

12.03 *Buyer's Infringement*

A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).

B. In the event of suit or threat of suit for intellectual property infringement, Seller must within a reasonable time after receiving notice thereof notify Buyer.

C. Upon written demand from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.

D. If Buyer fails to defend such suit or claim after written demand by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.

E. If Seller fails to provide Buyer the opportunity to defend such suit or claim after written demand by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.

12.04 *Reuse of Documents*

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

ARTICLE 13 - DISPUTE RESOLUTION

13.01 *Dispute Resolution Method*

A. Subject to the provisions of Paragraphs 9.05, Buyer and Seller may exercise such rights or remedies as they have under Controlling Law and shall be settled by filing a complaint in the Court of Common Pleas of Franklin County, Pennsylvania, and litigating said matters in said forum.

ARTICLE 14 – MISCELLANEOUS

14.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice as defined in the Agreement, it will 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.

Where email is expressly provided for, the sender shall be responsible to confirm receipt by recipient.

14.02 *Controlling Law*

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

14.03 *Computation of Time*

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

14.04 *Cumulative Remedies*

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

particular duty, obligation, right, and remedy to which they apply.

14.05 *Survival of Obligations*

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

Receipt of Confirmation
Of
Bidding and Contract Documents

For
Commerce Street Substation Transformers

All prospective bidders who obtained the Bidding Documents electronically must fax or email this "Receipt of Confirmation" form no later than Monday, June 10, 2019 at 4:00 p.m. EST to:

Jamia L. Wright, Borough Secretary, at (717) 264-0224 or boroughsecretariesoffice@chambersburgpa.gov.

The undersigned confirms receipt of all (106) pages of the bidding and contract documents dated May 10, 2019 for the project referenced above as posted electronically at www.borough.chambersburg.pa.us.

Name of Company _____

Name of Recipient _____

Signature of Recipient _____

Title of Recipient _____

Phone No: _____

Fax No: _____

E-mail: _____

Date: _____