



DPR PURCHASE ORDER

Sample Project

DPR Job No.:	XX-XXXXXX-XX	P. O. No.:	XXXXXXXXXX	Phase Code(s):	XX-XXXX
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This Purchase Order ("Agreement") is made as of XX/XX/XXXX, ("Effective Date"), between DPR Construction, A General Partnership, a California corporation ("Buyer"), and * Sample Seller * (Seller) in connection with the Prime Contract for the Project.

BUYER

DPR Construction, a General Partnership, _____ Regional Office

SELLER

* Sample Seller *

OWNER

PROJECT

Sample Project

ARCHITECT

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM.

- MATERIAL TO BE PROVIDED:** Seller shall furnish the goods and material described below at the price or prices set forth opposite each item within the times stated below in accordance with the terms and provisions of this Purchase Order which includes the contract between Buyer and Owner for work at the Project, including all documents included or referenced therein (Prime Contract) and the Attachments listed in Section 2.

Item	Description & Estimated Quantity	Job No.	Phase Code	Total*	Delivery Date
		XX-XXXXXX-XX	XX-XXXX	\$	

Total:	\$
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* Approximate Amount of Material Contract (Based on Estimated Quantity)

Ship 9606 MoPac Expressway N., Ste 300 Via: Mark:
 to: Austin, TX 78759

Deliver F.O.B. Destination, Freight Prepaid and Allowed, to: Project Site

Send Invoice to: DPR Construction, a General Partnership

Attn: Project Accountant at, _____@dpr.com

Terms: Payment within 10 days from payment from Owner.

- ENTIRE AGREEMENT:** This Purchase Order is the entire agreement between Buyer and Seller with respect to the goods and materials described in Section 1, and supersedes all proposals, negotiations, stipulations, understandings, agreements, representations and warranties, if any, between Buyer and Seller with respect to such goods and materials which preceded or accompanies the execution of this Agreement. This Purchase Order consists of this Agreement, the Attachments listed in this Section 2, including the applicable terms, conditions, plans, and specifications of the Prime Contract. Seller's acceptance is limited to the terms and conditions contained in this Purchase Order. Commencing performance or making deliveries or any acknowledgement of this Agreement by Seller shall constitute an acceptance of the terms of this Agreement by Seller. Buyer is to be bound only by the terms and conditions of this Purchase Order. Purchase Order Attachments are:

- Attachment 1, .
- Attachment 2, .

- CHANGES AND RIGHT TO TERMINATE:** Changes will be binding on Buyer only if in writing and signed by the Buyer.
 - Buyer, for its convenience, 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, or termination. Buyer may terminate or suspend, at its convenience, all or any portion of this order not shipped as of the date of termination or suspension of Seller's right to proceed with this Purchase Order. In the event of any change or termination, there shall be an equitable price adjustment by Buyer. If Seller maintains that Buyer's adjustment is not equitable, the price change shall be negotiated. In the event the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provision of this Agreement. However, if unit prices have been designated as to the goods and materials maintained in the normal course of Seller's business as standard stock, such unit prices shall control all price adjustments for quantity changes. No change or termination shall relieve Buyer or Seller of any of their obligations as to any material shipped prior to Seller's receipt of the change, termination, or suspension order. Any claim for adjustment by Seller hereunder must be asserted in writing within ten (10) days from written notice of such change or termination.
 - If the Owner shall order the Buyer to change, adjust, substitute, add to, delete from, suspend, or terminate the work included in this Purchase Order, Seller shall comply with Owner's order and the price or time of performance hereunder shall only be adjusted as allowed by Owner. If requested by Owner, Seller agrees to be bound to, and by, the dispute resolution procedure of the Prime Contract.
 - In the event of a termination of this Purchase Order for Seller's default, 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.

- 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, which either party is required to pay with respect to the production, sale, use or shipment of the goods and materials covered by this Agreement, and all charges for packing, loading, insurance, shipping and unloading. Transportation costs are designated

as part of the cost of the Seller and are only to be compensated for actual costs. Any and all damage to the goods and materials, until acceptance by Buyer at destination, shall be for the account of the Seller.

4.1. Seller's invoice shall set forth the items delivered to the Project site, the date of delivery, and the unit cost and total costs of the items invoiced. Seller's right to payment is subject to the same payment provisions enforced upon Buyer by the terms of the Prime Contract. Buyer agrees to pay the Seller for goods and materials actually delivered to the Project site under this Agreement, from funds received by Buyer, from Owner, for work of Seller as referenced in Buyer's Payment Applications, except payments withheld due to culpable acts or omissions of Seller. Seller shall, in turn and in the same manner, make progress payments to its suppliers and subcontractors upon payment to Seller from Buyer for work performed and materials furnished by Seller's suppliers and subcontractors, to the extent of their respective interests therein. Payment for all goods and materials stored offsite is solely at the discretion of Buyer. Any monies paid by Buyer to Seller under the terms of this Agreement shall be held in trust by Seller in favor of third parties furnishing labor and material to Seller with respect to the Work. Seller shall mark all payments made to its subcontractors and suppliers by identifying the Project referenced in this Agreement and including language on its remittances that limits the application of its payments to outstanding balances on the Project referenced in the Agreement. At any times reasonably requested by Buyer, Seller shall furnish notarized evidence that all labor, materials, and other costs for which it has received payment from Buyer have been paid in full. Seller agrees to provide Buyer with evidence satisfactory to Buyer showing payment by Seller of any and all contributions for health and welfare payments, payroll taxes and other contributions which may be required by law.

5. **RISK OF LOSS:** Notwithstanding the terms of shipment, the risk of loss shall pass to Buyer only after delivery and acceptance by Buyer of the goods and services at the Project site.
6. **DELIVERY:** Time is of the essence of this Agreement. If no delivery date is specified on the face of this order, all deliveries of goods and materials shall conform to the date or dates specified in writing from time to time by Buyer's representative. Should delivery for any reason fail to be timely, Seller shall be liable for all damages suffered by Buyer as a result of such failure, including, without limitation, any liquidated or other damages under Buyer's Prime Contract. In no event shall Seller be entitled to an extension beyond that allowed to Buyer under the terms of the Prime Contract.
7. **DEFAULTS:** If Seller fails to perform any of its obligations hereunder, 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 or bankruptcy proceedings, or becomes involved in labor difficulties, which in Buyer's opinion threaten Seller's ability to perform in a timely manner, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the Purchase Order upon written notice to Seller; such termination shall be deemed a termination for default. Buyer's failure to notify Seller of a rejection of nonconforming goods or materials or to specify with particularity any defect in nonconforming goods or materials after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach which it may otherwise have.
8. **INSPECTION:** Buyer shall have the right to inspect and test the goods and materials at Seller's plant any time prior to shipment and to conduct additional inspections at any time after arrival at the Project site. The making or failure to make any inspection of, or payment for or acceptance of, the goods and materials shall not impair Buyer's right to later reject nonconforming goods and materials, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Seller shall be liable for all additional inspection, reshipment and return costs on nonconforming goods and materials. Seller shall not replace returned goods and materials unless so directed by Buyer in writing.
9. **WARRANTIES:** Seller warrants to Buyer that it has fully reviewed the Purchase Order's documents, including Attachments, specifications, drawings, samples, Prime Contract, and/or other descriptions contained in this Agreement. Seller warrants to Owner, Architect, and Buyer that all goods and materials furnished shall be new and of good quality, unless otherwise explicitly specified in the Purchase Order and that all goods and services shall be free from faults and defects and shall be fit and appropriate for the purpose intended and in full conformance with the Agreement, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Prime Contract for the period set forth in the Prime Contract. All goods and services not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The warranty provided in this Section 9 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Purchase Order. The representations and warranties in this Section 9 shall survive the termination or completion of this Agreement. In addition to the foregoing warranties, Seller shall be required to provide all warranties required in the Prime Contract to be provided by Buyer that relate, in any manner, to the Seller's work.
10. **INFRINGEMENT:** Seller shall pay all royalties and licensing fees arising in connection with the sale or use of the goods and materials hereunder. Seller further undertakes and agrees to defend, at Seller's expense, all suits, actions 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 patent, copyrights or trademarks resulting from the use or purchase of any goods and materials 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 laws, regulations, 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 the Prime Contract and by Buyer's own internal safety program, and all local regulations and building codes. Seller shall execute and deliver all documents as may be required to effect or evidence such compliance.

- 12. INDEMNIFICATION AND DUTY TO DEFEND:** Seller assumes all risk in furnishing the goods and materials and services ordered hereunder, and will indemnify, hold harmless and defend Buyer and Owner against any and all losses, damages, liabilities and claims of any kind whatsoever, including actual attorneys' fees and experts' or consultants' fees, which arise directly or indirectly out of the performance or nonperformance of this Purchase Order including, but not limited to, losses of any goods and materials ordered hereunder and injuries to property and to persons, including death. This indemnity applies regardless of any active and/or passive negligent act or omission of Buyer or Owner or their agents or employees. Seller, however, shall not be obligated under this Agreement to indemnify Buyer or Owner for the sole negligence or willful misconduct of Buyer or Owner or their agents or employees. The indemnity set forth in this Section 12. shall not be limited by the insurance requirements set forth in Section 15 below.
- 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 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 Purchase Order against any delinquent 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 governed by, and shall be interpreted in accordance with the laws as stipulated in the Prime Contract, or if not so stipulated, the laws of the state and locality in which the Project is located without regard to any state's choice or conflict of law statutes. Whenever Buyer is not the ultimate consumer of the goods and materials, all rights, 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 goods and materials, including the ultimate consumer of the goods and materials. The goods and materials includes the supplies, drawings, data and other property and all services, including design, delivery, installation, inspection and testing specified or required to furnish the goods and materials or services ordered.
- 15. INSURANCE AND CLAIMS:** If Seller or its employees or agents come onto Buyer's premises or Project in connection with this Purchase Order, Seller agrees to carry (i) Comprehensive General Liability Insurance covering personal injuries (including death) in the amount of \$1,000,000.00 per occurrence, and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of \$1,000,000.00 per person, and \$1,000,000.00 per occurrence, property damage in the amount of \$1,000,000.00 per occurrence, and products liability in the amount of \$1,000,000.00. Seller further agrees to provide and maintain Workers' Compensation Insurance in conformity with the laws of the state in which the Project site is located and Employer's Liability Insurance in the amount of \$500,000.00 per occurrence. If requested by Buyer, Seller shall submit written proof of such insurance to Buyer prior to entrance on Buyer's premises or Project. Seller shall supply such bonds as are required by Buyer.
- 16. COMPLIANCE WITH LICENSE LAW:** Sellers shall have all licenses required by the appropriate authorized authority, and maintain said licenses during the full term of this Purchase Order.
- 17. DISPUTES:** Buyer may, at its sole discretion, elect to arbitrate any dispute, the value of which is less than \$50,000.00, arising out of or related to this Purchase Order or the breach thereof, in accordance with the Construction Industry 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 this Agreement. In the event of any arbitration or litigation arising out of or related to the enforcement or interpretation of any of the terms and provisions of this Agreement, breaches thereof, or the Work performed thereunder, the prevailing party shall be entitled to recover all costs, expenses, and attorney's fees (including expert witness and other consultants' fees and costs) incurred in relation to such arbitration, litigation, and appeal or other post-award proceedings. Unless judgment goes by default, the attorneys' fee award 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. The prevailing party shall be the party whose last offer of settlement is closer to the award of the arbitrators or court. If the difference between the judgment and the last offer of each party is equal, neither party shall be considered the prevailing party. For purposes of this provision, an offer of settlement must be in writing and delivered to the other party at least fifteen (15) Days' prior to the commencement of arbitration or trial. If either party makes no written offer of settlement, the amount of such party's final claim is considered to be its final offer of settlement. Any timely offer of settlement supersedes any offer previously made by that party. This provision shall not waive or alter any applicable rule of evidence, except to the extent of determining the prevailing party.

IN WITNESS WHEREOF, Buyer and Seller agree to the terms of this Purchase Order by providing the signatures of their duly authorized representatives below:

BUYER:

**DPR CONSTRUCTION, A GENERAL
PARTNERSHIP**

(Signature)

(Typed/Printed Name)

(Title)

SELLER:

*** Sample Seller ***

(Signature)

(Typed/Printed Name)

(Title)