



# L.H. WOODS AND SONS, INC.

## General Engineering Contractors

### PURCHASE AGREEMENT

Agreement No. XXX-[Type text]  
 Contract Start Date: [Type text]

Owner's Specification No. \_\_\_\_\_  
 Project Name \_\_\_\_\_  
 Delivery Date (Begin) [Type text]

**Purchase Agreement Execution: This Purchase Agreement must be executed by [Type text] and returned to LHWS no later than five (5) business days after receipt by [Type text].**

This Purchase Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the parties, L.H. Woods & Sons, Inc., a California corporation ("Buyer") and [Type text] ("Seller").

Buyer has entered or is about to enter into a Contract with \_\_\_\_\_ ("Owner") for the \_\_\_\_\_ ("Project"), located in the \_\_\_\_\_ which contract, together with all plans, specifications, addenda, supplements, changes or additions thereto, is called the "Prime Contract". This Purchase Agreement is contingent upon execution of the Prime Contract by the Buyer and The \_\_\_\_\_.

Buyer and Seller agree to as follows:

- MATERIAL TO BE PROVIDED:** Seller shall furnish the material described at the price or prices set forth opposite each item within the times stated below in accordance with the terms and provisions of the Prime Contract. As used throughout this Agreement "materials" means the goods, supplies, drawings, data other property, and all services, including design, delivery, installation, inspection and testing specified or required for the Project under the description below.

Item Description	Quantity	Unit	Unit Price	Total Price
<b>Sales Tax</b>				
<b>TOTAL</b>				



# L.H. WOODS AND SONS, INC.

*General Engineering Contractors*

## SPECIAL CONDITIONS:

1. Schedule:
  - a. **Insert Delivery dates and schedule estimates.**
2. Seller shall comply with the project work hours as delineated in the Prime Contract and as provided in Section \_\_\_\_\_. Construction activities shall be between 7:00am and 7:00pm, Monday thru Friday. These work hour limits include material and equipment delivery and the mobilization and assembly of labor and equipment for the purpose of pre-work activity.
3. Seller to comply with all site restrictions, including but not limited to, smoking prohibition, noise control, SWPPP, working hours, trucking and delivery operating hours, and unauthorized use of private roads. Violations of site restrictions by the Seller shall result in a possible penalty as delineated in the Prime Contract and as provided in Section \_\_\_\_\_.
4. Limits of Work shall be strictly enforced. Any disturbance outside of the limits of work to upland areas and/or wetland areas shall be subject to penalties delineated in the Prime Contract and as provided in Section \_\_\_\_\_.
5. Seller shall furnish all of the materials manufactured in accordance with the applicable provisions of the project specification requirements.
6. Prices are F.O.B. jobsite.
7. All required submittals and shop drawings to be submitted by Seller. Review time for the Owner shall be in accordance with the Prime Contract. Errors, omissions, or otherwise unacceptable submittals from Seller shall not be a justification for additional time.

## EXCLUSIONS:

- **[Type text]**

## INCLUSIONS:

- **[Type text]**

2. **COMPLETE AGREEMENT:** This Agreement consists of the terms written herein and the terms and conditions of and other documents referenced in the Prime Contract applicable to the materials, goods and services provided by Seller. Except as provided in this Agreement, provisions printed or otherwise contained in any quotation, acknowledgment, shipping document or other instrument issued prior to or after the date hereof which are inconsistent with or additional to the terms and conditions of this Agreement are of no force or effect. Buyer is to be bound only by the terms and conditions of this Agreement notwithstanding any proposals, terms or conditions additional to or different from those accompanying Seller's performance or acknowledgment. This Agreement is the entire agreement between Buyer and Seller, and shall not be modified except in writing signed by Buyer.

## 3. CHANGE AND RIGHT TO TERMINATE:



# L.H. WOODS AND SONS, INC.

## *General Engineering Contractors*

(A) Buyer may by written change order make any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, changes in the time of delivery. Buyer may terminate or suspend, for its convenience and without fault of the Buyer, all or any portion of this order not accepted as of the date of termination or suspension of the order. Any claim by Seller for adjustment on account of such change, termination or suspension, must be asserted in writing within ten (10) days from the date on such order.

(B) If the Owner directs or orders the Buyer to change, adjust, substitute, add to or terminate any of the materials, goods or services included in this Agreement, Seller shall comply with Owner's directive or order and the price and time of performance hereunder shall only be adjusted as allowed by Owner. For any dispute involving the responsibility of the Owner for claims or damages under the Prime Contract, Seller agrees to be bound to and by the dispute resolution procedures, if any, in the Prime Contract.

(C) If the Seller defaults in the performance of any of its obligations under this Agreement, in addition to damages for Seller's default, if any, the Buyer may at its option terminate this agreement and, in such case, all further liability or obligation of the Buyer to the Seller shall cease, except liability for the reasonable value of the materials theretofore furnished by the Seller and accepted by the Buyer, which shall not in any event exceed the contract price for the materials so furnished, but any such termination of this agreement shall not relieve the Seller of any obligation under paragraph number 6 hereof. Buyer may, in addition to all other rights and remedies, purchase substitute items or services elsewhere and hold Seller liable for any and all excess costs, incurred, including attorneys' fees and experts' and consultants' fees actually incurred.

4. **PAYMENT:** The price herein specified shall, unless otherwise expressly stated within the terms of this Agreement include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authorities with respect to the production, sale, use or shipment of the materials, goods and services provided by Seller under this Agreement. Unless otherwise expressly stated in this Agreement, the price includes all costs for the manufacture, procurement, and delivery of all materials and goods and performance of all obligations of the Seller under this Agreement. Charges expressly excluded from and not otherwise included in the price that are designated as reimbursable to the Seller shall only include actual reasonable costs.

Seller's invoice shall set forth the items delivered to the project site, the date of delivery, the unit price and total price of the items invoiced.

5. **RISK OF LOSS:** Seller shall bear the risk of loss and be responsible for all damage to the materials, goods and services until unconditional acceptance by Buyer and Owner.

6. **DELIVERY:** Time is of the essence of this Agreement. If no delivery date is specified otherwise in this Agreement, Seller shall deliver all materials, goods and services within a reasonable time as ordered by the Buyer. If the Seller fails to furnish any of the materials, goods or services within the time specified by the Buyer or in accordance with the requirements of this agreement and to the satisfaction of the Buyer, then the Buyer may at its sole election purchase said materials, goods and services elsewhere and the Seller shall pay any excess in the cost of such materials so purchased over and above the price(s) specified in this Agreement together with any additional expense incurred by the Buyer plus any additional loss or damage, including liquidated damages Buyer incurs thereby. However, that the Seller shall not be liable for excess costs and loss incurred by Buyer under this paragraph number 6 if such default is caused by strikes, lockouts, acts of God, or conditions beyond



# L.H. WOODS AND SONS, INC.

## *General Engineering Contractors*

the reasonable control of Seller, but in such event the Seller shall immediately give notice to the Buyer of the occurrence of any such event by which Seller is excused from responsibility. In no event shall Seller be entitled to an extension of time to perform beyond the time allowed to Buyer to perform similar obligations under the terms of the Prime Contract.

7. **DEFAULTS:** If Seller fails to perform any of its obligations hereunder, in addition to all other remedies specified in this Agreement, Buyer shall be entitled to all remedies provided by law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization proceedings, or becomes involved in labor strife, which is reasonably likely to impair Seller's performance in a timely manner, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the Agreement upon written notice to Seller; such termination shall be deemed a termination for default. Buyer's failure to notify Seller of a rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach which it may otherwise have.

8. **INSPECTION:** All materials, goods and services are subject to inspection and acceptance by the Owner and Buyer, said inspection to be both during manufacture and after delivery at the site of the work. Seller shall meet all the requirements of the Prime Contract for the Owner's inspection personnel at Seller's plant. The Owner's or Buyer's failure to make any inspection of the materials shall not impair Buyer's right to later reject nonconforming materials, goods or services or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge or reason to know of the nonconformity prior to acceptance. Seller shall be liable for all inspection, reshipment and return costs on nonconforming materials, goods and services. Seller shall not replace returned materials, good or services unless so directed by Buyer in writing.

9. **WARRANTIES:** Seller warrants to Buyer that it has fully and carefully reviewed the provisions of the specifications, drawing, samples or other descriptions contained in this Agreement. The Seller warrants the materials, good and services covered by this Agreement, including any repairs or replacements made pursuant to this warranty, are free from defects in workmanship and materials, under normal use and service, for the purpose for which they are designed, manufactured and intended for use and are in compliance with the Prime Contract. Seller agrees to make good at its own expense any defect in such materials in accordance with the terms of the Prime Contract. Seller warrants to Buyer that any and all manufacturer's warranties comply with the Prime Contract. A copy of each such warranty shall be provided for the records of the Owner. Seller hereby assigns to Buyer all manufacturer's warranty rights it might have. Nothing herein limits the rights and remedies of the Buyer on account of Seller's breach of this Agreement.

10. **INFRINGEMENT:** Seller shall pay all royalties and licensing fees arising in connection with the sale of use of materials hereunder. Seller further undertakes and agrees to defend, at Seller's expense, including attorney's fess, all suits, action or proceedings in which Buyer, its successors, assigns, customers, or users of its customer's products are made defendants for actual or alleged infringement of any U.S. or foreign letters, patents, copyrights or trademarks resulting from the use or purchase of any materials, goods or services furnished under this Agreement, and Seller agrees to pay or discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against such defendants therein.

11. **COMPLIANCE:** Seller's performance shall in all ways strictly conform with all applicable federal, state, and local laws, regulations, safety orders, and all labor agreements and working conditions to which it is subject, or which pertain to Seller's obligations under this Agreement. In



# L.H. WOODS AND SONS, INC.

## *General Engineering Contractors*

addition, Seller shall comply with all applicable laws required by the Prime Contract and Buyer's independent safety program. Seller shall execute and deliver all documents as may be required to effect or evidence compliance.

The Supplier agrees to comply with the L.H. Woods & Sons, Inc. site specific Injury and Illness Prevention Program (IIPP), as updated, for all on-site personnel. An IIPP acknowledgement form shall be signed by the Supplier.

The Supplier agrees to comply with L.H. Woods & Sons Inc., Drug Free Workplace Policy for any employee's sub-suppliers that may be on-site. A substance abuse acknowledgement form shall be signed by the supplier and returned with the Purchase agreement.

12. **INDEMNITY:** To the fullest extent of the law, Seller agrees to indemnify, defend and hold the Buyer, its officers agents and employees harmless from any and all loss, claim, suit, liability, damages, including all costs expenses and expert and attorneys' fees on account of injury or death to persons or damage to property, violation of any law, enforcement of any lien, or breach of any obligation under this Agreement, resulting from the acts or omissions of Seller or any person or entity for which Seller is responsible. This indemnity does not apply to the extent caused, if any, by the active negligence or willful misconduct of the Buyer. The indemnity set forth in this paragraph shall not be limited by the insurance requirement set for in Paragraph 15.

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

14. **APPLICABLE LAW – DEFINITIONS:** The definitions of terms used, interpretation of this Agreement and the rights of all parties hereunder, shall be construed under and governed by the law of the State of California. Whenever Buyer is not the ultimate consumer of the materials all right, benefits and remedies conferred upon Buyer hereunder shall accrue and be available to and are for the express benefit of any successors in interest to the materials, including the ultimate consumer of the materials.

15. **INSURANCE AND CLAIMS:** If Seller or its employees or agents come onto Buyer's premises or project in connection with this purchase agreement, Seller shall at its expense, purchase and maintain insurance of the following types of coverage and limits of liability.

a. Policies and Limits. Seller shall provide and maintain, at its own expense, insurance policies with responsible carriers approved to do business in the state of California which have a rating of not less than A: VII in the edition of the Best's Key Rating Guide current as of the date the policy is obtained, or otherwise acceptable to Contractor, of the following types and amounts:

(1) Workers' Compensation and Employer's Liability. Workers' Compensation, which shall comply with the statutory requirements of the state in which the work is



# L.H. WOODS AND SONS, INC.

## *General Engineering Contractors*

being performed; and Employer's Liability Insurance with policy limits of: a) \$1,000,000 each accident for bodily injury by accident, b) \$ 1,000,000 policy limit for bodily injury by disease, and c) \$ 1,000,000 each employee for bodily injury by disease. U.S. Longshore and Harborworkers Compensation Act Endorsement and Maritime Coverage Endorsement shall be provided when Seller performs any work applicable under such policies.

(2) Commercial General Liability Insurance. Commercial General Liability Insurance (CGL) in the following coverages (including but not limited to (i) personal injury; (ii) products liability; (iii) completed operations for at least ten (10) years after termination of services; (iv) Premises and Operations; (v) broad form property damage including but not limited to damage to property caused by explosion or resulting from collapse of buildings or structures, damage to underground structures and utilities; (vi) liability for slander, false arrest, and invasion of privacy arising out of construction operations; and (vii) blanket contractual liability), subject to policy terms, conditions, exclusions and limits of liability, but excluding Automobile Liability, in limits applicable specifically to the Project of not less than Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate for each policy year for combined personal injury or death and property damage, subject to an aggregate for products liability and completed operation for each policy year of Two Million Dollars (\$2,000,000). The combined aggregate limits of the Commercial General Liability Policy shall be made fully applicable to the Project by an appropriate endorsement unless issued on a project basis. Seller shall not provide general liability insurance under any Claims Made General Liability form without the express written consent of Buyer. CGL shall be written on ISO Occurrence form CG OO 01 10/01 or equivalent.

(3) Automobile Liability. Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for combined personal injury or death and property damage. This insurance shall apply to all owned, non-owned or leased automobiles and trucks to be used by Seller in the performance of the Purchase Agreement. Automobile liability insurance shall include coverage for all damage resultant from discharge or generation of hazardous materials or waste including MCS 90 and CA9948.

(4) Excess Liability. Excess Liability Insurance coverage in the amount of at least Five Million Dollars (\$5,000,000), or Ten Million (\$10,000,000) for tunneling work.

b. Subtier Providers. Seller shall require and provide insurance with coverages, limits, terms, and conditions, specified in this Section from all subcontractors, major vendors, and consultants engaged by Seller to perform any of the work under this Purchase Agreement.

c. Additional Insureds. Except for Professional Liability and Worker's Compensation Insurance, all policies shall include an endorsement identifying the following Indemnitees, as additional insureds, evidenced by amendatory riders or endorsements (Form Nos. CG 20 10 10 01 or CG 20 33 10 01, and CG 20 37 10 01) or equivalents), attached to the policies which shall indicate that, as respects the Indemnitees, there shall be severability of interests under said insurance policies for all coverages. The coverage under these policies shall be primary to any insurance carried independently by the Indemnitees. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in this Purchase Agreement.

Indemnitees:

(1) L.H. WOODS AND SONS, INC, and its Subsidiaries.



# L.H. WOODS AND SONS, INC.

## *General Engineering Contractors*

- (2) The Directors, Officers, Representatives, Agents, Sellers and Employees of the above.
- (3) The Owner, and any other party, including their officers, directors, agents (excluding design professionals), and employees, for whom Buyer has responsibility for work provided under this Purchase Agreement.

d. Evidence of Insurance; Other Policy Requirements. Each policy of insurance required to be provided and maintained by Seller shall be in form and content satisfactory to Buyer. Seller shall furnish to Buyer certificates of the insurance policies required to be maintained by Seller within ten (10) days after the execution of this Purchase Agreement and shall furnish or cause each Seller's Consultant to furnish to Buyer certificates of the insurance policies required to be maintained by it prior to the commencement of Seller's work on the Project. Upon request by Buyer, Seller shall provide, promptly, a copy of such insurance policies, which must be in form and content acceptable to Buyer. Such certificates shall provide for the delivery to Buyer of at least thirty (30) days prior written notice of cancellation or non-renewal. If the certificate does not so provide, the policies shall be endorsed (Form IL 12 01 11 85 or equivalent) to provide thirty (30) days notice of cancellation and a copy of the endorsement shall be provided Buyer. If the certificate does not provide for notice of cancellation to Buyer and the policy has not been endorsed to provide notice of cancellation, then the Seller shall be responsible for notifying the Buyer of cancellation of any policy within three (3) days from the date Seller becomes aware that the policy will be cancelled or not renewed. In addition, Seller agrees that for the duration of Seller's obligations under this Purchase Agreement, Buyer, at its sole and exclusive election, may inquire directly of the Seller's insurer and agents about the status and coverages of insurance required under this Purchase Agreement. By execution of this Purchase Agreement, Seller authorizes the Buyer to make such inquires. Except for specified excess coverage, each policy of insurance maintained by Seller and Seller's Consultants shall, to the extent applicable to the particular coverage (a) provide that such insurance is primary insurance as regards all other policies of insurance providing coverage to such additional insureds; (b) provide that any other insurance maintained by Buyer is excess and non-contributing insurance with that required herein; and (c) contain a "Cross-Liability" or "Severability of Interest" provision.

e. Assistance, Cooperation and Waiver of Subrogation. The parties shall assist and cooperate with each other in every manner possible in connection with the adjustment of all insurance claims arising out of the performance of this Purchase Agreement and shall cooperate with the insurance carrier or carriers in litigated claims and demands, whether resulting in litigation, which the insurance carrier or carriers are called upon to adjust or resist. Buyer and Seller hereby waive, and Seller shall cause Subtier Providers, as applicable, to waive any and all rights to subrogation against the other, the Owner, their agents, employees and representatives for any loss or damage to such waiving party to the extent: (a) such loss or damage arises from any cause or type of peril covered by any insurance required to be carried by such waiving party pursuant to this Purchase Agreement or any other insurance actually carried by such waiving party; and (b) of the amount the insurer actually pays with respect to such loss or damage under the insurance policy. Buyer and Seller shall take reasonable steps to have their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with this Purchase Agreement.

The Seller and Buyer waive all rights against each other and the and any of their Sellers, sub-Sellers, agents and employees, for damages caused by fire or other perils to the extent covered property insurance, if any, obtained pursuant to this Section and they actually receive insurance proceeds to cover such loss. These waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual



L.H. WOODS AND SONS, INC.  
*General Engineering Contractors*

or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

The Buyer shall have power to adjust and settle a loss with insurers under insurance provided under this Section.

f. Requirements of the Prime Contract. The requirements of the prime contract, applicable to the Sellers' work shall apply to the extent that they exceed the minimum requirements defined above.

16. **COMPLIANCE WITH LICENSE LAW:** Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a Contractor may be referred to the Registrar of the Board whose address is:

CONTRACTORS STATE LICENSE BOARD  
P.O. BOX 26000  
SACRAMENTO, CA 95826

17. **DISPUTES:** Buyer may, at its sole option, elect to arbitrate any dispute, the value of which is less than \$50,000.00 arising out of or related to this purchase agreement or the breach thereof, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The existence of a dispute between Buyer and Seller, not involving a material default by Buyer in performance of a condition precedent to Seller's performance, shall not relieve Seller of its obligation to perform under the Agreement. In the event either party becomes involved in litigation or arbitration arising out of this Agreement, the prevailing party shall be fully compensated for the cost of its participation such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee awarded shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. Disputes not arbitrated pursuant to this provision shall be litigated.

18. **FABRICATION:** Seller must complete and send to Buyer, a NOTICE OF FABRICATION FORM for itself and each Seller and fabricator he intends to use. Unless otherwise specified in the Contract Documents, seventeen (17) calendar days advance notice is required for all articles fabricated. The Seller must notify the Buyer of any scheduling changes prior to the fabrication date specified on the NOTICE OF FABRICATION FORM.

19. **HAZARDOUS MATERIALS:** The transportation, storage, use, removal, and disposal of hazardous materials used in the performance of the work by the Seller shall be in accordance with all laws, ordinances, and regulations. Hazardous materials are defined by state and federal regulations. The Seller shall submit to the Buyer, copies of the MATERIAL SAFETY DATA SHEETS (MSDS) prior to bringing hazardous materials to the site.

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SELLER

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L. H. WOODS & SONS, INC.  
BUYER





L.H. WOODS AND SONS, INC.  
*General Engineering Contractors*

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

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

Print Name: \_\_\_\_\_

Print Name: James D. Woods, Jr.

Title: \_\_\_\_\_

Title: President

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

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

Address: \_\_\_\_\_

Address: 2115 La Mirada Drive

\_\_\_\_\_

Vista, CA 92081

Phone \_\_\_\_\_

Phone: (760) 599-5500

Fax: \_\_\_\_\_

Fax: (760) 599-5510