

<b>BUYER:</b> Flatiron/Dragados, LLC, a limited liability company formed under the laws of Delaware, and having a place of business at 1620 North Port Avenue, Corpus Christi, TX 78401.	<h1>PURCHASE ORDER</h1>	<b>OWNER:</b> Texas Department of Transportation	<b>PROJECT:</b> US- 181 Harbor Bridge Replacement Project Corpus Christi, TX.
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<b>SELLER:</b> Company Name, LLC 123 Company Address Dr Company City, TX 12345	<b>EFFECTIVE DATE:</b> 01/01/2020	<b>P.O. NUMBER:</b> 20-702-PO-XXX
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**CONTRACT:** Comprehensive Development Agreement US 181 Harbor Bridge Replacement Project, between Buyer and Owner, dated September 28, 2015 to develop, design, construct and maintain the Project.

<b>SUPPLY:</b> Per Exhibit A – Scope of Supply	<b>SPECIFICATIONS:</b> Per Exhibit A – Scope of Supply
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<b>PRICE:</b> \$XXXX.XX. It is agreed the Materials to be furnished by Seller and the prices to be paid therefor by Buyer shall be as set forth in Section II of <b>Exhibit A – Scope of Supply</b> . Buyer shall retain 0% from each progress payment made to Seller. All prices are firm and not subject to escalation or fluctuation for the entire period of execution of this Purchase Order. The quantities set out in <b>Exhibit A – Scope of Supply</b> herein are approximate only and Buyer shall be under no obligation to purchase or accept any Materials not actually required by Buyer.	<b>DELIVERY TERMS:</b> Per Exhibit B – Delivery Milestones.
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**P.O. DOCUMENTS:** This Purchase Order Agreement (“**Purchase Order**”) is entered into between Buyer and Seller as of the Effective Date and comprises the following documents: (a) this Cover Page; (b) the terms attached to this Cover Page; (c) **Exhibit A – Scope of Supply; Exhibit B – Delivery Milestones; Exhibit C – Insurance Requirements; Exhibit D – TxDOT Required Provisions; Exhibit E - Federal Requirements; Exhibit F – DBE Special Provisions; Exhibit G Lien Waivers and Exhibit H – Code of Business Ethics and Code of Conduct** attached hereto **IMPORTANT CONTRACT TERMS ATTACHED.**

**FLATIRON/Dragados, LLC.**  
(Buyer)

By: \_\_\_\_\_

Name (print): Hugo Fontirroig

Title (print): Project Executive

Date: \_\_\_\_\_

**FLATIRON/Dragados, LLC**  
(Buyer)

By: \_\_\_\_\_

Name (print): Keith Armstrong

Title (print): Project Manager

Date: \_\_\_\_\_

**COMPANY NAME, LLC**  
(Seller)

By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title (print): \_\_\_\_\_

Date: \_\_\_\_\_

## 1. SUPPLY OF MATERIALS

Seller agrees to furnish any of the materials, equipment or supplies listed in the Cover Page and/or **Exhibit A – Scope of Supply** hereto, which the Buyer requires in connection with the Project (the “**Materials**”), in accordance with the terms and specifications of this Purchase Order (“**P.O.**”).

The Materials shall be in accordance with the characteristics and specifications listed in the Cover Page and/or **Exhibit A – Scope of Supply** and all applicable statutory and regulatory requirements. If the Materials under this P.O. are meant for direct or indirect incorporation into, or use in the Project (“**Project Supplies**”), those Project Supplies shall also meet all requirements, performance standards, drawings, samples, descriptions and technical specifications contained in the Contract. Seller acknowledges having received a copy of the Contract.

Seller’s performance shall in all ways strictly conform with all applicable laws, regulations, codes, safety orders, labor agreements and working conditions to which it is subject, including but not limited to, all state, federal and local non-discrimination in employment provisions, and all applicable provisions required by Buyer’s own internal safety program. If Seller supplies Project Supplies, then Seller shall also comply with the provisions required by the Owner and listed in **Exhibit D – TxDOT Required Provisions** hereto, together with the provisions of **Exhibit E – Federal Requirements, Exhibit F – DBE Special Requirements and Exhibit E – Code of Business Ethics and Code of Conduct**, to the extent set out in Exhibit D.

## 2. DELIVERY

Unless otherwise specified in the Cover Page and/or **Exhibit B – Delivery Milestones**, all Materials furnished under a P.O. shall be delivered DDP to the Site. Notwithstanding the terms of delivery, risk of loss shall pass to Buyer only after delivery to the Site or other place designated by Buyer. Buyer’s authorized representative’s signature on Seller’s bill of lading is a condition precedent to Seller’s right to payment for the Materials.

## 3. TIME

Time is of the essence in this P.O. All deliveries of Materials shall conform to the date or dates specified in **Exhibit B – Delivery Milestones**, or as reasonably directed from time to time by Buyer. Should delivery fail to be timely, Seller shall be liable for all damages incurred by Buyer to the extent caused or contributed by such delay of Seller. The existence of a dispute between Buyer and Seller, not involving a material breach by Buyer in performance of a condition precedent to Seller’s performance, shall not relieve Seller of its obligation to perform under this P.O.

If Seller fails to furnish any of the Materials set out herein within the time specified and to the reasonable satisfaction of Buyer, Buyer may, at its election, purchase such Materials elsewhere, and Seller shall pay the amount by which the cost of such Materials exceeds the price specified in this P.O., together with any additional expenses reasonably incurred by Buyer in connection therewith. Notwithstanding the above provisions, if such delay of Seller’s deliveries is caused by a supervening event such as fires, floods, abnormal weather conditions, earthquakes, war or other civil disturbances, government orders or regulations, strikes, lockouts or other acts of God beyond Seller’s control then Seller shall be entitled to relief to the same extent Buyer is entitled to and receives relief under the Contract. In such event, Seller shall promptly but in any event within three days give notice to Buyer of such supervening event. Upon receipt of timely notice, Buyer will diligently pursue such entitlement or right with the Owner in accordance with the provisions of the Contract.

## 4. INVOICING & PAYMENT

Seller’s invoice for all Materials furnished by Seller during the preceding month shall be submitted to Buyer no later than the seventh (7<sup>th</sup>) day of the month following the month in which the Materials are shipped. Each invoice shall reference the P.O. number. Seller shall provide partial lien waivers in the amount of each invoice and in the form set out in **Exhibit G – Lien Waivers** and shall also provide affidavits from Seller and its material suppliers and vendors.

Buyer shall pay invoices within thirty days after receipt of a valid and properly documented invoice. Payment by Buyer shall not be construed to be an acceptance of improper, defective or unsuitable Materials, nor as evidence of the performance of any obligation of Seller specified in this P.O. Notwithstanding the aforementioned, if the Materials include Project Supplies Buyer shall pay invoices for such Project Supplies within ten days after the Buyer’s receipt of payment from the Owner for the material delivered/shipped. However, if as a result of Buyer’s failure to comply with the Contract the Owner does not pay Buyer for Project Supplies properly delivered/shipped by Seller, Buyer shall nevertheless pay Seller for such Project Supplies within ten days after the date on which the Owner would have paid Buyer for such Project Supplies.

In the event the Materials ordered herein are being provided based on a “Not-to-Exceed Aggregate Maximum Amount”, Seller shall notify Buyer when 75% of the Not-to-Exceed Aggregate Maximum Amount of this P.O. has been committed. Buyer will then determine the necessary amount of additional funds (if required) that will be added to this P.O. by way of change order.

## 5. WARRANTIES

All Materials will have a two-year warranty starting from the date of delivery. Seller warrants and guarantees the Materials provided hereunder and agrees to correct, at its own expense, any defects in such Materials that may occur or develop prior to Buyer’s release from responsibility to Owner. Seller warrants to Buyer that Seller has fully and carefully reviewed the provisions, specifications, drawings, samples or other descriptions contained or referenced in this P.O. and, with regards to Project Supplies, the Contract. Seller warrants to Buyer that the Materials shall be free from all defects, shall be of the quality specified, shall be fit and appropriate for the purpose intended as disclosed to Seller. Seller further warrants that the Materials will be complete in all respects necessary to make the Materials fully functional if properly installed. All warranties implied by law or usage of trade are incorporated into this P.O. and shall apply to all services and Materials. Seller shall provide all written warranties, equipment manuals and the like to Buyer and shall transfer and assign all manufacturers’ warranties to Buyer. The aforementioned warranties are in addition and

supplemental to those warranties required by Section 10.1 of the Contract, the terms and duration of which are incorporated herein, with respect to Project Supplies. Such warranties and guarantees in no way limit Buyer’s remedy for breach by Seller of the terms of this P.O.

## 6. INDEMNIFICATION

**TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER AGREES TO INDEMNIFY, DEFEND, AND HOLD BUYER, AND EACH OF ITS AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “INDEMNIFIED PARTIES”) HARMLESS (A) FROM ANY AND ALL CLAIMS, SUITS AND LIABILITY FOR INFRINGEMENT OR VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHT ARISING IN CONNECTION WITH THIS P.O. OR FROM THE USE BY BUYER OF ANY OF THE MATERIALS FURNISHED TO IT BY SELLER; AND (B) AGAINST ALL LOSSES, DAMAGE, LIABILITIES AND CLAIMS OF ANY KIND, INCLUDING ACTUAL ATTORNEYS’ FEES AND EXPERTS’ OR CONSULTANTS’ FEES, WHICH ARISE DIRECTLY OR INDIRECTLY OUT OF SELLER’S PERFORMANCE OF ITS OBLIGATIONS (OR LACK THEREOF) UNDER THIS P.O., IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO LIABILITY FOR INJURIES TO PROPERTY OR PERSONS, INCLUDING DEATH. HOWEVER, SELLER SHALL NOT BE OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTIES TO THE EXTENT OF THE INDEMNIFIED PARTIES’ NEGLIGENCE, RECKLESS OR INTENTIONAL MISCONDUCT, BAD FAITH, FRAUD, BUYER’S BREACH OF THIS P.O. OR THE INDEMNIFIED PARTIES’ VIOLATION OF APPLICABLE LAW.**

If this P.O. includes Project Supplies, then the Owner and the Indemnified Parties under the Contract will also be considered an Indemnified Party for the purposes of this Section 6.

## 7. INSURANCE REQUIREMENTS

Throughout the term of this P.O. and thereafter as applicable, Seller shall maintain insurance per the terms set forth in **Exhibit C – Insurance Requirements** hereto.

## 8. TERMINATION & FAILURE TO PAY

Buyer may terminate this P.O. at any time without cause by written notice to Seller and, following such termination, shall pay the Seller for Materials furnished by Seller and accepted by Buyer, plus the unavoidable costs incurred in cancelling orders placed before such termination. Notwithstanding the foregoing, the applicable provisions of **Exhibit D – TxDOT Required Provisions** shall apply if the Owner terminates the Contract for convenience.

If Seller defaults in the performance of any of its obligations hereunder, or is delayed in the furnishing of the Materials set out herein, Buyer may terminate this P.O. and all further liability or obligation of Buyer to Seller shall cease, except liability for the payment of Materials previously furnished by Seller and accepted by Buyer, less any amounts due to Buyer under Section 3.

If Buyer believes Seller is delaying or defaulting in its payments to any supplier, laborer or other third party which could give rise to a claim, stop notice or lien against Buyer, its sureties, Owner or the Project, Buyer may pay such obligation(s) directly and deduct the amount from payments otherwise due or to become due to Seller, or require evidence of payment and release of same prior to payment to Seller, pay by check with Seller and obligee as joint payees, or take other reasonable steps to protect Buyer and its sureties. Buyer shall provide Seller with written notice of amounts to be withheld on account of unpaid obligations of Seller.

## 9. DISPUTES - APPLICABLE LAW

Seller agrees that disputes arising from this P.O. involving the Owner (a “**Seller Dispute(s)**”) shall be resolved pursuant to Section 19 of the Contract, and Seller agrees to be made a party to any proceedings brought under the Contract and to have its liability determined therein. Seller further agrees that it will be bound to any adjudicated determination of its rights and remedies and will only receive from Buyer what Buyer is entitled to receive from Owner on Seller’s behalf. Seller further agrees: (a) to submit such Seller Disputes to Buyer in a proper form and in sufficient time to allow processing by Buyer in accordance with Section 19 of the Contract; (b) that, to the extent a Seller Dispute is involved, completion of all steps required under Section 19 of the Contract shall be a condition precedent to pursuit by Seller of any other remedies permitted by law, including institution of a lawsuit against Buyer; (c) that any Seller Dispute brought against a surety, that also is actionable against the Owner through Buyer, shall be stayed until completion of all steps required under this Section 9; and (d) that the existence of a dispute resolution process for Seller Disputes shall not be deemed to create any claim, right, or cause of action by Seller (or its sub-contractors) against the Owner. Seller shall, at all times, have rights and remedies only against Buyer. This Section 9 applies to disputes and claims for any sub-subcontractor at any tier.

Disputes between Buyer and Seller not involving the Owner concerning the party’s rights under this P.O., shall be settled by arbitration before a single arbitrator in accordance with the then current JAMS Comprehensive Arbitration Rules & Procedures and judgment upon the award rendered may be entered in any court having jurisdiction. The place of such arbitration shall be Dallas, TX. This P.O. is governed by the laws of the State of Texas.

## 10. MISCELLANEOUS

Seller shall not assign or sublet this P.O. or any part thereof, including payments due or to become due thereon, without the written consent of Buyer.

This P.O. supersedes any and all other representations and agreements, either oral or in writing, of the parties with respect to its subject matter (including any proposal received from Seller) and contains all of the covenants and agreements between the parties. The parties acknowledge that no other representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on their behalf, which are not embodied herein, and that no other agreements, statements or promises not contained in this P.O. are valid and binding. Any modification to this P.O. will be effective only if in writing, signed by the party to be charged.

Unless authorized hereunder or by Buyer in writing, Seller shall hold in confidence and not disclose and not permit any person any manner of access to any confidential or proprietary information acquired at any time by Seller pursuant to this P.O.

**EXHIBIT A**  
**SCOPE OF SUPPLY**

**I. DESCRIPTION**

[...]

**II. MATERIAL PRICE LIST**

Line Item	UoM	Quantity	Description	Unit Price (USD)	Total
1					\$ -
2					\$ -
				Sub-total:	\$ -
				Taxes:	\$ -
				<b>Total:</b>	<b>\$ -</b>

**III. SPECIFICATIONS**

[...]

**EXHIBIT B**  
**DELIVERY MILESTONES**

All Materials to be delivered DDP on Site in conformance with the following milestones and dates:

- [Example 1: First Delivery – March 10, 2017: steel pier caps for structures “A1”, “A2” and “A6”...]
- [Example 2: Request amount of Materials to be delivered within ten calendar days from Buyer’s written order]
- ...
- ...
- ...
- ...
- ...

14 days prior to any shipment, supplier will submit a detailed packing list, the certificate of origin and a copy of the commercial invoice. These documents are to be submitted electronically to the attention of [ ] at \_\_\_\_\_@harborbridgeproject.com.

Seller shall send a shipping list and bill of lading with each delivery.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Part A. Seller's Insurance.**

Seller shall maintain insurance as set forth in this Exhibit C at all times throughout the performance of its obligations under this P.O. or for longer periods as specifically stipulated. The policies will be issued by insurance companies satisfactory to Buyer. Buyer shall have the right, without limitation, to reject any insurance company selected by Seller that has an A.M. Best rating of less than A"VIII" or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa. In the event Seller employs any sub-contractors, it shall ensure that such sub-contractors comply with all of the insurance requirements in this Exhibit C.

- 1 Comprehensive Business/Automobile Liability Insurance. This insurance shall be on a current ISO form or equivalent and apply on an "any auto" basis, including all vehicles used in connection with the Work, and provide annual limits of at least **\$1,000,000** per occurrence - bodily injury and property damage combined including uninsured and underinsured motorist coverage and medical payment protection. Coverage shall include, without limitation, loading and unloading.
- 2 Workers' Compensation (including but not limited to coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable) – Statutory Limits for the state(s) in which the Work will take place. Self-insurance is not acceptable.
- 3 Employer's Liability This insurance shall have limits of at least **\$1,000,000** (per bodily injury/disease and annual aggregate).
- 4 Commercial General Liability Insurance. This insurance shall be provided by a current ISO occurrence form policy, including, without limitation, coverage for damages because of bodily injury, property damage and personal and advertising injury. This insurance shall include, without limitation, coverage for the products-completed operations hazard.
  - 4.1 This insurance shall have annual limits of at least **\$1,000,000** combined single limit for bodily injury and property damage, each occurrence. This insurance shall be maintained from commencement of the Work until not less than **10 years** after **substantial completion of the Project**.
  - 4.2 This insurance shall include separate limits per occurrence, dedicated to the Project.
- 5 Umbrella and Excess Liability. This insurance shall provide excess annual liability limits of at least **\$5,000,000** in the form of an umbrella or excess liability policy. This insurance shall follow form to the Employer's Liability, Commercial General Liability and Automobile Liability policies and "drop down" for defense and indemnity in the event of exhaustion of the underlying insurance. (The limits of liability required in this section may be satisfied with a combination of general liability, umbrella and/or excess policies of insurance where applicable, provided that such policies comply with all of the provisions hereof including, without limitation, with respect to scope of coverage, naming of the Insured Parties as additional insureds and applying as primary and non-contributory to any other insurance available to the additional insureds).
- 6 Professional Liability Insurance. This insurance shall include annual limits of at least **\$5,000,000** per claim and in the aggregate. This insurance must be maintained for at least **5 years** following completion of the Work. This requirement shall apply only if Supplier's work under this P.O. involves any type of design or engineer work.
- 7 Contractor's Pollution Liability Insurance. Any sub-contractor whose work involves removal or treatment of hazardous materials will provide and maintain contractor's pollution liability insurance with annual limits of at least **\$10,000,000**, and shall continue to maintain such insurance for a period of not less than **5 years** following substantial completion of the Project.

**Part B. General Insurance Requirements.**

- 1 To the fullest extent permitted by law, Owner, Buyer, and such other parties as Buyer may designate, shall be listed as additional insureds on each sub-contractors' Commercial General Liability, Business Auto Liability and Umbrella/Excess policies. Each policy (including umbrella/excess) shall state that the insurance provided to the additional insureds is primary and non-contributory to any other insurance (including primary, excess, self-insurance, or on any other basis) available to the additional insureds. The policies Seller (and its sub-contractors) provides in compliance with this Exhibit C shall not eliminate or restrict coverage for claims or suits between named insureds and additional insureds. To the fullest extent permitted by law, the coverage provided to the additional insureds must be at least as broad as that provided to the Seller who is the first named insured on each policy. In the event that any policy provided in compliance with this Exhibit C states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this P.O. is intended to restrict or limit the breadth of such coverage. With respect to the Commercial General Liability policy, additional insured status must be provided using a current I.S.O. endorsement(s) or its equivalent(s). The Commercial General Liability insurance must also include I.S.O. CG 20 01 04 13 or its equivalent.
- 2 The limits of insurance provided by Seller or its sub-contractors shall be the greater of the limits maintained in the normal course of Seller or its sub-contractors' business or the minimum limits specified in this Exhibit C. The limits of insurance stated above for each type of insurance are minimum limits only; in the event any Seller's (or its sub-contractors') policy provides greater limits, then the additional insureds shall be entitled to, or to share in, the full limits of such policy, and this P.O. shall be deemed to require such full limits.
- 3 Certificates of Insurance ("COIs"), in duplicate, evidencing all required coverages must be submitted to Buyer prior to the commencement of any supply and prior to any personnel coming onto the Project site. Seller shall collect COIs from each of its sub-contractors for all insurance

required by this Exhibit C. Seller shall continue to provide to Buyer (and to collect from its sub-contractors and provide to Buyer) COIs annually, and in the event of any change in insurer, limits or coverage, during the entire time period for which such insurance is required under this Exhibit C.

Seller's (including its sub-contractors') failure to provide a COI shall not relieve it of its responsibility to carry and maintain the insurance required by this Exhibit C. Buyer's failure to demand or inspect a COI and/or Buyer's failure to identify or object to any discrepancy therein is not a waiver of any requirement contained in this Exhibit C or elsewhere in this P.O. At Buyer's request, Seller (and its sub-contractors) shall provide Buyer with a copy of the insurance policies required hereunder, and any and all endorsements or riders thereto, evidencing compliance with all requirements contained in this P.O., all in form and substance satisfactory to Buyer. With respect to Seller's obligations hereunder, Buyer's failure to inspect such policies and/or endorsements, and/or Buyer's failure to identify or object to any discrepancy therein, is not a waiver of any requirement contained in this Exhibit C or elsewhere in this P.O.

- 4 All policies shall contain a provision that coverages afforded under the policies shall not be canceled, materially changed or not renewed unless at least thirty (30) days prior written notice has been given to Buyer, at the address set out above.
- 5 To the fullest extent permitted by law, all insurance Seller (or its sub-contractors) furnishes in compliance with this Exhibit C shall include a waiver of subrogation in favor of Buyer and the other additional insureds, the Indemnified Parties, and any other party requested by Buyer.
- 6 If the insurance provided by Seller (or its sub-contractors) excludes or limits coverage for named insureds because a contractor controlled insurance program has been provided for this Project, such limitation or exclusion may only apply to the extent of valid and collectible insurance available from the contractor controlled insurance program. No such exclusion or limitation may apply to Buyer or any other additional insured.
- 7 The policies Seller (or its sub-contractors) furnishes in compliance with this Exhibit C shall not be subject to any self-insured retention in excess of \$25,000 unless approved in writing by Buyer. Seller (and its sub-contractors) shall be responsible for any deductible or self-insured retention due under any insurance they provide. The coverage afforded to the additional insureds shall not be conditioned on the payment of any deductible or retention.
- 8 To the fullest extent permitted by law, if Seller (or its sub-contractors) fails to furnish the required COIs or maintain the coverage required under this Exhibit C or if any of the insurance is cancelled or changed such that it is no longer compliant with this Exhibit C, Buyer may: (1) immediately terminate this P.O. and Seller will reimburse Buyer for any and all losses resulting from such Seller's failure, or (2) Buyer may procure substitute insurance and Seller shall reimburse Buyer for all associated costs including insurance premiums or such costs will be offset against amounts otherwise payable to Seller under this P.O. To the fullest extent permitted by law, in the event a Seller's failure to comply with any aspect of this Exhibit C results in payment for defense or indemnity by Buyer and/or any Additional Insureds or by Buyer and/or any other additional insured party's insurance, Seller shall indemnify such party for the full amount paid by Buyer and/or any Additional Insured or by such party's insurance, and Seller shall not be entitled to an off-set whatsoever, from other insurance. This remedy is without prejudice to or limitation of any other remedy available to Buyer under the terms of this P.O. or applicable law.

#### **Part C. Limitation.**

The insurance requirements described in this Exhibit C exist for the sole and exclusive benefit and protection of Buyer, Seller and the insured parties. The required insurance described in this Exhibit C are not intended to benefit any other parties including, without limitation, parties not covered by the insurances or claimants (regardless of whether such claimant's claim(s) are covered by the insurances and regardless of against whom such claimant makes claim(s)).

#### **Part D. Seller's Representations and Warranties to Buyer.**

Seller represents and warrants to Buyer that all information they submit to Buyer shall be accurate and complete. Nothing contained in Article 7 of the P.O. or this Exhibit C shall be construed as a limitation of Seller's liability for damage or injury, including death, which arises out of Seller's performance of its obligations under this P.O.

**EXHIBIT D**  
**CONTRACT REQUIRED PROVISIONS**

The provisions required by the Contract to be included in this P.O. are incorporated herein by reference to the extent they relate to the supply of the Project Supplies, including, without limitation, each of the provisions set forth below. Seller shall comply with all such provisions, and Seller shall ensure that all provisions required to be included in any subcontracts are included in such sub-subcontracts and that each of its sub-subcontractors agree to comply with such provisions. Capitalized terms used in this Exhibit D shall bear the meaning attributed to them in the Contract and this P.O.

1. Seller shall perform its obligations under this P.O. in accordance with a standard of professional responsibility and commercial practice equal to the requirements of this P.O. and Good Industry Practice for supplies of similar scope and scale.
2. Seller agrees to carry out its obligations under this P.O. in accordance with the Contract, this P.O., Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.
3. Without cost to Buyer or the Owner, Seller expressly permits assignment to the Owner or its successor, assign or designee of all of the Buyer's rights under this P.O., contingent only upon delivery of request from the Owner following termination of the Contract, allowing the Owner or its successor, assign or designee to assume the benefit of the Buyer's rights with liability only for those remaining obligations of the Buyer accruing after the date of assumption, such assignment to include the benefit of all of the Seller's warranties, indemnities, guarantees and professional responsibility.
4. Seller acknowledges and agrees that any acceptance of assignment of this P.O. by the Owner or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of this P.O. by Buyer or for any amounts due and owing under this P.O. for work or services rendered prior to assumption (but without restriction on the Seller's rights to suspend work or demobilize due to Buyer's breach).
5. Seller covenants to recognize and attorn to the Owner, upon receipt of notice from the Owner that it has exercised its rights under the Contract, without necessity for consent or approval from the Buyer or to determine whether the Owner validly exercised its rights, and the Buyer hereby covenants to waive and release any claim or cause of action against Seller arising out of or relating to its recognition and attornment in reliance on any such notice.
6. Seller will: (a) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged; (b) permit audit thereof with respect to the Project or its supply under this P.O. by each of Buyer and the Owner pursuant to section 20.5 of the Contract; and (c) provide progress reports to Buyer appropriate for the type of work it is performing sufficient to enable Buyer to provide the reports it is required to furnish the Owner under the Contract.
7. Seller acknowledges that Buyer has the right to terminate this P.O. in whole or in part upon any Termination for Convenience of the Contract without liability of Buyer or the Owner for Seller's lost profits or business opportunity. In particular, in the event of a termination for convenience by Owner, Seller will
  - (i) not be entitled to any anticipatory or unearned profit, or to any payment which constitutes consequential damages on account of the termination or partial termination;
  - (ii) abide by the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience by Owner;
  - (iii) accept any assignment of this P.O. or the Seller's Warranties (as such term is defined below) to Owner; and
  - (iv) execute any documents and perform any actions necessary to give effect to the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience and comply , and allow Buyer to comply, with the provisions of section 15.1 of the Contract.
8. Seller will participate in meetings between Buyer and the Owner, upon the Owner's request, concerning matters pertaining to this P.O.; provided, however, that all direction to Seller shall be provided by Buyer, and provided further that nothing in this clause shall limit the authority of the Owner to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.
9. Seller will give evidence in any dispute resolution proceeding pursuant to section 19 of the Contract, if such participation is requested by either Buyer or the Owner.
10. Seller acknowledges that all Liens, claims and charges of Seller and its sub-subcontractors at any time shall not attach to any interest of the Owner in the Project or the Project ROW.
11. Seller covenants, which covenant shall survive termination of this P.O., to promptly execute and deliver to Owner a new contract between Seller and the Owner on the same terms and conditions as this P.O., in the event: (a) this P.O. is rejected by Buyer in bankruptcy or otherwise wrongfully terminated by Buyer and (ii) the Owner delivers request for such new contract following termination or expiration of the Contract.

12. Seller is not, and will not enter into any subcontracts with any Person that is, debarred or suspended from submitting bids by any agency of the State of Texas.
13. The Parties acknowledge and agree that they may not amend any of the foregoing provisions in this **Exhibit D – Contract Required Provisions** without the prior consent of the Owner.
14. In the performance of its obligations under the P.O., Seller at all times shall comply with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.
15. Seller shall comply and require its Subcontractors to comply with all federal requirements applicable to transportation projects that receive federal-aid funding or other federal funds or credit, including those requirements set forth in Exhibit 3 of the Contract (which is appended as Exhibit E of this PO). Seller shall deliver any certification required pursuant to such federal requirements to Buyer. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.
16. During all periods necessary for the performance of the scope of this P.O., Seller will maintain all required authority, license status, professional ability, skills and capacity to perform its scope under this P.O.
17. Seller shall comply with all requirements of all Laws applicable to the D&C Work, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended.
18. Seller shall comply with the applicable requirements of the approved Project Management Plan.
19. Seller shall at all times coordinate and cooperate with Owner and its Authorized Representative to facilitate Owner's oversight activities.
20. Seller agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances, standards, rules and regulations applicable to the scope of its obligations under this P.O. including, but not limited to, all applicable standards, rules, laws, regulations, and federal and State orders related to federal and State labor laws, occupational safety, health standards, equal employment opportunity, minority business enterprises, women's business enterprises, disadvantage business enterprises ("DBE"), Environmental Laws, Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended, and all other laws with which Seller must comply according to the P.O. Seller shall be liable to Buyer and the Owner for all loss, cost and expense attributable to any acts of commission or omission by Seller, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.
21. The Owner's DBE Special Provisions for Non-Traditional Contracts, applicable to the Project, are set forth in Exhibit 6 of the Contract (which is appended as Exhibit F of this PO). The purpose of the DBE Special Provisions for Non-Traditional Contracts is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Seller shall comply with all applicable requirements set forth in the DBE Special Provisions for Non-Traditional Contracts and the Owner's Disadvantaged Business Enterprise Program applicable to comprehensive development agreement projects and adopted pursuant to 49 CFR Part 26, and the provisions in the Buyer's approved DBE Performance Plan, set forth in Exhibit 7 of the Contract. The approved overall DBE participation goal for the Project, including construction and professional services, is established as 9% of the D&C Price. Seller shall exercise good faith efforts to achieve such DBE participation goal in the scope of this P.O. through implementation of Buyer's Owner-approved DBE Performance Plan related to the scope of this P.O. Seller shall include provisions to effectuate the requirements of this subsection 21 in every sub-subcontract (including purchase orders and in every sub-subcontract for the scope of this P.O.), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. Seller shall not cancel or terminate any sub-subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of subcontracts with DBE firms set forth in the DBE Special Provisions for Non-Traditional Contracts in Exhibit 6 of the Contract (which are appended as Exhibit F of this PO).
22. Seller shall not, and shall cause its sub-subcontractors to not, discriminate on the basis of race, color, national origin, sex, age or handicap in the performance of its obligations under this P.O. Seller shall carry out, and shall cause its sub-subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Seller to carry out these requirements is a material breach of this P.O., which may result in the termination of this P.O. and the Contract or such other remedy as Buyer deems appropriate (subject to the Seller's rights to notice and opportunity to cure set forth in this P.O.). Seller shall include the language in this subsection 22 in every sub-subcontract (including purchase orders and in every subcontract for the scope of this P.O.), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. Seller confirms for itself and all sub-subcontractors that Seller and each sub-subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, or handicap; and that Seller and each sub-subcontractor maintains no employee facilities segregated on the basis of race, color, religion, or national origin. Seller shall comply with all applicable laws relating to equal employment opportunity and nondiscrimination, including those set forth in Exhibit 3 of the Contract (which is appended as Exhibit E of this PO), and shall require its sub-subcontractors to comply with such provisions.
23. Seller hereby agrees to abide by the applicable portions of the Buyer's Job Training Plan/Small Business Opportunity Plan set



forth as Exhibit 8 to the Contract. Seller shall include this subsection 23 in every sub-subcontract (including purchase orders and task orders for the scope of this P.O.), and shall require that each sub-subcontractor include this section in all sub-subcontracts at lower tiers (including purchase orders and task orders for the scope of this P.O.), except for sub-subcontracts with the Owner or Governmental Entities, so that such provisions will be binding upon each sub-subcontractor.

24. Seller shall pay or cause to be paid to all applicable workers employed by it or its sub-subcontractors to perform its obligations under the P.O. not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3 to the Contract (which is appended as Exhibit E of this PO). Seller shall comply and cause its sub-subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with the Owner or Governmental Entities. Any issue between Buyer or Seller, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15<sup>th</sup> day after the date the Owner makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code. Seller shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.
25. Any Project Supplies supplied under this P.O. (“**Seller’s Warranties**”) shall (a) be under warranty from a period starting with the delivery of Project Supplies and ending, at least, one year after Project Final Acceptance and (b) survive all Owner inspections, tests and approvals. Seller’s Warranties shall be extended to Owner and any third parties for whom Project Supplies are supplied under this P.O.; provided however that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Owner using commercially reasonable efforts.
26. Seller shall cooperate and provide
  - (i) such information as determined necessary or desirable by Owner in connection with any Project financing;
  - (ii) such information as is necessary or requested by Owner to assist or facilitate the submission by Owner of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.
27. Seller acknowledges that, if the amount of the P.O. exceeds \$10,000,000, Seller is considered a “Major Subcontractor” under the Contract. In that case:
  - (i) Seller shall have submitted to Developer, immediately prior to executing the P.O., a copy of all documentary information used in determining its P.O. price, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;
  - (ii) Seller shall submit to Developer, immediately prior to executing each change order, a copy of all documentary information used in determining its price for Materials included in any Change Order, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;
  - (iii) Seller represents and warrants, for the benefit of Buyer and Owner, that Seller’s submission in the EPDs, constitutes all the documentary information used in establishing its P.O. price, and agrees to provide a sworn certification in favor of Buyer and Owner together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current.

**EXHIBIT E**  
**FEDERAL REQUIREMENTS**

*(See EXHIBIT 3 - FEDERAL REQUIREMENTS to the Contract)*

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	24
Attachment 3 – Federal Prevailing Wage Rate	8
Attachment 4 – Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)	6
Attachment 5 – Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	5
Attachment 6 – Certification Regarding Use of Contract Funds for Lobbying	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects	4

**EXHIBIT F**

**DBE SPECIAL PROVISIONS**  
**FOR NON-TRADITIONAL CONTRACTS**

*(See Exhibit 6 - DBE SPECIAL PROVISIONS FOR NON-TRADITIONAL CONTRACTS to the Contract)*

## EXHIBIT G

COUNTY OF \_\_\_\_\_ §

JOB NO.:

On receipt by the signer of this document of a check from Flatiron/Dragados, LLC in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (*payee or payees of check*) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_ (*job or material description*).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this is progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

BY : \_\_\_\_\_ ( *Signature* )

\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_  
(title) of \_\_\_\_\_ (subcontractor/supplier), known to me or proved through photo identification.

Notary Public in and for the State of Texas

My commission expires\_\_\_\_\_

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a condition release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

The signer of this document has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment, or materials furnished to the project for Flatiron/Dragados, LLC on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_(description of work performed/material delivered). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

DATE: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

BY : \_\_\_\_\_ ( Signature)

\_\_\_\_\_ (Title)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_  
(title) of \_\_\_\_\_ (subcontractor/supplier), known to me or proved through photo identification.

\_\_\_\_\_

Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

On receipt by the signer of this document of a check from Flatiron/Dragados, LLC in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (*payee or payees of check*) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_ (*job or material description*).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or final payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this is final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

BY : \_\_\_\_\_ ( *Signature* )

\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_  
(title) of \_\_\_\_\_ (subcontractor/supplier), known to me or proved through photo identification.

Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC regarding the Project on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_ (*description of work performed/material delivered*). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a final payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_ (*Company Name*)

BY : \_\_\_\_\_ (*Signature*)

\_\_\_\_\_ (*Title*)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*subcontractor/supplier*), known to me or proved through photo identification.

\_\_\_\_\_

Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

## **EXHIBIT H**

### **CODE OF BUSINESS ETHICS AND CODE OF CONDUCT**

Contractor has a longstanding reputation for honesty and integrity in its business dealings and for its corporate policies promoting lawful and ethical behavior. Contractor is committed to upholding that reputation and has adopted policies which govern the actions of all of its employees. Pursuant to those policies, Contractor employees are prohibited from accepting bribes or kickbacks, in any form and, further, are prohibited from accepting goods or services provided by a subcontractor, supplier or vendor for the personal benefit of the employee, his or her relatives, or any entity in which the employee or his or her relatives has a personal interest. This prohibition includes, but is not limited to; work performed on an employee's residence and applies regardless of whether the beneficiary of the goods or services pays for them. Therefore, if the Subcontractor offers or provides a bribe or kickback to any employee, or offers or provides goods or services to any employee, his or her relatives, or any entity in which the employee or his or her relatives has a financial interest, the Subcontractor will be considered to be in material breach of this Subcontract. Subcontractor undertakes the commitment to advise Contractor of any action by any entity or person associated with the project that Subcontractor believes violates any applicable law, rule or regulation. Subcontractor's violation of any of the foregoing shall be considered as Subcontractor's failure to perform its obligation, under the terms and conditions of this Agreement. Such failure shall be considered adequate and justifiable ground for Contractor to effectuate its rights and remedies under the termination provision of this Agreement. The provision, of this Article must be incorporated into any subcontract Subcontractor enters into in connection with the performance of the Work. Additionally, the Contractor, a subsidiary of Flatiron Constructors, Inc. and Dragados USA, Inc., has adopted corporate practice policies applicable to this Subcontract. Subcontractor agrees to comply, and to cause its subcontractors to comply, with the Dragados USA, Inc. Code of Business Ethics and Code of Conduct for Business Partners set forth at:

<http://www.dragados-usa.com/files/CodeofConduct2013.pdf>.