



## **VENDOR AGREEMENT**

Agreement made as of January, 26<sup>th</sup> 2016 by and between NPL Construction Co. ("NPL") and Daley and Georges, Ltd("Provider") regarding the goods and/or services listed within Exhibit A.

The parties agree as follow:

### **1. Scope of Agreement**

If and when NPL opts to source goods and/or services from Provider, it shall do so by Order (oral or written, without regard to title or description or instrument or means used, so long as reasonably evidenced to NPL's satisfaction) specifying type, location, and date on which services are to be rendered (along with purchase-order number [meaning NPL's "job and phase"] and/or, in the case of goods, specifying quantities as well as type[s] requested). Each such Order shall be deemed to have automatically incorporated all terms and conditions of this Vendor Agreement ("Agreement"), which contract includes Exhibits A and B as each is hereby made a part hereof. Provider shall perform each Order, doing so in strict accordance with its terms (including those incorporated therein) and with applicable law; *time is of the essence*. Pricing and payment shall be as shown on Exhibit B. Neither this Agreement nor any Order may be changed or modified unless in writing and signed by a representative of NPL's Supply Chain Resources, or by such individual as may be authorized by that department.

### **2. No Commitments on Business Levels.**

Notwithstanding anything contained herein that is or may be construed to the contrary, Provider acknowledges and agrees that NPL's arrangement with Provider is not exclusive; that NPL is not obligated to issue any order, or to otherwise award or contract any project or services while this Agreement is in effect; that NPL, in its sole and absolute discretion, expressly reserves the right to contract with one or more providers; that this Agreement is in no manner a requirements contract; and that NPL makes no manner of a commitment, inducement or representation to Provider as to any level of business to be achieved in its dealings with NPL, or that there will be any transactions whatsoever.

### **3. Forecasts**

NPL may submit non-binding forecasts of its intent for goods and/or services, but shall be obligated only for those quantities stated on issued Orders, subject to such order revisions, changes and cancellations as allowed hereunder.

### **4. Order Change, Cancellation**

NPL may, in its sole discretion and at any time and for any reason (including but not limited to NPL wishing to prosecute all or any part of any work itself), by Change Order suspend or cancel performance as to all or any portion of Work not then completed. Without limiting the generality of the foregoing, NPL may at any time:



- (a) cancel or suspend performance of any Order, in whole or in part;
- (b) make changes in the method of shipment or packing, or time or place of delivery of goods and/or services;
- (c) reschedule services; and/or
- (d) require additional or diminished services.

All of the foregoing shall be subject to Provider's standard lead-times, prompt notification of which shall be given NPL upon Provider's receipt of any change to the Order. If, with regard to matters other than cancellation or suspension of an Order, any such change causes an increase or decrease in the cost of, or the time required for, performance of the affected Order, an equitable adjustment shall be made in the price or delivery dates or both, and the affected Order shall be modified accordingly. Any claim for adjustment under this Article 4 may, at NPL's option, be deemed to be absolutely and unconditionally waived unless asserted in writing (including the amount of the claim) and delivered to NPL within ten (10) business days from the date of NPL's notice to Provider.

#### 5. Cancellation Charge

With regard to any cancellation or suspension of an Order, Provider shall immediately cease its performance on the affected Order and, in the case of cancellation occurring within:

- (a) ten (10) days of the scheduled date for delivery of goods and/or services, if the Order does not exceed \$10,000, and
- (b) thirty (30) days for all other Orders,

NPL shall reimburse Provider its reasonable, direct costs for performance on the cancelled Order, plus pay a reasonable amount for profit thereon.

#### 6. Pricing/Catalogs

Except as NPL and Provider may agree otherwise in a writing signed by both, Provider's pricing and warranties to NPL at time of Order shall be as listed within Provider's applicable catalog(s), current copies of which shall be sent to NPL upon any change and/or revision. In no event, however, shall Provider's warranty be any less than as stated in Article 7 below (regarding matters other than the period of coverage). With respect to NPL, no change in pricing or warranty:

- a) shall take effect without at least thirty (30) days' prior written notice, or
- b) apply to any Order outstanding at the time of the effective date of change



unless any such change is in NPL's favor. Nor shall Provider's pricing or warranties be any less favorable to NPL than the lowest pricing or the greatest coverage in warranty, whichever applies (if not both), for comparable or substantially equivalent transactions offered by Provider, in either case, to any other customer doing business as a contractor on underground structures or utilities. If, at any time, Provider offers more favorable pricing and/or warranty coverage to any such customer, Provider shall immediately offer same to NPL.

7. Warranty

Provider warrants that its goods and/or services will meet all applicable specifications and other specific product and work requirements (including those of performance), if any be so prescribed or otherwise referred to by NPL, and will be of good quality and free from defects in material and workmanship, and free and clear of all claims, encumbrances and/or liens. Regarding goods not of Provider's manufacture, Provider shall convey to NPL any and all manufacturer warranties, which warranties shall be in addition to those made hereunder. Upon NPL's submission of a warranty claim, Provider shall at its option either (a) repair or replace its product, part or work at NPL's facility, or (b) refund an equitable portion of the purchase price based on a pro rata scheme.

8. F.O.B./Payment

Except as NPL and the Provider may agree otherwise in a writing signed by both, all shipments shall be F.O.B. NPL's facility and payments shall be net thirty (30) days from date of invoice (issued no earlier than shipment). All invoices must be submitted to NPL within 60 days of completion of the task, work, or project for which the invoice applies; submittal beyond the 60-day period shall be subject to an administrative fee of 10%, which amount shall constitute liquidated damages sustained by NPL.

9. NPL Subcontractors

Solely for determining volume-based prices and, if applicable, rebates to NPL, any and all purchases from Provider by any NPL subcontractor, if the purchase is directed by NPL and Provider is so notified, shall be treated as a "purchase" by NPL. Provider acknowledges and agrees, however, that each such transaction is strictly between the Provider and the subcontractor, and that in no manner shall NPL be obligated on any such transaction, and that in no manner are these terms and conditions intended to constitute (nor shall they be construed to be) a third-party beneficiary contract.

10. Indemnities

To the fullest extent allowed by law, Provider shall hold harmless, defend and indemnify NPL, its subsidiaries and affiliates, and their respective officers, directors, and employees, from and against any and all claims, damages, injuries, actions, penalties, fines, liabilities or costs (including without limitation attorneys' fees), whether for death, bodily injury, property damage, environmental pollution or release, or infringement of intellectual property (whether trademark, trade secret, patent or copyright) that result from, arise out of, or are in connection with Provider's goods, services, acts or omissions (irrespective of whether or not any such act or omission constitutes negligence or is in breach of, or in compliance with, these terms and



conditions), whether asserted under contract, tort, warranty, statute, or ordinance, irrespective of any act or omission by NPL. The foregoing obligations of indemnity are in addition to, and not in lieu of, any right or remedy available to NPL under law.

## 11. Insurance

Except as NPL and Provider shall agree in a writing signed by both, Provider shall, at its own expense, carry and maintain the following insurance in amounts no less than indicated:

~~Worker's Compensation: Statutory Limits~~

~~Employer's Liability: \$500,000 single limit and in the aggregate~~

~~General Commercial:~~

~~Except as stated herein, for bodily injury and property damage, including products liability, \$1 million per occurrence and in the aggregate.~~

~~For hauling or otherwise transporting materials and/or equipment, or for electrical work of any sort, the limits of liability shall be no less than: \$3,000,000 each occurrence (combined single limit for bodily injury and property damage); \$3,000,000 for personal and advertising injury liability; \$3,000,000 aggregate on products and completed operations; and \$3,000,000 general aggregate~~

Professional Liability (if Provider's services include any professional services):

Coverage for claims arising from negligent performance of professional services, which shall be General Office Coverage written for no less than \$1 million per claim and in the aggregate. Professional Liability insurance shall contain prior acts coverage sufficient to cover all professional services performed by Provider, and the policy or policies shall be continued in effect for no less than five (5) years following final payment to Provider.

~~Automobile Liability: Bodily injury and property damage, \$1 million combined single limit and aggregate~~

~~All required policies shall include waiver of subrogation against NPL, its affiliated and subsidiary companies, successors, and assigns. Moreover, the General Commercial Liability insurance shall name NPL as additional insured using Form CG 2010 (0704) in combination with CG 2037 (0704) or the equivalent, and shall be primary with respect to any other insurance available to NPL, notwithstanding the provisions of any such other insurance.~~

As a condition to Provider's initial transaction under these terms and conditions (and no less than annually thereafter, or upon NPL's written request), Provider's insurance broker or carrier shall furnish NPL a certificate evidencing the above-required insurance and endorsements; all



certificates shall, on date of issuance to NPL, be the most current standard of Accord Form in the insurance industry.

12. Confidentiality

Provider shall treat as confidential and proprietary to NPL, and shall neither disclose to third parties nor use (except, with regard to use, as needed in its transactions with NPL), any and all information disclosed by NPL or as otherwise learned by Provider through its dealings with NPL that constitute or otherwise relate to: technical information and know-how on NPL products, equipment, processes, services, and systems; NPL business planning information, such as new services, customer strategy, expansion plans, relocation, downsizing, acquisition and mergers; financial information on costs, investments, profit, margins and forecasts; problems in any area of NPL's business; NPL production information, progress reports and other productivity information; marketing strategies, pricing, supplier/subcontractor information, bid information and NPL-developed bid programs; quality and improvement program results; and, employee information, such as but not limited to staffing, relocation, and compensation.

13. Uniform Commercial Code

These terms and conditions are in addition to, and not in lieu of, provisions of the Uniform Commercial Code ("Code"). That said, in no event shall the parties' obligations be modified, supplemented, explained or waived by parol evidence or course of dealing. To the extent there exists any conflict or inconsistency between a term and condition hereof and a provision of the Code, these terms and conditions shall prevail. NPL and Provider expressly disclaim applicability of the U.N. Convention on the Sale of Goods.

14. Independent Status

Provider shall be an independent contractor to NPL. Neither Provider nor NPL shall have any right or authority to bind the other to any obligation or responsibility to any third party, nor shall either represent or hold itself out as agent or representative of the other (unless and until so directed by NPL in writing).

15. Dispute Resolution

NPL and Provider shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between them. Any such matter not settled by negotiation shall be decided in accordance with the Commercial Rules of the American Arbitration Association. The forum for any such arbitration shall be Maricopa County, State of Arizona. Judgment on the arbitration award may be entered in any court of competent jurisdiction. The parties' obligation to arbitrate shall not prevent either from seeking a temporary restraining order or such other injunctive relief in connection with an assertion of rights regarding intellectual property, which shall be deemed to include confidential, trade and/or proprietary information.

16. Miscellaneous

Subject in all respects to these terms and conditions, any and all transactions by and between



Provider and NPL shall be construed under and governed by the laws of the State of Arizona, excepting its principles on conflicts of law. Any waiver by NPL of any breach of any term or condition, or its failure to insist on strict performance, shall not be construed as waiving any subsequent breach or term or condition for subsequent performance. If any one or more of these provisions should be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Headings are included for convenience only, are not a part of these terms and conditions and shall not be taken as an interpretation of any provision hereof. References to the plural include the singular. The phrase "and/or" and the word "or" are both inclusive. The words "include," "includes," and "including" shall be deemed to be followed by the phrase, "without limitation." The words "hereof," "herein," "hereunder" and similar terms refer to these terms and conditions as a whole and not to any particular provision.

IN WITNESS WHEREOF, NPL and Provider have entered into this Agreement effective as of the date set forth above.

**NPL CONSTRUCTION CO.**

**Daley and Georges, Ltd**

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

By: Mara S. Georges

Its: \_\_\_\_\_

Its: Managing Partner

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

Date: 1-26-16



**EXHIBIT A: STATEMENT OF WORK**

