



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: Agreements

Item No:

Date: January 19, 2021

Originating Department: Public Works

Issue: In the matter of PO No 4500373437 between Gas Transmission Northwest and Klamath County for noxious weed control.

Background: Klamath County enters into agreements with outside agencies to treat noxious weed infestations on their property. The purpose of this PO is to control the growth and spread of noxious and non-native weeds at Gas Transmission Northwest locations in Klamath County.

Fiscal Impact: Income of 3,500.00 to the Weed Control Budget

Recommended Motion: Board approve and authorize chair to sign PO No 4500373437 between Gas Transmission Northwest and Klamath County for noxious weed control. Fiscal Impact is \$3,500.00 income to the Weed Control Budget.

DONE AND DATED this _____ day of _____, 20__.

Chair

Approved

Denied

Vice-Chair

Approved

Denied

Commissioner

Approved

Denied

Order Number: 4500373437

Document Date: 12/31/20



**Gas Transmission Northwest LLC
("Company")**

Supplier:
KLAMATH COUNTY PUBLIC WORKS
DEPARTMENT
305 MAIN ST
KLAMATH FALLS OR 97601-6332

Ship to :
Gas Transmission Northwest
7235 Keller Road
Klamath Falls OR 97603

Supplier Number: 2015787
Telephone: 541-883-4696
Fax number: 541-882-3046

Shipping instructions: See Shipping Instructions located with Terms & Conditions in the Purchase Order.

**ALL PERSONS PERFORMING WORK AT ANY TCENERGY FACILITY MUST COMPLETE A WEB BASED SAFETY ORIENTATION COURSE PRIOR TO ARRIVAL AT THAT LOCATION.
THE WEB SITE FOR THE COURSE IS: <http://tc-orientation.icomproductions.ca/>**

UPON SUCCESSFULLY COMPLETING THE ORIENTATION COURSE, A CERTIFICATE OF COMPLETION SHOULD BE PRINTED FOR EACH INDIVIDUAL WHO WILL BE PERFORMING ON-SITE WORK.

THE CERTIFICATE WILL THEN BE PRESENTED TO COMPANY'S REPRESENTATIVE UPON ARRIVAL AT THE TCENERGY WORK SITE.

Please note that the following information on Contractor's invoice must match the information in the PO and in Company's records in order to be processed: "bill to" Company name, "remit to" Contractor name, Contractor address, and any banking or EFT information.

For Canadian contractors, Contractor's GST # must match those in Company's records. Where the above information fails to match, Company reserves the right to return the invoice to Contractor for correction and resubmission, or contact Buyer to resolve any outstanding discrepancies.

Submit Invoice To:
Gas Transmission Northwest LLC
Accounts Payable Department
P.O. Box 4563
Houston, TX 77210-4563, US
Email: ap_invoices_houston@tcenergy.com
eCommerce submission via designated platform

Buyer: CHRIS POPE
Phone Number: (830) 320-5052
E-Mail Address: chris_pope@tcenergy.com

Payment Terms: Net 15 Days

Incoterms 2010: NA Not Applicable
Named Place or Port: Not Applicable

Additional Information:

Requisition: 10470688
Requestor: Keri Severance

Vendor Contact: pharvey@co.klamath.or.us; tpheiffer@co.klamath.or.us

"The parts ordered herein based on supplier's quotation are for pricing and lead time purposes only. By accepting this Order, the parties hereby agree that only the terms and conditions referenced herein and attached hereto governs the supply and /or performance contemplated by this Order and will in all cases supersede any other pre-printed terms and conditions submitted by Supplier in any manner. Failure of the Company to object to any term or condition inserted by the Supplier on any quotation, acknowledgement or invoice or otherwise submitted by the Supplier will not be construed as a waiver of the terms and conditions set forth in this Order."

Line Items

Line No.	Qty.	Unit	Delivery Date	Description	Material No.	Unit Price	Per	Amount
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Order Number: 4500373437

Document Date: 12/31/20



Line No.	Qty.	Unit	Delivery Date	Description	Material No.	Unit Price	Per	Amount
00010	1	AU	12/31/21	Klamath Falls weed control 5000383 Weed Spraying in Klamath County January - December 2021. Site contact is Steve Klus 541-891-7535 Billing contact is Keri Severance 541-548-9206 service # 5000383 Make all invoices out to Gas Transmission Northwest and include the correct PO number on invoices for processing send a copy of the invoice to keri_severance@tcenergy.com		\$ 3,500.00 USD	1 AU	\$ 3,500.00 USD

Tax Amount: \$0.00 USD

Sub-Total: \$3,500.00 USD
Tax Amount: \$0.00 USD
Total Amount: \$3,500.00 USD

Purchase Order Acknowledgement

Purchase Order: 4500373437

Supplier: KLAMATH COUNTY PUBLIC WORKS
DEPARTMENT
305 MAIN ST

This Document should be completed in full and e-mailed to the Buyer's attention, as indicated on the face of this Purchase Order.

We agree to comply with all details presented on this Purchase Order, including scope of work ("Description"), "Delivery Date", "Amount" and Quantity ("Qty.").

By receipt of this document, all terms and conditions of this Purchase Order are accepted.

Should you disagree with any of the information in this Purchase Order, kindly contact the Buyer immediately upon receipt hereof.

Signature: _____

Signed by: _____ Date: _____

Company: _____

Buyer: CHRIS POPE

SHIPPING INSTRUCTIONS

**** INCOTERMS ON THE PURCHASE ORDER (PO) SUPERSEDE SHIPPING INSTRUCTIONS ****

COURIER > Shipments should not be palletized and single pieces should not exceed 150 lbs (approx 68 kgs).
 FREIGHT > Shipments greater than 150 lbs (68 kgs) per piece and/ or palletized freight (LTL, PTL, FTL).
 LTL= Less than Truckload = (150lbs - 10,000 lbs or 10 linear feet / van load - flat deck NOT required).
 PTL= Partial Truckload = (10,000 lbs - 20,000 lbs or 10 linear feet / flat deck required).
 FTL= Full Truckload = (greater than 20,000 lbs).

LINE PIPE SHIPMENTS > Special shipping instructions required. Contact buyer on the front page of this Purchase Order for more information. Pipe that is greater than or equal to 16 inches in diameter and is greater than or equal to 20 feet in length must be shipped with a TC Energy prequalified carrier.

WOOD PACKAGING REQUIREMENTS > It is the seller's and / or contractor's responsibility to comply with international ISPM 15 / IPPC wood specifications and regulations for all wood packaging to include pallets, skids, dunnage, crating, etc.

USMCA REQUIREMENTS > It is the seller's and / or contractor's responsibility to supply (if applicable) a USMCA certificate that meets the requirements / regulations for all goods that are manufactured / supplied with origin from USMCA certified countries. Sellers and / or contractors accept all responsibility for the information they provide on the USMCA certificate or Statement of Origin. Sellers and / or contractors also accept any liabilities resulting from inaccurate data or failure to comply with USMCA requirements.

Vendor Instructions - Courier

ORIGIN	DESTINATION	TYPE OF SHIPPING	USE THE FOLLOWING COURIER
All USA Vendors	USA	Courier Shipments (documents and small packages that do not exceed 150 lbs per piece)	FedEx Account Code 668349617 customer service: 1.866.960.5500 ext. 1052 or fedex@tcenergy.com
All Canadian Vendors	Canada	Courier Shipments (documents and small packages that do not exceed 150 lbs per piece)	FedEx Account Code 350818650 FedEx Express Economy; Billed Third Party Do not use FedEx Ground or FedEx Freight customer service: 1.866.960.5500 ext. 1052 or fedex@tcenergy.com
All Vendors	Outside country of ORIGIN	Courier Shipments (documents and small packages that do not exceed 150 lbs per piece)	Cole International email: tcenergy@coleintl.com 1.866.698.1135
All Vendors	Mexico	Courier Shipments (documents and small packages that do not exceed 150 lbs per piece)	Coordinator Import/Export email: tc_freight_customs_m@tcenergy.com

Vendor Instructions - Freight (refer to PO instructions)

ORIGIN	DESTINATION	TYPE OF SHIPPING	USE THE FOLLOWING FREIGHT PROVIDERS
All USA Vendors	USA	Shipments greater than 150 lbs (68 kg per piece and/or palletized freight (LTL, PTL, FTL, HOT SHOT)	CAP Logistics email: Pipeline@caplogistics.com 1.800.227.2471 OR Cole International email:tcenergy@coleintl.com 1.866.698.1135 OR Pentagon Freight email: transcanada@pfsCanada.com 1.888.241.6710 or 1.403.218.2024
All Canadian Vendors	Canada	Shipments greater than 150 lbs (68 kgs) per piece and/or palletized freight (LTL, PTL, FTL, HOT SHOT)	TF Truckload and Logistics: email: TCPL@tftruckloadlogistics.com 1.866.780.8890 OR Cole International email: tcenergy@coleintl.com 1.866.698.1135 OR Mullen Trucking email: droberts@mullentrucking.com 403.404.0351
International Vendors Shipping TO Canada & US ONLY	Canada & USA	Shipments greater than 150 lbs (68 kgs) per piece and/or palletized freight (LTL, PTL, FTL, HOT SHOT)	Cole International: email:tcenergy@coleintl.com 1.866.698.1135
All Mexico Vendors	Mexico	Shipments greater than 150 lbs (68 kgs) per piece and/or palletized freight (LTL, PTL, FTL, HOT SHOT)	Coordinator Import/Export email: tc_freight_customs_m@tcenergy.com
International Vendors	Mexico	Shipments greater than 150 lbs (68 kgs)	Coordinator Import/Export

CUSTOMS BROKER: Cole International

SHIPPING INQUIRIES > Please direct all inquiries to the buyer on the front page of the Purchase Order.

CUSTOMS INQUIRIES > Please direct all inquiries to tc_freight_customs@tcenergy.com

CUSTOMS INQUIRIES MEXICO ONLY > Please direct all inquiries to tc_freight_customs_m@tcenergy.com



PURCHASE ORDER TERMS

1. **ACCEPTANCE**
 - 1.1 This P.O. (collectively, the cover or face page(s), including any other documents referred to or attached, and these terms) shall be deemed received and accepted upon the earlier of the following: (a) the Contractor's electronic acceptance of this P.O. by clicking on "accept" (or a similar acknowledgement) on the Company's ecommerce site; (b) the Contractor's execution or acknowledgement of this P.O.; and (c) commencement or shipment of any Work.
 - 1.2 This P.O. governs the performance of the Work and supersedes all terms and conditions that may be submitted by the Contractor. Failure of the Company to object to any term or condition submitted by the Contractor will not be construed as a waiver or amendment of this P.O.
2. **PRICE AND PAYMENT**
 - 2.1 "Price" means the price set out on the cover or face page(s). The Contractor shall perform the Work for the Price calculated and payable in the manner provided in this P.O.
 - 2.2 All amounts are in US dollars unless specifically stated otherwise. If any portion of the Work is quoted in a currency other than US dollars, the Contractor will indicate the quoted foreign currency on the invoice.
 - 2.3 Upon the Company's receipt of a correct invoice in a format acceptable to the Company at the address provided on the cover or face page(s) or through the Company's ecommerce site, the Company will, except as otherwise stated on the cover or face page(s), pay monies owing within the payment term provided on the cover or face page(s). The Company reserves the right to dispute any invoice. If so disputed and requested by the Company, the Contractor shall resubmit two (2) new invoices, one detailing the undisputed amounts and the second invoice detailing the disputed amounts.
 - 2.4 If you are required to transact via the Company's ecommerce site, the invoice generated by the Company specified ecommerce application is the determinative invoice of all amounts owing, and any other invoice submitted shall be of no force and effect.
 - 2.5 No payments made by the Company under this P.O. shall constitute a waiver of any claim or right the Company may have at that time or thereafter, including claims regarding direct damages, warranty rights and indemnification obligations of the Contractor. No payments by the Company under this P.O. shall be considered or deemed to represent that the Company has inspected the Work or checked the quality of the Work and shall not be deemed or construed as an approval or acceptance of any Work. All payments shall be subject to future correction or adjustment.
 - 2.6 The Company is entitled to withhold and remit any amounts which are required by law to be held back and remitted or paid to a third party and to hold back from payment any sums required pursuant to any lien legislation or law.
 - 2.7 Notwithstanding anything to the contrary in this P.O., in the event that any amount is due to the Company or the Company's affiliate by the Contractor, the Company shall have the right of set-off against the Contractor for that amount, whether such amount arises pursuant to this P.O., any other contracts between the Contractor and the Company, the Company's affiliate or otherwise.
 - 2.8 The Contractor shall keep the property of the Company free and clear of all liens, Claims, and encumbrances arising from the Work, provided however that this provision will not operate to deprive the Contractor of statutory lien rights that may arise in the event of non-payment by the Company.
3. **TAXES**
 - 3.1 All applicable sales taxes calculated on the Price and to be paid to the Contractor by the Company must be itemized on each invoice. If the Contractor has a tax registration number for any such taxes, such tax registration number must be listed on the invoice.
 - 3.2 The Contractor shall pay the cost of all labour, materials, and equipment, including the cost of all rental equipment, to be furnished by the Contractor in connection with the performance of the Work and shall pay, or, as applicable, withhold and pay to the appropriate lawful authority, all workers' compensation premiums, unemployment insurance, social security, and employee income tax payments, withholdings, and payroll contributions together with all taxes that are payable or required to be withheld by the Contractor.
 - 3.3 The Contractor shall comply with all laws and regulations relating to the collection and remittance of any taxes and the Contractor shall defend, indemnify, and hold harmless the Company from and against all claims, costs, penalties and interest which may be assessed against the Company in respect to the Contractor's obligations specified in this Section 3.
 - 3.4 The Company is not responsible for the payment of any taxes based on the Contractor's income or gross or net receipts.
4. **CONDUCT OF THE WORK**
 - 4.1 "Work" means the work required to be performed by the Contractor hereunder, as listed on the cover or face page(s), including any work which is not expressly described in this P.O. but which is reasonably implied, incidental to or foreseeably required in order to perform the Work or necessary for the proper execution of the Work. All Work is subject to inspection and approval by the Company, but neither inspection nor failure to inspect will relieve the Contractor of any of its obligations under this P.O.
 - 4.2 The Contractor shall perform and execute the Work in accordance with this P.O. and the law and in a professional, efficient, prompt, economical, skilful and good workmanlike manner, in accordance with the methods, standards, practice and diligence employed by leading companies in the field or industry to which the Work relates. The Company may, from time to time, provide directions with respect to the performance of the Work and the Contractor agrees to follow such directions.
 - 4.3 The Contractor acknowledges and agrees that this P.O. does not grant the Contractor an exclusive right to perform the Work, or any work, for the Company.
 - 4.4 Equipment, materials, products, and goods supplied by the Contractor for the Work may be subject to approval by the Company.
 - 4.5 The Contractor is an independent contractor and shall perform the Work as such. The Work will be performed by the Contractor under its own direction and control and at its own risk. Nothing in this P.O. is to be construed as creating a partnership, joint venture, master and servant, or principal and agent relationship between the Company and the Contractor. The Contractor does not have the authority to enter into agreements or incur liability on behalf of the Company.
 - 4.6 The Contractor shall supply a sufficient number of personnel to enable timely and proper execution and completion of the Work in accordance with this P.O.. All such personnel, including subcontractor personnel, shall be competent, qualified by education, training, experience, and as required by law, and, in all other respects, shall be capable of carrying out the tasks to which each is assigned.
 - 4.7 If the Contractor enters onto any Company site or property for the performance of any part of the Work, it shall comply with all applicable access, safety and security requirements. The Company shall have the right to stop any Work on its site or property which is thought to be unsafe or not in conformity with such requirements or applicable law; the Contractor shall not be entitled to reimbursement for any costs, expenses or damages resulting from such stoppage.
 - 4.8 The Contractor has, or shall obtain in a timely manner, all permits, licences, approvals, consents, and authorizations necessary to perform the Work and to use, distribute, and/or modify anything the Contractor uses to perform the Work.
 - 4.9 The Contractor shall commence Work on the date provided in this P.O., perform the Work diligently and continuously, and perform the Work in accordance with, and in a manner that is consistent with, any delivery date or work schedule included in this P.O.
 - 4.10 If the Contractor is responsible for a delay in the performance of the Work, or fails to perform any portion of the Work in accordance with any delivery date or work schedule included in this P.O., the Contractor shall, at no additional cost to the Company, work overtime, acquire and use any necessary additional labour and equipment, and perform whatever other acts are required or requested by the Company to make up the lost time and to avoid delay in the completion of the performance of the Work.
 - 4.11 The Contractor may not make additions, changes, alterations or omissions to the Work, or perform extra work, or supply or use extra materials or equipment of any kind without the prior written consent of the Company.
5. **ACCESS TO COMPUTING RESOURCES AND INFORMATION**
 - 5.1 The Contractor understands and agrees that the Contractor, its employees, and subcontractors will not attempt to access or have access to any computer or computer systems of the Company, except under the supervision of and in accordance with the instructions given by a Company representative. The Contractor shall ensure that: (a) the Company representative is informed in advance as to any required usage of a computer or computer system of the Company, and that the written approval of the Company representative is obtained prior to any such usage; (b) no attempt is made to obtain access to any information contained in any computer or computer system of the Company, other than as specifically authorized by the Company representative; and (c) no program or data is entered into a computer or computer system of the Company, other than as specifically authorized by the Company representative.
6. **RECORDS AND AUDITS**
 - 6.1 "Records" means all records, information, material and data, in whatever form or medium (written or electronic), including but not limited to documents, files, books, statements, reports, policies, procedures, agreements, subcontracts and accounts, pertaining to the Company, this P.O., the performance of the Work, amounts payable under this P.O. or compliance with the terms of this P.O.
 - 6.2 The Contractor shall preserve all Records in good order during the term of this P.O. and for a period of three (3) years after the later of (a) the completion of the Work; (b) the date of any termination of this P.O. prior to completion of the Work; or (c) the final invoice date. All Records shall be kept and maintained in accordance with generally accepted accounting principles as applicable in Canada consistently applied.
 - 6.3 For the purposes of determining the Contractor's and its subcontractors' compliance with all of the terms of this P.O. and for verification of all Work performed and all amounts payable under this P.O., including claims and suspension or termination charges, the Company and its authorized representatives shall have the right at any time upon reasonable notice to the Contractor (or immediately in the case of an actual or perceived emergency) to inspect, copy and audit Contractor's and its subcontractors' Records at all reasonable times throughout the term of this P.O. until the completion of the Work (or the date of any termination of this P.O. prior to completion of the Work), and for a period of three (3) years thereafter. The Contractor shall ensure all subcontractors are required to preserve and make available all Records in the same manner as the Contractor is required to under this P.O.
 - 6.4 With respect to fixed or unit price Work, the Company's right to audit shall not include the Contractor's cost accounting records detailing the fixed or unit prices, except to the extent necessary to validate compliance with the P.O. with respect to law, quality, compliance with warranties and qualifications of staff.
7. **PACKAGING, LABELLING AND SHIPPING**
 - 7.1 The Contractor shall be solely responsible for (a) the shipment and delivery of the Work in accordance with any shipment and delivery terms (including Incoterms) set out in this P.O., the applicable law and in accordance with industry guidelines relating to the packaging, labelling, documenting, reporting and registering of such Work; (b) the accuracy of the description and classification of all Work shipped to the Company; and (c) any damages which arise due to non-conforming packaging or failure to ship the Work in accordance with this P.O.
8. **CONFIDENTIALITY**
 - 8.1 "Confidential Information" means information in whatever form, including but not limited to verbal, written, and electronic information, data, programs, processes, accounts, specifications and reports, that is disclosed by the Company or its representatives to the Contractor or any of the Contractor's representatives relating to the Work or the Company's business and affairs, and includes all derivative information, reports, interpretations, and analyses generated therefrom. Confidential Information does not include information that is: (a) lawfully known to the Contractor on a non-confidential basis prior to its receipt from the Company; (b) generally known to the public, other than as the result of an act of the Contractor or any third party under an obligation of confidentiality with regard to such information; or (c) lawfully received by the Contractor from a third party not bound to maintain such information as confidential.
 - 8.2 The Contractor shall (a) not use Confidential Information for any purpose whatsoever except for the performance of the Work; and (b) maintain all Confidential Information in confidence and shall not disclose Confidential Information to any person, firm, partnership, company, corporation or other entity or governmental authority.
 - 8.3 The Contractor may disclose Confidential Information only to those employees, representatives, and subcontractors participating in the performance of the Work who have a need to know such Confidential Information to perform the Work and who have been informed of and agree to observe the terms of this P.O. relating to Confidential Information. The Contractor shall be responsible for any breach of this Article 8 by any of its employees, representatives or subcontractors.

- 8.4 In the event that the Contractor or any of its employees, representatives, or subcontractors are required by law to disclose Confidential Information, the Contractor shall: (a) immediately provide to the Company written notice thereof so that the Company may seek a protective order or other appropriate remedy or waive compliance by the Contractor with this Article 8 in whole or in part; (b) furnish only that portion of the Confidential Information that is legally required; and (c) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information.
- 8.5 In the event the Contractor becomes aware that Confidential Information has been disclosed or used, or is intended to be disclosed or used, in a manner that would violate the terms of this P.O., the Contractor shall: (a) immediately notify the Company, providing all details available regarding such violation; (b) immediately take all commercially reasonable steps to prevent, stop, and rectify such violation; and (c) keep the Company fully informed of all steps taken by the Contractor to prevent, stop, and rectify such violation.
- 8.6 Upon request of the Company, the Contractor shall return to the Company all Confidential Information that the Contractor and its employees, representatives, and subcontractors have received.
- 8.7 The confidentiality and non-use covenants contained in this P.O. will survive for five (5) years following the completion of the Work (or the date of any termination of this P.O. prior to completion of the Work).
- 8.8 The Contractor acknowledges and agrees that actual or threatened disclosure or use of Confidential Information that does not fully comply with the terms of this P.O. will cause irreparable harm to the Company for which an award of damages alone will not be adequate compensation. Accordingly, the Contractor agrees that the Company shall be entitled to seek injunctive relief to prevent actual or threatened breaches of this Article 8, and to specifically enforce the terms hereof, in addition to any other remedy to which the Company may be entitled, at law or in equity.
- 9. TERMINATION**
- 9.1 The Company may, by notice to the Contractor, immediately terminate this P.O. in whole or in part if the Contractor:
- (a) fails to follow the Company's reasonable instructions and does not cure such failure within seven (7) days of notice thereof;
 - (b) breaches any provision of this P.O. and does not cure such breach within seven (7) days of notice thereof;
 - (c) becomes insolvent, bankrupt, takes the benefit of any insolvency or bankruptcy law, enters into a plan of arrangement for the benefit of its creditors, or makes a general assignment for the benefit of creditors; or
 - (d) is responsible for any theft or misappropriation of the property of the Company.
- Upon such termination, the Company shall pay the Contractor for all Work satisfactorily completed prior to the date of termination, less the sum of any monies already paid to the Contractor.
- 9.2 The Company may, at its option, terminate this P.O. or any part thereof upon five (5) days written notice to the Contractor. Upon such termination, the Company shall pay to the Contractor the sum of the following: (a) all amounts due and not previously paid to the Contractor for that part of the Work completed prior to receipt of notice of termination; (b) all amounts owing for the Work requested to be performed after the Contractor received the notice of termination; and (c) reasonable direct costs that, in the opinion of the Company, result from the termination of the Work.
- 9.3 Upon termination of this P.O. in whole or in part, the Company will not incur any further liability to the Contractor or the Contractor's directors, officers, employees, representatives, or subcontractors with respect to such termination, and the Contractor waives all Claims, including for loss of anticipated profits on account thereof, and agrees that its sole remedy for such termination shall be receipt of the payments set out in this Article 9. In addition, the Company shall maintain all rights under this P.O. and law.
- 9.4 Upon receipt of notice of termination, the Contractor shall ensure that no further commitments are made with respect to the terminated Work (unless authorized in writing by the Company), and shall take all reasonable steps necessary to minimize any costs arising from commitments made prior to receipt of such notice.
- 9.5 The Contractor shall submit a detailed account of all reimbursable costs incurred with every request for payment arising out of or as a result of termination pursuant to this Article 9.
- 9.6 Upon termination of this P.O., all Company-furnished material in the Contractor's possession must be immediately returned to the Company or, if the Company stipulates certain Work to be completed in the termination notice, be returned no later than the date of completion of such Work.
- 10. INSURANCE**
- 10.1 Unless otherwise agreed to in writing by the Company, the Contractor shall place and keep in force at its own cost during the performance, supply and/or delivery of the Work (and if requested, provide evidence of the same in the form of a certificate of insurance), with insurers that are rated A- or better by Best's Insurance Guide and Key Ratings (or if not rated by Best's Insurance Guide and Key Ratings, an equivalent rating from another nationally recognized rating agency of similar standing), the following policies and insurance:
- (a) commercial general liability insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence providing coverage for damages resulting from bodily injury (including death) at any time sustained by any person or persons or resulting from injury to or destruction of property caused by an occurrence arising out of the performance of this P.O. including coverage for premises and operation liability, contractual liability, sudden and accidental pollution, and products/completed operations liability. Such insurance must stay in full force and effect for the warranty periods specified in this P.O.;
 - (b) automobile liability insurance for the Contractor's owned, non-owned, rented and leased automobiles, with a minimum combined single limit of Two Million Dollars (\$2,000,000) per occurrence;
 - (c) workers' compensation insurance or its equivalent, including occupational disease coverage, as required by law for all employees, and subcontractors; and employer's liability insurance (including occupational disease coverage) with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall provide coverage in the location in which the Work is performed and the location in which the Contractor is domiciled. The Contractor expressly agrees to comply with all provisions of the law related to workers' compensation of the state or country wherein the Work is being performed. If there is an exposure of injury or illness under the U. S. Longshoreman and Harbor Workers Compensation Act, the Jones Act, or under U.S. or foreign laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims and shall have a territorial extension for the area in which the Work is performed. Such coverage shall include maritime employer's liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence endorsed to include coverage for the obligation to provide transportation, wages, maintenance and cure. Voluntary compensation and the alternate employer's endorsement are required under this P.O. In all cases where the Contractor's employees (defined to include the Contractor's direct, borrowed, special, or statutory employees) are covered by the Louisiana Workers' Compensation Act, La. R.S. 23:1021 et seq., the Company and the Contractor agree that all Work and operations performed by the Contractor and its employees pursuant to this P.O. are an integral part of and are essential to the ability of the Company to generate the Company's goods, products and services for purposes of La. R.S. 23:1061 (A) (1). Furthermore, the Company and the Contractor agree that the Company is the principal or statutory employer of the Contractor's employees for purposes of La. R.S. 23:1061 (A) (3). Irrespective of the Company's status as the statutory employer or special employer (as defined in La. R.S. 23:1031 (C)) of the Contractor's employees, the Contractor shall remain primarily responsible for the payment of Louisiana Worker's Compensation benefits to its employees, and shall not be entitled to seek contribution for any such payments from the Company; cargo insurance against physical loss of or damage to the Work caused by loading, unloading and transit perils including but not limited to loss of or damage to the Work incurred at interim storage depots or while the Work is in the process of conveyance to the delivery point shown on the cover or face page(s) of this P.O.;
 - (d) if this P.O. requires the provision of any professional service, professional liability insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence; and
 - (e) any additional or other insurance that may be required from time to time by law.
- 10.2 The insurance requirements outlined in this P.O. may be achieved through primary policies, excess policies, or a combination thereof.
- 10.3 All deductibles for insurance policies placed by the Contractor pursuant to this P.O. will be to the Contractor's account.
- 10.4 The Contractor shall ensure that all its required insurance policies to be maintained under this P.O., to the maximum extent permissible by law in the jurisdiction where the Work is to be performed:
- (a) include the Company as an additional insured with respect to the obligations assumed by the Contractor pursuant to this P.O. (except with respect to workers' compensation insurance coverage required by Section 10.1(c)); and
 - (b) are endorsed to provide for a waiver of subrogation in favour of the Company, its parents, subsidiaries and affiliates including their respective directors, officers, employees, agents, representatives and parties for which it is operating.
- 10.5 Should the Contractor receive a cancellation or termination notice from its insurer, the Contractor shall notify the Company within thirty (30) days of such notice.
- 10.6 Neither the providing of insurance by the Contractor in accordance with the requirements of this P.O. nor the insolvency, bankruptcy, or failure of any insurance company to pay any Claim accruing, will be held to waive any of the provisions of this P.O. with respect to the liability or indemnity obligations of the Contractor, or otherwise.
- 11. NOTICES**
- 11.1 Notices shall be in writing and sent by prepaid or registered mail, email, or courier to the other party at the address noted on the cover or face page(s). Notices are effective upon receipt, and in any event a notice will be deemed received three (3) days following its mailing or courier date or, if sent by email, on the first business day following the date of transmission. All such notices shall be in English. Either party may change its address, email address, or telephone number for notices by giving written notice of such change to the other party.
- 12. WARRANTIES**
- 12.1 The Contractor warrants that:
- (a) the Work will be performed in accordance with this P.O.;
 - (b) any service provided as part of the Work that involves the licencing, provision, or development of an application, code, or software (collectively, "Software") will conform to the specifications set out in this P.O.; and
 - (c) the Work is of the kind and quality specified in this P.O., is free from fault of design, workmanship and material, is of new and merchantable quality and is fit for the purpose for which the Work is required as the Company has expressly or by implication made known to the Contractor.
- 12.2 All warranties specified in Section 12.1 will extend for a period of twenty-four (24) months from completion of the Work ("Warranty Period").
- 12.3 If, during the Warranty Period, the Software does not function in accordance with Section 12.1(b), the Contractor will repair or replace the Software with a service that is at least functionally equivalent or, if the Contractor is not able or unwilling to do so the Company may acquire alternative replacement Software from a third party and the Contractor will pay all costs of such replacement Software to the Company.
- 12.4 The Contractor agrees and acknowledges that if, during the Warranty Period, the Work or any portion thereof fails to conform with the terms of this P.O. or is otherwise defective or deficient in any way, then, in addition to the Company's rights under this P.O. and law, the Company may: (a) reject all or any portion of the Work and the Company will be entitled to a refund for the rejected portion; or (b) allow the Contractor to perform on an expedited basis, at the Contractor's cost and expense, any corrective work and measures required to remedy the defective or deficient portion of the Work and any incidental expenses arising therefrom. If the Contractor fails to promptly remedy any defect or deficiency to the Company's satisfaction within the Warranty Period the Company may have remedial work performed by a third party and charge all costs of such remedial work to the Contractor.
- 12.5 The Contractor represents and warrants that any Work repaired, corrected, or replaced pursuant to this Article 12 will be subject to a further warranty period until the later of (a) twelve (12) months after completion of all such repairs, corrections, and replacements, or (b) the end of the Warranty Period.
- 12.6 The Contractor will pay all costs for repair, correction, and replacement of the Work under warranties herein, including, but not limited to, the replacement cost of the Work, installation costs, expediting costs and delivery costs.
- 12.7 The Contractor will assign or flow through to the Company all warranties provided by third parties with respect to the Work.
- 13. LIABILITY AND INDEMNITY**
- 13.1 Each party is liable to and shall indemnify and hold harmless the other party and the other party's directors, officers, employees, and representatives from and against all claims, demands, losses, injuries, costs, damages, expenses, lawsuits, and proceedings (collectively, "Claims") to the extent that such Claims arise out of or are attributable to: (a) any negligent act or omission, willful misconduct, or breach of this P.O. by the indemnifying party or its directors, officers, employees, representatives, subcontractors, and the costs thereof, including, without limitation, all legal expenses on a solicitor and own client basis, except to the extent such Claims are caused by the negligence, willful misconduct, or breach of this P.O. by the indemnified party; and (b) any taxes and third party obligations payable by the indemnifying party as a result of this P.O. and any related contributions and penalties imposed on the indemnified party by any governmental or other authority having jurisdiction.

- 13.2 If requested by the indemnified party, the indemnifying party shall, at its sole expense, defend all Claims and pay all incidental costs and expenses of defending such Claims. The indemnified party maintains the right, at its option, to participate or have its insurer participate in the defence of any such Claims, and, in such event, the indemnifying party must pay the reasonable costs of the indemnified party and the indemnified party's insurer to participate in such defence. If the indemnified party does not request the indemnifying party to defend such Claims, the indemnifying party shall nevertheless indemnify and hold harmless the indemnified party from and against all costs of defending such Claims, including experts' fees, court costs, and legal fees on a solicitor and own client basis, whether incurred through settlement or otherwise.
- 13.3 Notwithstanding anything else in this P.O., neither party will be liable for any consequential or indirect damages arising out of or relating to this P.O., whether or not such loss or damage is based on tort, strict liability, or breach of contract, except: (a) to the extent such loss or damage arises from such party's gross negligence, wilful misconduct, or fraud; (b) to the extent amounts are recoverable under a policy or policies of insurance required to be maintained by the indemnifying party hereunder; (c) to the extent such loss or damage arises from awards or assessments of punitive damages; (d) to the extent such loss or damage arises from a breach of Article 8; and/or (e) pursuant to the indemnity obligations of the indemnifying party identified in this P.O.
- 13.4 The Contractor acknowledges that Northern Border Pipeline Company ("Northern Border") is a general partnership formed under the laws of the State of Texas and as such, with respect to any Work supplied to or performed for Northern Border or any other obligations of Northern Border arising under or as a result of this P.O., agrees that any Claims the Contractor may have under or as a result of this P.O. are limited to the assets of Northern Border and expressly waives any rights to enforce any Claim against the assets of the partners of Northern Border. The Contractor further agrees that any rights the Contractor may have at law to proceed against the partners of Northern Border individually are hereby expressly waived.
- 14. OWNERSHIP AND RISK OF LOSS**
- 14.1 Title to the Work and Intellectual Property will transfer to the Company at the earlier of payment therefor or delivery thereof to the Company.
- 14.2 Any deliverable included in the Work, is owned by the Company, except to the extent it is Pre-existing IP. The Contractor may not use, copy, display, distribute, or create a derivative work of any Work without the prior written consent of the Company.
- 14.3 Unless otherwise specified on the cover or face page(s), the Contractor is will be responsible for and shall bear any and all risk of loss or damage to any Work until delivery of such Work to the Company.
- 15. INTELLECTUAL PROPERTY**
- 15.1 All inventions, copyrightable works, drawings, designs, discoveries, improvements, trade secrets, trademarks, and other intellectual and proprietary rights, including the right to register and protect any of the above ("Intellectual Property") prepared for or delivered to the Company under this P.O. or that arises as a result of the Work and any other deliverables included in the Work are owned solely by the Company. The Contractor hereby waives any and all legal and moral rights in the Intellectual Property. During the term of this P.O. and for a reasonable time thereafter, the Contractor agrees to provide, at the expense of the Company, all necessary information, materials, and assistance to enable the Company to proceed with the filing and prosecution of all patents, industrial designs, trademarks, and copyright applications relating to the Intellectual Property.
- 15.2 The provisions of Section 15.1 will not apply to the extent that any Intellectual Property was developed or owned by the Contractor prior to the commencement of the performance of the Work ("Pre-existing IP").
- 15.3 The Contractor grants to the Company a fully paid-up, non-exclusive, irrevocable, and transferable right and licence: (a) to use all or any portion of the Pre-existing IP that is necessary for the Work; and (b) for all or such portion of the Pre-existing IP that has been incorporated into the Work.
- 15.4 The Contractor agrees not to breach or infringe upon any patent, copyright, licence, industrial design, trademark, trade secret, or other intellectual property or proprietary right owned by the Company or any third party resulting from, arising in connection to, or relating to the Work.
- 15.5 If any of the Work constitutes or is alleged to constitute an infringement of any intellectual property, the Contractor shall, in addition to its other obligations under this P.O., at its own expense and as directed by the Company, either procure for the Company the right to continue using such Work without liability for such infringement, or modify or replace such Work with non-infringing Work that is at least functionally and operationally equivalent to the Work that infringes or is alleged to infringe upon the intellectual property rights of a third party.
- 16. LAW**
- 16.1 This P.O. shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice of law rules which may direct the application of the laws of another jurisdiction, and shall be treated in all respects as a Texas agreement.
- 16.2 The parties irrevocably consent to the exclusive jurisdiction of the courts of the State of Texas located in Harris County or the United States District Court for the Southern District of Texas in Houston, Texas for any dispute or Claim arising out of or related to this P.O. and irrevocably waive, to the fullest extent permitted by law, any assertion of inconvenient or inappropriate forum or other objection respecting conflict of laws.
- 16.3 The application of the United Nations Convention on Contracts for the International Sale of Goods to this P.O., is expressly excluded.
- 16.4 (a) Without limitation to any other provision in this P.O., Contractor hereby represents, warrants and agrees that:
- it is familiar with the Anti-Corruption Laws applicable to the performance of this P.O. and it will comply with all such laws;
 - in performing its obligations under this P.O., it shall not directly or indirectly provide, promise or authorize any bribe, kickback, illegal facilitation or influence payment or any other illegal payment; and
 - It will indemnify, defend, and hold harmless the Company and its Affiliates from and against any and all losses, damages, claims, expenses, fines and penalties arising out of Contractor's representations in this Article 16 being untrue or arising out of Contractor's breach of any of its warranties or undertakings in Article 16.
- (b) "**Anti-Corruption Laws**" means Laws concerning anti-corruption and money laundering, including the Canadian Criminal Code and Corruption of Foreign Public Officials Act, and the U.S. Foreign Corrupt Practices Act of 1977.
- (c) "**Governmental Authority**" means any judicial, legislative, administrative or other supra-national or foreign, Canadian federal, provincial, municipal or local governmental authority, ministry, department, agency, commission, instrumentality self-regulatory organization, regulatory or administrative authority, board, office, court, tribunal or judicial or arbitral body having jurisdiction over or applying to the parties, the Work, or any location where the Work is performed.
- (d) "**Official**" means:
- any person employed, appointed by or acting on behalf of, in an official capacity, a Governmental Authority or a public international organization;
 - a person who performs public duties or functions for a Governmental Authority;
 - elected officials, candidates for public office, political parties, and officials of political parties.
- 17. FORCE MAJEURE**
- 17.1 "Force Majeure" means any cause or event beyond the reasonable control of the affected party that is not caused by or attributable to the negligence or lack of reasonable foresight of the claiming party, and which by the exercise of due diligence such party would not have been able to avoid or overcome. Force Majeure does not include: (a) late delivery of the Contractor's equipment or materials; (b) delays resulting from breakdown of the Contractor's equipment or materials; (c) delays caused by inefficiencies on the part of the Contractor; (d) late performance caused by inefficiencies on the part of the Contractor; (e) late performance caused by inefficiencies or failure on the part of the Contractor to hire adequate labour and/or supervisory personnel; or (f) financial considerations of the party claiming Force Majeure.
- 17.2 In the event that either party is rendered unable by Force Majeure to carry out, wholly or in part, its obligations under this P.O., other than its obligations to make payments of money due hereunder, such party shall, within twenty-four (24) hours of such Force Majeure arising, or as soon thereafter as reasonably possible, give written notice to the other party, stating full particulars of such Force Majeure including the obligation that is to be delayed or prevented as a result. The party affected by the Force Majeure shall promptly notify the other party as soon as such event no longer prevents it from complying with its obligation, and shall thereafter resume performance of the affected Work.
- 17.3 The obligations that the party giving notice is rendered unable to carry out will be suspended during the event of Force Majeure. No event of Force Majeure affecting the performance of any obligation of either party will relieve that party from performance of any other obligation not affected by the event of Force Majeure, and the affected party shall promptly take all commercially reasonable steps to mitigate the effect of such Force Majeure.
- 17.4 No extra compensation will be payable to the Contractor as a result of a suspension of a party's obligations, in whole or in part, due to Force Majeure.
- 17.5 The time for completion of the Work suspended due to an event of Force Majeure will be extended for a period equal to the duration of such Force Majeure event.
- 18. GENERAL**
- 18.1 No change, amendment, or modification of this P.O. shall be valid or binding upon the parties hereto, unless such change, amendment, or modification shall be in writing and duly executed by both parties.
- 18.2 The Contractor may not assign this P.O. in whole or in part and may not subcontract any portion of this P.O. without the prior written consent of the Company and any such assignment shall be null and void.
- 18.3 This P.O. enures to the benefit of and is binding upon the parties together with the successors and assigns of the Company and the successors and permitted assigns of the Contractor.
- 18.4 The Contractor shall not use the Company's names, logos, trademarks, or service marks in any advertising, promotional material, or publicity release relating in any way, directly or indirectly, to this P.O., the Work or the results thereof, without the prior written consent of the Company. The Contractor shall not publish or cause to be published any statement, or encourage or approve any advertising or practice that is, or may reasonably be expected to be detrimental to the name, goodwill, reputation, trademarks, or service marks of the Company. The Contractor shall not take any photographs, video, or other recordings of the Company's property without prior written consent of the Company. Upon the Company's request, the Contractor shall immediately withdraw any statement and discontinue any advertisement or practice that the Company requests be withdrawn or discontinued.
- 18.5 If any term of this P.O. is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms of this P.O. shall nevertheless remain in full force. The failure or delay of any party to require performance by the other party of any term of this P.O. shall not affect its right to require performance of such term unless and until such performance has been waived by it in writing in accordance with the terms hereof. No waiver by either party of any term of this P.O., in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term of this P.O. on any future occasion.
- 18.6 Time is of the essence of this P.O.
- 18.7 The provisions of this P.O. which by their nature are intended to survive termination or expiration of this P.O. (including without limitation provisions with respect to interpretation, audit, representations and warranties, liability and indemnification, granting of licenses and ownership, payment and taxes, law, intellectual property and confidentiality) will remain in effect and be enforceable following such expiration or termination.
- 18.8 This P.O. sets forth the entire agreement between the parties pertaining to the subject matter of this P.O. and supersedes any previous discussions, negotiations, and agreements, whether written or verbal, pertaining to such subject matter.