



CONSIGLI

Est. 1905

Material Purchase Agreement

#

To:

Date:

Job:

Job Address:

Description:

Furnish and deliver F.O.B. jobsite all of the

for the project as specified and as shown and as further modified and/or clarified in accordance with the MPA exhibits, as listed below, attached hereto and hereby made a part here of.

EXHIBIT "A" - SCHEDULE OF WORK

EXHIBIT "H" - PROJECT SPECIFIC REQUIREMENTS

Total Material Purchase Agreement Amount:

Bonds Required (Yes/No):

Sample Material Purchase Agreement

Date

Consigli Construction Co., Inc.

Date

Project Name
City - Town, State - Job # xxx
MPA-xxx-xxx – Between Consigli Construction Co., Inc. (“Contractor”) and (Vendor Name)

Vendor Contact Name

Business Name (to be removed before finalizing)

Address, phone, fax

Email -

Cost Code (enter code)

Value - \$

Date of Award to Vendor _____

EXHIBIT“A”
SCOPE OF WORK

1. **SCOPE OF WORK** - The Scope of the Material Purchase Agreement Work includes furnishing f.o.b. jobsite all _____ for the Project in strict accordance with the following Contract Documents which are listed below and made a part hereof (the “Goods”):
 - A.
 - B.

2. **ADDITIONAL INCLUSIONS** - The Scope of Work of the Material Purchase Agreement also includes provisions for all labor, materials, equipment and supervision required to furnish f.o.b. jobsite all _____ as specified and as shown including, but not limited to the following:
 - 1)
 - A. Provisions for all submittals as specified.
 - B. Provisions for all warranties and guarantees as specified and as required.
 - C. It is mutually understood and agreed that Vendor has included provisions for all deliveries which shall be coordinated with Contractor's Project Manager or Project Superintendent.
 - D. All Goods shall be provided in strict accordance with all local, state, federal and regulatory codes, standards and regulations.

3. **CONSTRUCTION SCHEDULE** - Vendor hereby acknowledges and agrees that it has been made aware of and hereby agrees to comply with the following schedule for the Material Purchase Agreement Work:
 - A. Provide submittals to Contractor's office immediately. Lead-time on submittals and shop drawings shall be no longer than ____ () weeks.
 - B. Deliver all Goods in accordance with Contractor's Project Manager's Construction Schedule dated _____

4. **EXCLUSIONS** - The following items are excluded from the Scope of Work of this Material Purchase Agreement:
 - A. Installation

5. **SALES TAX** - Sales Tax - All prices set forth herein **include / exclude** all applicable Sales and/or Use Taxes.

6. **DISPUTE RESOLUTION** – Jury-waived litigation in state court [unless copy of Owner-Contract dispute resolution method is incorporated by reference here]

7. **PROJECT SITE REQUIREMENTS**
 - A. No smoking shall be allowed on site
 - B. No abusive or inappropriate language will be tolerated
 - C. No one shall physically abuse any individual on our project site
 - D. All workers food scraps and trash must be disposed of into a waste basket or dumpster at all times
 - E. No radios, IPODS or any other musical devices are allowed on site
 - F. All deliveries need to be coordinated with the jobsite superintendent 48 hours prior to delivery
 - G. Normal working hours are Monday – Friday 7:00 am – 3:30 pm. or as directed by the job superintendent as required by project
 - H. All Vendors shall use rubber wheeled carts when moving material or removing trash from a building. Any damage caused by Vendor shall be repaired at the cost of Vendor. Back charges will be appropriately assessed for the cost of the repairs.
 - I. Please check with project superintendent to verify parking on or near the site.

MATERIAL PURCHASE AGREEMENT TERMS & CONDITIONS

1. **ACCEPTANCE:** This MPA is Buyer's offer to purchase the Goods according to the terms and conditions specified herein. When signed by Vendor, this MPA establishes a binding contract. The MPA, together with the Contract Documents listed on the face of this MPA, sets forth the entire agreement between the parties and supersedes any prior negotiations and understandings between them respecting the subject matter of this MPA.

2. **CHANGES:** No change, modification or revision of this MPA shall be valid unless assented to in writing and signed by Buyer. Buyer shall have the right to make changes from time to time as to quantities, packing, testing, destinations, specifications, designs, and delivery schedules. Vendor shall promptly notify Buyer of any increase or decrease in price or time of delivery caused by such changes, and an equitable adjustment of prices and/or delivery schedules hereof shall be made by the parties.

3. **DELIVERY:** Buyer's production schedules are based upon Vendor's agreement that the Goods will be delivered to Buyer by the date(s) specified on the face of this MPA. Time is of the essence of this MPA. Buyer reserves the right to refuse deliveries made in advance of the schedule of deliveries appearing on the face hereof. Delivery shall not be deemed complete until the Goods are received and subsequently accepted by Buyer. Receipt of delivery must be signed by Buyer's Project Superintendent or Project Manager. Whenever any delay (or any threatened delay) in delivery is foreseen by Vendor, Vendor shall immediately notify Buyer of such threatened or actual delay, but any such notice shall not affect any right of Buyer hereunder.

4. **SHIPPING, PACKAGING AND PACKING, AND STORAGE:** Vendor shall comply with Buyer's shipping and routing instructions on the face of this MPA. No additional charges of any kind for boxing, packing, crating, cartage or storage will be allowed. Vendor shall be responsible for safe packaging and packing. Vendor shall separately number all cases, packages and other containers showing the corresponding numbers in all invoices. An itemized packing slip bearing Buyer's order number shall be placed in each container. A shipping memo, including designation of Goods, date shipped, carrier, car number, bill of lading number and routing shall be mailed promptly to Buyer at the address listed on the face of this MPA ("Buyer's Office"). A duplicate shipping memo should be delivered to Buyer at the location of the Project.

5. **SHIPMENT AND RISK OF LOSS:** Notwithstanding any F.O.B. terms stated herein, Vendor's tender of Goods shipped pursuant to this MPA shall be upon receipt of the Goods by Buyer at Buyer's delivery location as designated on the face of this MPA. Risk of loss and/or damages shall be upon Vendor until the Goods are physically delivered (and accepted) to Buyer's designated location. Charges for prepaid transportation must be agreed upon by Buyer and substantiated by attaching to the invoice original transportation bills signed by the carrier.-

6. **INSPECTION, ACCEPTANCE OR REJECTION OF GOODS:** Items purchased hereunder will be inspected at time of delivery at project destination. In addition to its other rights and remedies, Buyer reserves the right to reject and refuse acceptance of items which are not in accordance with the instructions, specifications, drawings, and data or Vendor's warranty. Payment for any item shall not be deemed an acceptance thereof.

7. **INVOICES:** Promptly after shipment (or by the 25th of each month) Vendor shall forward to Buyer's Office the invoice (bearing the date of shipment), a copy of the packing slips and the bill of lading, express receipt, or parcel post receipt, all bearing Buyer's MPA number. For billing purposes, Vendor and its lower-tier suppliers will be required to provide to Buyer a detailed breakdown of its MPA Price in order to show the division of the price in the manner requested by Buyer.

8. **TERMS OF PAYMENT:** Vendor agrees that the price set forth in this MPA is firm for the duration of the Project for which the Goods are to be used.

Payment terms shall be Net 30 days determined from date of Buyer's receipt of Goods or receipt of invoice, whichever is later. Invoices will not be payable before inspection and acceptance of the Goods. However, Buyer, at its option, may pay in advance of inspection and acceptance without prejudice to its rights hereunder. Drafts against Buyer will not be honored, nor C.O.D. shipments accepted, absent prior written agreement. If requested, Vendor shall provide a signed waiver of mechanics lien form in consideration for any progress or final payment.

9. **WARRANTY:** All Goods delivered hereunder shall be free from defect-in materials and/or workmanship and shall conform strictly to any specifications, drawings or samples specified or furnished. Vendor warrants that all Goods supplied under the terms of this MPA will be adequately contained, packaged, and labeled and that all such Goods will conform to the promises, descriptions, and statements of fact made on the containers and labels of the Goods and in any written document promulgated or furnished by or on behalf of Vendor the composition, characteristics, virtues, qualities, measurements and/or properties of the Goods. Vendor agrees to replace or promptly correct, without expense to Buyer, any Goods not conforming to the foregoing requirements, a reasonable time upon written notification by Buyer. These warranties shall survive Buyer's inspection, acceptance and payment.

10. **REMEDIES:** Any failure of Vendor to comply with the material terms and conditions of this MPA shall constitute a breach hereof. In the event of any material breach, Buyer reserves the following rights against Vendor: (a) to cancel and reject so much of Vendor's performance as is nonconforming and executory or at Buyer's option the whole order; (b) to recover so much of the price as has been paid with respect to such cancellation or rejection; (c) to make covering purchases at Vendor's expense of any nonconforming Goods and recover the cost thereof; (d) to recover all damages the extent allowed by Section 2-715 of the UCC; and/or (e) to recover from Vendor the amount of any damage, injury or loss to Buyer resulting from any breach of physical warranty as to Goods ordered hereunder, any breach of the price or delivery terms hereof, or any other breach of any other material terms of this MPA. Goods which do not conform to the requirements of this MPA may be returned to Vendor at Vendor's expense for replacement, repair, or credit at Buyer's option. The remedies herein specifically reserve shall be cumulative and in addition to any other remedies provided by law or equity.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, Vendor shall indemnify, defend and hold Buyer harmless from and against any and all claims, liabilities, fines and penalties, liens, demands, and causes of action for or on account of any injury to persons, including death (and including employees of Vendor, Vendor's subcontractors or suppliers, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable) or damage to property resulting from or in consequence of Vendor's performance or non-performance hereunder. Vendor will defend with attorneys reasonably acceptable to Buyer all such claims at its own cost and expense. In claims against any person or entity indemnified under this paragraph by an employee of Vendor, Vendor's sub-subcontractors or suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Vendor or Vendor's sub-subcontractors or suppliers under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

12. **INSURANCE:** Vendor agrees to provide and maintain, at its own expense, the following insurance: (i) Commercial General Liability (CGL) with Products Liability coverage with limits of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate; (ii) Business Auto Liability with combined single limits of at least \$1,000,000 each accident; and (iii) Excess

Umbrella with limits of at least \$5,000,000; and (iv) Workers' Compensation (statutory) and Employers Liability with limits of a least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease (where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement and/or Maritime Coverage Endorsement and/or Defense Base Act Coverage shall be attached to the policy-

13. **TERMINATION FOR CONVENIENCE:** Buyer may at any time terminate this MPA at its convenience, in whole or in part, by written notice thereof to Vendor. If Vendor has incurred expenses because of partial performance including non-cancelable purchase of materials, preparation, of fabrication of Goods identifiable to this MPA, it shall submit a request for an equitable adjustment which the parties shall negotiate in good faith. Neither party shall be held liable to the other for any lost profits or other incidental or consequential damages resulting from or relating to said termination for convenience.

14. **CONFIDENTIAL INFORMATION:** Vendor shall use the Contract Documents provided in connection with this MPA only for the purposes of fulfilling the requirements of this MPA and shall not disclose such documents or their contents or any information pertaining to Buyer, this MPA or Buyer's affairs to any person, firm or corporation other than as needed to fulfill this MPA. Vendor shall, upon Buyer's request or upon completion of the order, promptly return all Documents to Buyer.

15. **SAFETY:** If this MPA required Vendor to perform any operation on the Project site, Vendor shall be obligated to provide for the safety of its employees at such site. Vendor agrees to conduct itself on site in a safe manner to provide a safe place to work, and to abide by and enforce all applicable federal, state, and local safety laws, rules or regulations governing the performance of this MPA. Vendor further agrees to cooperate with any other safety programs in effect on the job site.

16. **"RIGHT TO KNOW" and "HAZARD COMMUNICATION" LAW COMPLIANCE:** Vendor shall furnish to both the destination and to Buyer's Office the required Material Safety Data Sheet (MSDS), together with appropriate labels on all material containers.

17. **TAXES:** Vendor shall pay all governmental taxes, tariffs and/or other charges that Buyer may be required to pay with respect to the production, sale and transportation of any Goods provided hereunder, except those taxes, tariffs and/or other charges which are specifically noted on the face of this MPA.

18. **COMPLIANCE WITH LAWS:** To the extent relevant to this MPA, Vendor's performance shall comply in all respects with all federal, state, and municipal laws, regulations, ordinances, and bylaws relating thereto including, without limitation and when applicable, (i) all applicable U.S. Government procurement regulations, including the Federal Acquisition Regulations (FAR); (ii) any state or local public procurement law or regulation; and (iii) any mandatory term included, referenced or required to be included by law or regulation in any instructions, specifications or drawings included as part of this MPA.

19. **ASSIGNMENT:** Vendor shall not assign this MPA or any portion thereof without the express prior written consent of Buyer. Vendor acknowledges and agrees to Buyer's right to assign this MPA to third parties, including, but not limited to, Owner or Owner's lender as security for the performance of the Buyer's obligations to Owner. Vendor consents to such an assignment, if, as and when made, and shall accept, after receipt of notice, performance by such assignees of all of the rights and obligations of the Buyer as set forth in this MPA.

20. **DESIGN DELEGATION:** Whenever the Contract Documents referenced in this MPA specifically require Vendor to furnish, as part of the performance required by this MPA, design or engineering services or certifications of any kind, Vendor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by such professional. Buyer shall

be entitled to rely upon the adequacy, accuracy, and completeness of such services. Vendor shall furnish a certificate of insurance from each design professional certifying to professional liability insurance coverage for such design profession in an amount not less than \$1,000,000 or such greater amount as required by the Contract Documents. Vendor shall indemnify, defend and hold Buyer harmless from all claims, damages or losses, including reasonable attorney's fees, arising out of or related to any errors or omissions in design.

21. **RIGHT TO ACCESS:** Buyer and Owner and their respective representatives shall have full and free access to all places of business of Vendor or of Vendor's suppliers, including but not limited to the places of production, manufacture or shipment, in order that they may inform themselves as to the general condition and progress of Vendor's performance as herein contemplated and/or to perform inspections and tests. Vendor shall furnish, without additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests.

22. **VENDOR REQUESTS FOR INFORMATION:** Vendor agrees that any information needed by it to promptly and expeditiously perform Vendor's performance will be sought by written request to Buyer promptly after discovery.

23. **GOVERNING LAW; JURISDICTION; VENUE:** This MPA shall be construed in accordance with the laws of the jurisdiction of the Project for which the Goods have been ordered without regard to that jurisdiction's law regarding conflict of laws, including, when applicable the Uniform Commercial Code as adopted in such jurisdiction. All disputes arising out of or in connection with this MPA shall be brought in state or federal court having jurisdiction (jury trial waived), unless a different method of dispute resolution is required on the first page of this MPA. By executing or performing under this MPA, Buyer consents to personal jurisdiction in the state and judicial district where the Project is located.

24. **INTEGRATION CLAUSE:** This MPA contains the entire Agreement between the parties relating to Vendor's performance at the Project and supersedes all previous agreements between the parties whether written or oral with respect to the subject matter hereof.

25. **NO WAIVER; SEVERABILITY:** Buyer's failure to insist on performance of the terms and conditions herein or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, shall not thereafter waive the same or other terms, conditions, rights or privileges or affect any subsequent breach. In the event that any terms and conditions of this MPA are declared void or unenforceable under law, this shall not serve to abrogate the entire instrument and the remainder of the terms and conditions shall continue to be in full force and effect.

26. **SUCCESSORS AND ASSIGNS:** The rights and obligations set forth herein shall inure to the benefit of and be binding upon Buyer and Vendor and their respective successors and permitted assigns and any entity with which Buyer or Vendor may merge or consolidate or to which Buyer or Vendor may sell its assets.

27. **USE OF BUYER'S NAME:** Vendor shall not use the name or any trademark of Buyer or its clients or of any employee of Buyer, or any in its sales promotion, advertising, or any other publication without Buyer's prior written permission. No person performing on behalf of Vendor pursuant to this MPA shall represent himself or herself to be an employee or agent of Buyer.

28. **FLOW-DOWN:** Vendor shall include the terms and conditions of this MPA in any of its agreements with lower-tier vendors.