

**MPA-000-001 – Between Kirchhoff Consigli Construction Management, LLC and**

**Exhibit “A”  
Schedule of Work**

1. **SALES TAX**: The MPA price includes/excludes all New York State sales and usage taxes.
2. **PAYMENT TERMS**: Payment terms shall be net 30 from the date of the approved invoice for payment with 0% retainage.
3. **DELIVERY**: The MPA price is inclusive of delivery of all materials F.O.B. jobsite.
4. **DELIVERIES**: It is mutually understood and agreed that all deliveries to the project site shall be delivered between the hours of 7:00 am and 3:30 pm, Monday through Friday, unless otherwise directed by the Contractor’s Project Superintendent. It also mutually understood and agreed that all deliveries shall be scheduled and confirmed (by fax), with the Contractor’s Project Superintendent 24 hrs prior to delivery.  
All deliveries shall be made to:

**Kirchhoff Consigli Construction Management, LLC Site  
199 West Road  
Suite 100  
Pleasant Valley, NY 12569  
Attn: Scott Fischer (845) 635-1800**

5. **RECEIPT OF MATERIALS**: It is mutually understood and agreed that receipt of all material shall be confirmed in writing via billing slips, packing slips etc by the Contractor’s Field Superintendent. Confirmation is for receipt of shipment only, not for quantity of material received. The quantity of material received will be determined via a detailed inspection by the Field Superintendent. The supplier has the option of having a representative onsite during the field count of material. Any discrepancies between the packing list and the field count will be reported immediately in writing. Copies of all signed confirmations shall be submitted (if required by the Contractor’s Project Manager), with the Vendor’s requisition for monthly payment.
6. **PREREQUISITE PAYMENT REQUIREMENTS**: In addition to the Terms of Payment as described above, the Vendor will be required to adhere to the following additional terms. In order for the Vendor to receive any progress payments, the Vendor will be required to transmit to the Contractor's Office, the following Contract Documents. A list of these Contract Documents and the condition in which they must be in to be acceptable, are as follows:
  - A. **MATERIAL PURCHASE AGREEMENT** - Fully and correctly executed in the signature blocks provided. No physical modifications shall be made to any part of the MPA. Any qualifications shall be addressed under separate cover and if mutually agreed upon shall be incorporated into to the MATERIAL PURCHASE AGREEMENT.
  - B. **CERTIFICATES OF INSURANCE** - Submitted on the proper forms, reflecting the following Minimum Amounts & Limits
    1. Workers’ Compensation as required by any and Employer’s Liability applicable law or regulation. If there is an exposure of injury to Vendor’s employees under the U.S. Longshoreman’s and Harbor Worker’s Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.
    2. Commercial General Liability with combined single limits of liability for bodily injury or property damage, excluding personal injury, shall be:

\$500,000 Bodily Injury Each Occurrence  
\$500,000 Personal Injury Aggregate

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\$1,000,000 Property Damage Each Occurrence  
\$1,000,000 Property Damage Aggregate

3. Automobile liability (Owner, hired and non-owned) with combined single limits of liability for bodily injury or property damage shall be:

\$500,000 Bodily Injury per Person  
\$500,000 Bodily Injury per Accident  
\$500,000 Property Damage

Vendor shall furnish Contractor with Certificates of Insurance as evidence of the above-required insurance and such Certificate shall provide for thirty (30) days written notice to Contractor prior to cancellation thereof.

Neither Owner nor Contractor is maintaining any insurance on behalf of the Vendor covering loss or damage to the work or to any other property of Vendor unless otherwise specifically set forth herein.

None of the requirements contained herewith as to type, limits and approval of insurance coverage to be maintained by Vendor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Vendor under this MPA.

Vendor shall deliver the original Certificate of Insurance and one copy to the following address:

Kirchhoff Consigli Construction Management, LLC  
199 West Road, Suite 100  
Pleasant Valley, NY 12569  
Att: Janet Gross

Note: To assist in avoiding any payment delays associated with the above terms, and to confirm insurance coverage's are met prior to on site delivery, the Vendor is required to submit its Certificates of Insurance within five (5) days of a verbal award, and return the MATERIAL PURCHASE AGREEMENT within five (5) workings days from receipt thereof.

7. **INDEMNIFICATION** - To the extent permitted by law, the Vendor shall (1) fully indemnify and save the Contractor wholly harmless from any and all claims, liabilities, liens, demands, and causes of action for or on account of any injury to persons, damage to property, fines, penalties' assessments, or any loss of whatever kind or nature arising out of or in consequence of the performance of the Vendor's work hereunder and (2) assume, on behalf of the Contractor, its officers, agents, servants, and employees, the defense of any claim or action which may be brought against the Contractor, its officers, agents, servants, or employees and shall reimburse the Contractor for any attorneys' fees and expenses incurred by the Contractor with respect to any such claim.
8. **ASSIGNMENT** - The Vendor hereby acknowledges and agrees to the Contractor's right to assign this Material Purchase Agreement to third parties, including, but not limited to, the Owner or the Owner's lender (the "Assignee") as security, or as additional security, for the performance of the Contractor's obligations as described in this Agreement or in documents collateral to this Agreement (the "Assignment Documents"). The Vendor agrees to said assignment and to accept, after appropriate notice under the Assignment Documents, the performance by the Assignee of all of the rights and obligations of the Contractor as set forth in the Material Purchase Agreement.
9. **CONTRACTOR'S RIGHT TO CARRY OUT THE WORK**: If the Vendor defaults or neglects to carry out the work in accordance with the Material Purchase Agreement Documents or fails within a three (3) day period after receipt of written or verbal notice from the Contractor to commence and continue correction of such fault or neglect with diligence and promptness, the Contractor may correct such deficiencies. In such case an appropriate

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Change Order shall be issued deducting from payment then or thereafter due the Vendor the reasonable cost of correcting such deficiencies, including Contractor's expenses and compensation for additional services made

necessary by the default. Should the Vendor's deficiencies pose a threat to the safety and well being of the project and/or the employees, the Contractor reserves the right to bypass the three (3) day notification period and perform the corrective work immediately

10. **CHANGES IN THE WORK** - The Vendor hereby acknowledges and agrees that upon receipt from the Contractor of a notification of a Change Order Request, the Vendor will respond no later than ten (10) days from the receipt thereof in writing as to the effect on the Material Purchase Agreement Price and/or Material Purchase Agreement Work Schedule of said Change Order Request, and will provide full and complete detailed information to substantiate the effect. Should the Vendor fail to respond within ten (10) days, the Contractor shall be at liberty to ascertain cost and schedule impact and amend the Material Purchase Agreement accordingly
11. **ACCIDENT REPORTING**: The Vendor hereby acknowledges and agrees to orally notify the Contractor's Project Superintendent within twenty-four (24) hours after any of the Vendor's employees and/or equipment and/or motor vehicles or any of its lower tier Vendor's and/or supplier's employees and/or equipment and/or motor vehicles are involved in a jobsite accident or injury. Further, the Vendor also hereby acknowledges and agrees to provide the Contractor with a completed first report of injury within five (5) days after any of the Vendor's or any of its lower tier Vendor's or supplier's employees are injured in a jobsite accident.
12. **SUBMITTALS**: Vendor shall provide all material data information, shop drawings and submittals as required by the Material Purchase Agreement Documents.
13. **ESTIMATES OF COST** - The Vendor will be required to cooperate with the Contractor and the Owner in a detailed breakdown of its Material Purchase Agreement Price in order to show the division of costs between several parts of the work and in the manner and form required by both the Contractor and the Owner showing also breakouts of labor, material, overhead, general conditions and profit. It is understood and agreed that this will also apply to all of the Vendor's lower tier sub-Vendors.
14. **OFFSITE STORAGE** - Any offsite storage requirements shall be the responsibility of the Vendor.
15. **CORRECTION OF WORK** - The Vendor shall promptly correct Work rejected by the Contractor and/or the Owner or known by the Vendor to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct the Work under this Material Purchase Agreement found to be defective or nonconforming.

Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of the Vendor under the Work of this Material Purchase Agreement. This Paragraph relates to the specific obligation of the Vendor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Vendor's liability with respect to the correction of the Work.

16. **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:
  - A. Drawings as prepared by Kirchhoff-Consigli Construction, dated April 6, 2010 including, but not limited to:
    1. Division 1 specifications as applicable
17. **ADDITIONAL INCLUSIONS** - The Scope of Work of the Material Purchase Agreement also includes, but is not limited to, the following items:
  - A. 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:

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- B. Provisions for compliance with all specifications, general notes, typical notes and all other specifications related to the scope of work of this Material Purchase Agreement.
  - C. Provisions for all submittals, shop drawings, literature, hardware schedules, cut sheets, keying schedules and templates as specified.
  - D. Provisions for all warranties and guarantees as specified and as required.
  - E. It is mutually understood and agreed that the Vendor has included provisions for all deliveries f.o.b. jobsite as required (to be coordinated with Project Manager and/or Job Superintendent).
  - F. All materials shall be provided in strict accordance with all local, state, federal and regulatory codes, standards and regulations.
18. **CONSTRUCTION SCHEDULE** - The 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 shop drawings and submittals to the Contractor's office immediately. Lead-time on submittals and shop drawings shall be no longer than 2 weeks.
  - B. Deliver all materials in accordance with the Contractor's Project Manager's Construction Schedule dated 5/20/12
19. **EXCLUSIONS** - The following items are excluded from the Scope of Work of this Material Purchase Agreement:
- A. Installation

**EXHIBIT “H”**  
**Project Specific Requirements**

1. No smoking shall be allowed on site
2. No abusive or inappropriate language will be tolerated
3. No one shall physically abuse any individual on our project site
4. All workers food scraps and trash must be disposed of into a waste basket or dumpster at all times
5. No radios, walkman, IPODS or any other musical instruments are allowed on site
6. All deliveries need to be coordinated with the jobsite superintendent 48 hours prior to delivery
7. Normal working hours are Monday – Friday 7:00 am – 3:30 pm. or as directed by the job superintendent as required by project
8. All subcontractors shall use rubber wheeled carts when moving material or removing trash from a building. Any damage caused by the Subcontractor shall be repaired at the cost of the Subcontractor. Back charges will be appropriately assessed for the cost of the repairs.
9. Please check with project superintendent to verify parking on or near the site.
10. Place Holder
11. Place Holder