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| <b>BUYER:</b> Flatiron/Dragados, LLC, a limited liability company formed under the laws of Delaware, and having a place of business at 500 N. Shoreline Blvd., Suite 500, Corpus Christi, TX 78401.<br><b>Prepared By:</b> | <h1>PURCHASE ORDER</h1> | <b>OWNER:</b><br>Texas<br>Department of<br>Transportation | <b>PROJECT:</b> US-<br>181 Harbor Bridge<br>Replacement<br>Project Corpus<br>Christi, TX. |
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|---|------------------------|---------------------|
| <b>SELLER:</b> Seller/Vendor<br>123 address<br>Anywhere, TX 12345 | <b>EFFECTIVE DATE:</b> | <b>P.O. NUMBER:</b> |
|---|------------------------|---------------------|

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| <b>CONTRACT:</b> 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. |
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| <b>SUPPLY:</b> | <b>SPECIFICATIONS:</b> |
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| <b>PRICE:</b> 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><br>Post-shipping invoicing<br><b>Exhibit B – Delivery Milestones.</b> |
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| <b>P.O. DOCUMENTS:</b> This Purchase Order Agreement (“ <b>Purchase Order</b> ”) 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) <b>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 and Exhibit G Lien Waivers</b> attached hereto <b><u>IMPORTANT CONTRACT TERMS ATTACHED.</u></b> |
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**FLATIRON/Dragados, LLC.**
**FLATIRON/Dragados, LLC**

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

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

 Name (print): Rob Boyce

 Name (print): Pedro Chico

 Title (print): Deputy Project Manager

 Title (print): Project Manager

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

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

**SELLER'S COMPANY NAME**

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** and **Exhibit F – DBE Special Requirements** 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**

| Item #       | UoM | Quantity (Est) | Description | Unit Price (USD) | Total       |
|--------------|-----|----------------|-------------|------------------|-------------|
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
|              |     |                |             |                  | \$ -        |
| 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 Mr. [ ] at [\[ \]@harborbridgeproject.com](mailto:[ ]@harborbridgeproject.com).

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