

2021 Wastewater Treatment Plant
Improvements Project

Owner:

City of Arkansas City, Kansas

Design-Builder:

Burns & McDonnell / CAS Constructors
Arkansas City Joint Venture





**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER -
LUMP SUM
AS MODIFIED BY THE PARTIES**

Document No. 525

Second Edition, 2010

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Washington, DC



Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2021, by and between the following parties, for services in connection with the Project identified below.

OWNER: City of Arkansas City, KS
118W. Central Ave.
Arkansas City, KS 67005

DESIGN-BUILDER: Burns & McDonnell / CAS Constructors Arkansas City Joint Venture
3500 SW Fairlawn Road Suite 200
Topeka, KS 66614

PROJECT: 2021 Wastewater Treatment Plant Improvements Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform or furnish all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2010 Edition) as modified by the Parties ("General Conditions of Contract");
- .2** Basis of Design Documents consisting of the following:
 - A. Preliminary Engineering Report (including Appendix A Conceptual Drawings) attached hereto as Exhibit B.
 - B. Work Description, attached hereto as Exhibit C .
- .3** This Agreement;
- .4** Standard Form of General Conditions of Contract, as modified by the Parties, attached hereto as Exhibit A.
- .5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and
- .6** Payment and Performance Bonds, attached hereto as Exhibit D.
- .7** KDHE SRF Contract Provisions, attached hereto as Exhibit E.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Basis of Design Documents, and then the Design Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.6 In the event of some ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, including any Architectural Works, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a perpetual worldwide limited license to use the Work Product in connection with Owner's occupancy the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein. The Work Product will not be used for other projects without Design-Builder's express written consent and appropriate compensation and agreement on terms of use and indemnity.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above provided that use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

4.6 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design-Builder's rights.

4.7 The Owner shall not utilize the Documents, designs, or specifications furnished by Design-Builder to solicit bids or obtain negotiated prices from other contractors.

4.8 This Article 4 shall survive any termination of this Agreement by either Party.

Article 5

Contract Time

5.1 Date of Commencement.

.1 Limited Notice To Proceed. The Parties agree that the Owner will issue a Limited Notice To Proceed for early work activities prior to closure of the Owner's Kansas State Revolving Loan Fund loan. Early work activities include; advancement of detailed design, initiating procurement of long lead time equipment, and release of shop drawings. The parties further agree the a Limited Notice To Proceed shall be issued not later than **August 30, 2021**.

.2 Full Notice to Proceed. The Parties agree that the Owner will issue a Full Notice To Proceed for the entire Work not later than **September 30, 2021** unless that parties agree otherwise in writing. The construction work shall commence as soon as practicable following issuance of the Full Notice to Proceed provided that any permits, regulatory approvals, property acquisition and easement acquisitions required to commence construction have been obtained ("Date of Commencement") unless the parties mutually agree otherwise in writing.

.3 If the Limited Notice to Proceed and Full Notice to Proceed are not issued in accordance with the dates listed in 5.1.1 and 5.1.2 above, then the Design-Builder will be entitled to an adjustment in the Contract Time and Contract Price.

5.2 Substantial Completion and Final Completion

.1 Substantial Completion of the entire Work shall be achieved within **Six Hundred Nine (609) calendar days** of Owner's issuance of a Limited Notice to Proceed provided that a Full Notice to Proceed is issued in accordance with 5.1.2 above. Substantial Completion shall be defined as set out in the General Conditions.

.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

It is the intent of this contract that multiple Substantial Completion dates for different portions of the Work will be achieved as individual systems or areas are occupied or used by the Owner for their intended purposes.

.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

.5 If the Design-Builder is delayed in the progress of this Project by acts or neglect by the Owner, its employees, separate contractors employed by Owner, or by tenants, tenants' separate contractors or subcontractors employed by the tenant, governmental action, or by change orders in the Work not caused in any part by the fault of the Design-Builder; then the Contract Time for completion shall be extended, and the Contract Amount shall be equitably adjusted by a written Change Order.

.6 Where the Design-Builder reasonably establishes that delays as set forth above or that are caused by shortage of labor, strikes, lockout, tornado, flood, wind damage, fire, unusual delay in transportation, adverse weather, explosion, sabotage, accidents, riots, civil commotion, acts of war, casualty, epidemic, pandemic, public health emergency, condemnation, or other Force Majeure beyond the Design-Builder's reasonable control impact the cost and/or Contract Time, the Design-Builder shall be entitled to recover all extra costs and an appropriate extension of the Contract Time. Design-Builder shall provide written notice of the existence of such cause of delay, together with back-up documentation that verifies the impact in accordance with the Contract Documents.

5.3 Time. Owner and Design-Builder mutually agree that time is material with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages.

.1 Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date in Section 5.2.1, above, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Five Hundred Dollars (\$ 500.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates or Final Completion. Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be Fifty Thousand Dollars (\$50,000).

5.6 Early Completion Bonus. (Not used).

5.7 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$) _____ ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

.1 Between the dates of the Limited Notice to Proceed and the Full Notice to Proceed the Design-Builder's shall not incur costs in excess of Two Million Dollars (\$2,000,000.00) without Owner's written approval.

.2 The Contract Price includes all Allowances and an Owner's Allowance in the amount of _____ Dollars (\$) _____ for the Owner's exclusive use. No work shall be performed on account of the Owner's Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a mark-up of not more than ten percent (10%) for overhead and not more than ten percent (10%) for profit on the additional costs incurred for that Change Order.

.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup.

6.3 Allowance Items and Allowance Values

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Work Description attached hereto as Exhibit C.

.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and

Contract Price.

.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, design fees, Design-Builder's overall project management and general conditions costs, overhead, fee, bonds and insurance associated with the applicable Allowance Item.

Article 7

Procedure for Payment

7.1 Progress Payments

.1 Design-Builder shall submit to Owner on the fifth (5th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments

.1 Owner will retain Five percent (5__%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project. No retention will be held on payment for design or professional services.

.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and one-half percent (1.5%) per month until paid.

7.5 Record Keeping and Financial Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting

and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit and any Work performed and agreed to on a lump sum basis, is not subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

8.2 Anticipatory Profit (Not used).

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representative of the Parties

9.1 Owner's Representatives

.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Name: Randy Frazer.
Title: City Manager .

.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Name: Rod Philo .
Title: Director of Environmental Services.

9.2 Design-Builder's Representatives

.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Name: Travis Stryker .
Title: President CAS Constructors .

.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Name: John Mitchell .
Title: Director Burns & McDonnell .

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth below and in accordance with Article 5 of the General Conditions of Contract.

TYPE:	REQUIRED LIMITS:
1. Worker's Compensation Insurance	Statutory Amount
2. Employer's Liability	\$500,000 by disease, \$500,000 each accident,
3. Commercial General Liability (CGL)	
General Aggregate:	\$2,000,000
Completed Operations Aggregate:	\$2,000,000
Limit Per Occurrence:	\$1,000,000
4. Automobile Liability: (Hired, Owned and Non-owned Included) Combined Single Limit per Accident	\$1,000,000
5. All-Risk Builder's Risk	Limits equal to the Completed Value of Project Work. This policy shall

be in place during construction of the Work until Substantial Completion of the Work.

6. Professional Liability \$1,000,000 per claim and annual aggregate

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond.

Performance Bond.

Required Not Required

Payment Bond.

Required Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.2 Special Provisions

.1 - Design-Builder and its Design Consultants are entitled to rely on all information and data provided by the Owner for completeness and accuracy without independent verification.

.2 In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

.3 Where this Agreement is entered into subsequent to the Design-Builder beginning performance of the Work for the Project, the parties acknowledge and agree that this Agreement is intended to and shall govern all Work provided by the Design-Builder for the Project, whether initiated or performed prior or subsequent to the execution of this Agreement, and that this Agreement is intended to and shall supersede and replace any and all prior agreements whether written or oral for the subject matter set forth in this Agreement.

11.3 Listing of Exhibits:

- Exhibit "A": General Conditions, DBIA Doc. No. 535, as modified by the Parties
- Exhibit "B": Preliminary Engineering Report (including Appendix A - Conceptual Drawings)
- Exhibit "C": Work Description
- Exhibit "D": Performance and Payment Bonds (to be included after execution of Agreement)
- Exhibit "E": KDHE SRF Contract Provisions

Article 12

Limitation of Liability

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed the total compensation actually received by Design-Builder under this Agreement. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

OWNER:

City of Arkansas City, Kansas

DESIGN-BUILDER:

Burns & McDonnell / CAS Constructors Ark City Joint Venture

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Exhibit A

General Conditions, DBIA Doc. No. 535, as
modified by the Parties



**STANDARD FORM OF GENERAL
CONDITIONS OF CONTRACT
BETWEEN OWNER AND
DESIGN-BUILDER
(AS MODIFIED BY THE PARTIES)**

Document No. 535

Second Edition, 2010

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Washington, DC



Standard Form of General Conditions of Contract Between Owner and Design-Builder

Table of Contents

Article 1:	General
Article 2:	Design-Builder's Services and Responsibilities
Article 3:	Owner's Services and Responsibilities
Article 4:	Hazardous Conditions and Differing Site Conditions
Article 5:	Insurance and Bonds
Article 6:	Payment
Article 7:	Indemnification
Article 8:	Time
Article 9:	Changes to the Contract Price and Time
Article 10:	Contract Adjustments and Disputes
Article 11:	Stop Work and Termination for Cause
Article 12:	Electronic Data
Article 13:	Miscellaneous

Article 1

General

1.1 Mutual Obligations

.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder Lump Sum* (2010 Edition) as modified by the parties.

.2 *Basis of Design Documents* are as follows: Exhibit B Preliminary Engineering Report (including Appendix A Conceptual Drawings) and Exhibit C Work Description.

.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared furnished or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

.6 *Design Consultant* is a qualified, licensed design professional who may be an employee of Design-Builder, or who is retained by Design-Builder or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, terrorism, vandalism, floods, labor disputes, earthquakes, epidemics, pandemics, public health emergencies, quarantines, protest, civil unrest or disturbance, action or inaction by any governmental authority, adverse weather conditions not reasonably anticipated, and other acts of God.

.9 *General Conditions of Contract* refer to this DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified by the parties and attached to the Agreement as Exhibit A.

.10 *Hazardous Conditions* are any materials, wastes, substances, and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.11 *Legal Requirements* are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

.12 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

.13 *Site* is the land or premises on which the Project is located.

.14 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers and shall not include the Design Consultants retained by the Design-Builder.

.15 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

.16 *Substantial Completion* or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.17 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring, and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents.

.18 *Limited Notice to Proceed* Owner's authorization to proceed with advancement of design and initiate procurement activities under the Contract Documents. Owner is funding the Limited Notice to Proceed out of using funds on hand. Cost to Owner shall not exceed \$2,000,000 during the Limited Notice to Proceed period.

.19 *Full Notice to Proceed* Owner's authorization to proceed with the entire work setting forth the date of commencement of the entire Work.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder, which shall not be unreasonably withheld by the Owner.

.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as

not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services

.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as

such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

.5 Upon completion of the Design Development Phase, the Design-Builder shall provide the Owner with drawings, outline specifications and other documents for written acceptance by the Owner. Owner shall provide written approval and / or comments within ten (10) working days of the receipt of the same or such longer period the Owner and Design-Builder agree to in writing prior to setting the Contract Time.

2.5 Legal Requirements

.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

.2 Design-Builder shall perform all construction activities efficiently and with the requisite skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

.3 Design-Builder shall employ only Subcontractors who are duly licensed (where applicable) and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any negligent acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate with such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. However, unless otherwise stated, Design-Builder is not responsible to schedule or coordinate Owner's separate contractors.

.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable. The Safety Representative may be the Design-Builder's Superintendent or Project Manager.

.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work. Design-Builder is not responsible for any safety violations, acts or omissions of the Owner or its separate contractors, consultants and their subcontractors.

2.9 Design-Builder's Warranty

.1 For a period of one year following the date of Substantial Completion, Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to duplicate or limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

.2 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work all manufacturer's warranties relating to materials and labor used in the Work. Owner agrees to look solely to such manufacturer(s) for remedies for defects in equipment and material, and not to Design-Builder to the extent covered by an express or implied warranty. Design-Builder's sole obligation is to provide reasonable assistance to Owner in obtaining relief under such manufacturer's warranties.

.3 The warranties and remedies provided in this Section 2.9 are in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. All Design-Builder liability shall end upon expiration of the one-year warranty period, provided that Owner may continue to enforce any claim for which is has given notice prior to that date.

2.10 Correction of Defective Work

.1 To the extent not covered by a manufacturer's warranty under Section 2.9.2, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information

.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

.1 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

.2 A legal description of the Site;

.3 To the extent available, record drawings of any existing structures at the Site; and

.4 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative

.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits

.1 Except for The City of Arkansas City Building Permit and Construction Site Disturbance Permit (stormwater permit), Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees. Design-Builder shall obtain a City of Arkansas City Building Permit and the Owner agrees to waive all associated permit fees.

3.6 Owner's Separate Contractors

.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

.2 Owner shall require its separate contractors to name Design-Builder as an additional insured on their insurance and to waive rights of subrogation against Owner, Design-Builder and its Design Consultant, consistent with Section 5.3.5, below.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts and contractors to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless, (iii) remove, abate and remediate such Hazardous Conditions. Design-Builder is entitled to rely on the information and work of Owner's separate experts and contractors as being complete and accurate.

.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for

Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

.3 Design-Builder will take steps to minimize the spread of COVID 19 on the jobsite by following published guidelines of the Centers for Disease Control and Prevention (CDC) and OSHA in effect as of the date of execution of the Agreement. For any impacts to the Project or the Work due to the global outbreak and spread of COVID-19 ("coronavirus"), including without limitation, impacts caused by quarantines, actions by governmental entities, and labor force and supply chain disruptions, by Change Order, the Contract Time shall be extended appropriately, and the Contract Price will be adjusted to account for the additional costs incurred by Design-Builder as a result of impacts due to the coronavirus.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum A-VIII rating.

.2 Design-Builder's insurance shall not include any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.

.4 Nothing in this Agreement shall require the Design-Builder or its Design Consultants to name the Owner or others as additional insureds on any Professional Liability or Workers Compensation policies.

5.2 Owner's Liability Insurance

.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance in at least the same limits and types as required of Design-Builder as set forth in the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 All-Risk Builders Risk Property Insurance

.1 Unless otherwise provided in the Contract Documents, prior to Design-Builder commencing any construction Work at the site, Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located all-risk builders risk insurance upon the Work to the full insurable value of the Work plus the value of the materials, supplies and equipment furnished to Contractor for incorporation into the Work. The all-risk builders risk policy obtained by Design-Builder shall include as additional insureds, as their interests appear, of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such builder's risk insurance shall include the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, windstorm, debris removal and other perils or causes of loss as called for in the Contract Documents. The all-risk builders risk insurance shall include physical loss or damage to the Work, including materials and equipment, that will become part of the completed project, in inland transit, at the Site or at a temporary storage location. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1. Owner shall also procure and maintain property insurance on the Work at the Site after Substantial Completion.

5.4 Owner's Insurance

.1 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery (equipment breakdown) insurance that will include Owner, Design-Builder, Design Consultants, and Subcontractors of any tier as named insureds. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

.2 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

.4 Any loss covered under Owner's insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance or that could be covered by property insurance (including self-insurance and deductibles), including rights of subrogation, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These

waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.5 Bonds and Other Performance Security

.1 Design-Builder is to obtain performance and labor and material payment bonds, the amount, form and other conditions of such security shall be as set forth in the Agreement.

Article 6

Payment

6.1 Schedule of Values

.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments

.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon Design-Builder's receipt of payment.

6.3 Withholding of Payments

.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all

amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Provided Owner makes all payments to Design-Builder when due, Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

.1 Design-Builder shall notify Owner when it believes the Work, or a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

.2 Upon Substantial Completion of the entire Work or any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

.4 If Owner occupies or uses any portion of the Work prior to Substantial Completion, it agrees to it does so at its own risk and shall sign any reasonable release, waiver, and indemnity agreement required by Design-Builder as a condition of such use or occupancy.

6.7 Final Payment

.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests, or that any existing liens have been bonded by Design-Builder;

.2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

.3 consent of Design-Builder's surety, if any, to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement

.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder

shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification

.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification

.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond or Owner's indemnity bond. If Design-Builder fails to do so within ten (10) days after receipt of written notice from Owner to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees. However, in the event that a lien is a result of disputed sums, the Owner shall give the Design-Builder reasonable time and opportunity to negotiate settlement with its Subcontractor prior to the Owner taking steps to discharge the lien directly.

7.4 Design-Builder's General Indemnification

.1 Subject to Section 10.5 and any limitations in the Agreement, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against losses, damages, and expenses including reasonable attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other

than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification

.1 In addition to other specific indemnities elsewhere in this Agreement, Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against losses, damages, and expenses including reasonable attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors or anyone for whose acts any of them may be liable.

.2 If an employee of Owner or its separate contractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Design-Builder, its officers, directors, employees, or agents, Owner's indemnity obligation set forth in Section 7.5.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner, Owner's separate contractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives

.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Agreement; and

.4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

9.6 Cost Escalation / Delivery Delays

.1 If, during the performance of this contract, the price of materials increases, through no fault of Design-Builder, the price shall be equitably adjusted by an amount reasonably necessary to cover any such increase. As used herein, a price increase shall mean any increase in price experienced by contractor from the date of this proposal until the time of purchase. Such price increases shall be documented through quotes, invoices, or receipts. Where the delivery of materials is delayed, through no fault of contractor, as a result of a shortage or unavailability, contractor shall be granted an extension of time, and for any additional costs or damages associated with such delay(s).

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained

in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

.5 In the event that a dispute arises between the parties is submitted to mediation under this Section, the parties agree to split the mediator's and any filing fees equally. The mediation shall be held in Kansas City, Missouri. In the event that it is necessary to file a lawsuit or demand arbitration in order to meet the requirements of a statute of limitations which is about to expire, the parties agree, nonetheless, to submit the dispute to mediation within thirty (30) days after the filing of such lawsuit or demand. Any agreements reached in mediation shall be enforceable as a settlement agreement.

10.3 Arbitration

.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall be decided by arbitration. The number of arbitrators shall be one (1) and the place of the arbitration shall be Kansas City, Missouri, unless the parties agree otherwise in writing.

.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. A "prevailing party" is one who wins more than 75% of what it claimed was owed, or one who defends more than 75% of the opposing party's claim.

10.4 Duty to Continue Performance

.1 Notwithstanding paragraph 6.4 and unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 Consequential Damages

.1 Notwithstanding anything herein to the contrary (except as set forth in Section 10.5.2 below), neither Design-Builder nor Owner shall be liable to the other for any consequential loss or damages, whether arising in contract, warranty, tort, (including negligence), strict liability or otherwise, including but not limited to losses of use, anticipated profits, business reputation or financing.

.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.6 COMMENCEMENT OF STATUTORY PERIOD

.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion, or the date of issuance of final payment (for acts or failures to act occurring after Substantial Completion).

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract

Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment or items which have been purchased or provided and installed or intended to be installed as part of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. Design Builder's rented or owned construction equipment not intended to be incorporated into the completed Work shall remain the property of the Design-Builder and shall not be used or possessed by Owner. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

.5 Design-Builder shall not be liable for either design services or construction Work (including, but not limited to, equipment installation) that is incomplete due to a termination by Owner for cause or for convenience under this Agreement, including any errors, omissions or defects in such designs or Work which Design-Builder is prevented from correcting and completing due to any termination.

.6 Owner shall pay Design-Builder as a Cost of the Work to make reasonably safe any incomplete Work or Site conditions left open due to any termination under this Agreement. Thereafter, Owner assumes full risk and control of the Site.

11.3 Design-Builder's Right to Stop Work

.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder

.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data. The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data

.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol

.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information

.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment

.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship

.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law

.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq.

13.5 Severability

.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver

.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings

.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice

.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments

.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

Exhibit B

Preliminary Engineering Report
Including Appendix A – Conceptual Drawings

Placeholder for
Preliminary Engineering Report
Including Appendix A – Conceptual Drawings

Exhibit C

Work Description

Design / Build Firm: Burns & McDonnell / CAS Constructors Ark City WWTP Joint Venture

Project: Arkansas City WWTP Renovations
City of Arkansas City, KS

WORK DESCRIPTION

This Work Description is not intended to be comprehensive. This Work Description identifies major definable components of the Project as they can be defined at the time that the contract was prepared. The final Project will provide a complete and workable facility that meets the performance requirements identified for the Project. In addition to the major components called out herein, the Project includes all associated, ancillary, and connecting components and features required to achieve the documented performance requirements, whether or not these items are specifically called out in this Work Description.

01000 GENERAL CONDITIONS

All Supervision, Administrative Costs, and Temporary Facilities
No Sales Tax included, Owner to provide Exemption Certificate for the project
No building permits fees included. Permits will be obtained as required, but no fees will be charged for the plan review or the permits.
No cost for electrical consumption during construction
No cost for water consumption during construction
Storm Water Plan Permit included
Builders risk insurance is included
Design and construction administration fees are included for the duration of the schedule.
Performance & Payment Bonds for the total value of the project
Startup / Testing – Owner to provide any necessary chemicals necessary for startup/testing
O&M's supplied by equipment suppliers shall be turned over to the Owner. All O&M manuals will be provided in paper (3 sets) and electronic PDF form
In the event that there are discrepancies between this and any other contract document, this document shall govern
This project is under current prevailing wage for Cowley County, KS dated 06/25/2021
This project is in compliance with all KDHE guidelines for SRF funded projects
This agreement excludes any and all time delays and cost increases arising from or related to the COVID-19 virus and any government or other third party action in response thereto.

01010 SPECIAL SITE CONDITIONS

No hazardous or special waste are known of at this time or anticipated to be encountered in the course of this project. If encountered, Design/Builder to stop work, Owner to provide abatement and disposal of any hazardous or special wastes prior to Design/Builder continuing work.

01015 OWNER FURNISHED ITEMS

Temporary power and water are available at project site for design/builder use.
Any chemical required for temp disinfection for UV work

REV 03

Local building permit fees to be waived by City
Operation and maintenance of existing facilities during construction
Access to site as needed to perform work.
Shut down of plant flows as coordinated with Design/Builder to accomplish project scope.
Draining and cleaning of basins including the grit vortex chamber, final clarifier, UV structure, and digesters
Temporary sludge handling as required while digester repairs being completed.
New plant administration space or building to be constructed by Others. Space shall be completed within a mutually agreed upon schedule to allow for adequate time for the Owner to vacate the existing lab/admin space prior to digester complex work starting and for the Design/Builder to install networking components and complete treatment plant control upgrades with in the Design/Builders project schedule. The space shall have adequate room for a network rack provided and installed by the Design/Builder. Any connections to this building/space (water, sewer, gas, electric) are provided by others. Any site development or upgrades required for this new space/building by Others.

01500 CONSTRUCTION EQUIPMENT

All construction equipment necessary to complete the work is included.

01550 ALLOWANCES

Allowance items are included in the lump sum price. Decisions will be made by the Owner for their use. In the event that the decisions made are in excess of the amounts listed, the Owner shall pay such additional cost. In the event that the decisions made are less than the amounts listed, the Owner shall be entitled to the amounts remaining.

1. \$15,000.00 Third Party Testing Services – includes any testing by an independent third party for soil, concrete, and/or welding.
2. \$531,845.00 Digester basement piping and valve replacement with new ductile iron pipe and cast valves. Coating of all new pipe and valves.

02075 DEMOLITION

RAW WATER PUMP STATION/SCREENING

Demolition of the existing process blowers, piping and concrete pads.
Existing air piping to be capped with a blind flange in the Screen Room
Existing air intake for blowers to remain.
Demolition of the existing washing compactor/conveyor
Expanding existing conveyor exterior wall opening to accommodate new conveyor
Demolish existing control damper on north wall of Screen Room
Demolish existing transfer air fans on south and west walls of Screen Room
Sawcut new opening for exhaust fan in roof

GRIT BUILDING

Demolish existing grit vortex grit removal system equipment. No modifications to the existing basin concrete or gates are included
Demolish existing grit classifier, associated piping, and supports
Demolish existing unit heater and transfer fan
Sawcut and demolish flooring to remove and replace the floor drain

REV 03

Sawcut and partially remove north wall to accommodate a new 3070 Door & Frame
Demolish existing window on north side for the installation of a new louver
Demolition of interior wall as needed for new classifier and conveyor.

AERATION BASIN

Cut & cap existing 10" process air at new air piping tie-in
Abandoned line to remain, cap to consist of concrete slug

TRICKLING FILTERS

Demolish two (2) existing trickling filter mechanism. Trickling filter equipment below rock to remain.
No modifications to the existing concrete basin

FINAL CLAFIER

Demolish existing 80' final clarifier mechanism including launder trough
No modifications to the existing concrete basin

UV SYSTEM

Demolish existing UV System including existing sunshade
No modification to the existing concrete basin

DIGESTER COMPLEX

Demolish existing gas system including piping, flare, and associated equipment
Demolish two (2) existing floating Digester lids
Demolish existing 8" ductile iron sludge inlet piping that is currently clogged
Demolish one (1) existing sludge recirculation pump
Demolish one (1) 3070 Door between process area and lab
Demolish plumbing as shown including;
 Water heater
 Service sink
 Restroom toilet/sink in Lab
 Cut and cap all water lines in office/lab area
Demolish HVAC equipment as shown, including the following:
 Wash room ventilation fan
 Roof exhaust fan
 Control dampers on louvers at south side of building
 Duct heater, blower, and ductwork in process area

02200 SITE CLEARING / GRUBBING

Site to be stripped of topsoil and stockpiled as required; all materials to be utilized or wasted on site

02250 SITE EXCAVATION / BACKFILL

Excavation shall be as necessary to construct structures in accordance with the drawings
If any spoils are generated they shall be wasted on site.
Finish grading of site and access road

02260 STRUCTURAL EXCAVATION/BACKFILL

Virgin Soil or compacted material to 95% of Standard Proctor under structures

REV 03

Site grading and backfilling of Structures to 90%; Roadways to 95%
Backfill around structure walls will be completed with onsite soils

02275 TRENCH EXCAVATION/BACKFILL

6" aggregate bedding below pipe – open graded materials
Backfill around pipe to 95%; Above pipe – 2' to 90%
6" clear unreinforced concrete encasement – all piping below structures & in roadways

02280 AGGREGATE

6" clean aggregate base below all new structures
#67 Stone for roadways

02300 SEEDING

Design/Builder to return topsoil and fine grade site and seed any disturbed areas
Seed will be standard contractor mix
Topsoil will be stockpiled at beginning of project and re-spread at the end
No topsoil import is included in the project

03100 FORMWORK

Fill any repairable honeycomb; patch all tie holes
No architectural or rubbed finish
Joints to be noticeable, but not protruding
Chamfer tops of all walls & edge of pads

03200 REINFORCING

ASTM Grade 60 – No Epoxy

03300 CONCRETE

ASTM C 150 Type II Cement – 1" nominal maximum aggregate
4,000 PSI - for structural concrete
2,000 PSI - Flow Fill for duct bank cap and pipe encasement

03350 CONCRETE ACCESSORIES & FINISH

Broom finish on exterior pads

03500 CONCRETE REPAIRS

2 FT wide repair of concrete spall around interior perimeter in West Digester tank.
Repair grout shall be one of the following or approved equal:
Sikatop 123 Plus by Sika Corp.
Speed Crete PM by Euclid Chemical Company
Tamms Structural Repair Mortar by Euclid Chemical Company

04000 MASONRY

REV 03

Infill of Exhaust fan and transfer fan openings to match existing at the Raw Water Pump Station
Infill of existing interior door and HVAC openings at the Digester Complex

05500 MISCELLANEOUS METALS

Sch 40 Steel Pipe Bollards as shown
Lintel for expanded conveyor opening
Lintel for new door at Grit Building
10'0 x 10'0 sunshade over control panel at UV
Replace grating over the UV channel
Replacement of South exterior stairs at Digester Complex
Handrailing as required for fall protection at the digester lids
All Handrailing – aluminum, mechanical assembled, 2 rail with toe kickplate
All grating and stair treads – aluminum, serrated

07900 JOINT SEALANTS

Sealants around doors, windows, louvers, and other wall penetrations as required
Fire Safing as required by code

07500 ROOFING

Patching existing Raw Water Pump Station roof around new exhaust fan opening
Patching existing Grit Building roof around new roof penetrations.
Due to condition of existing roofs, no warranties are provided for the patching

08100 DOORS / FRAMES / HARDWARE

FRP door and frame – North wall at Grit Removal Building
3'0" x 7'0" 1-3/4" thick

08500 GLAZING

As required for door vision

09900 PAINTING

Raw Water Pump Station – touch up around conveyor opening in block wall
Grit Building – coat piping, walls, ceiling, valves, and supports; paint Doors & frames
Recirculation Pump Station – Touchup on pump & piping as needed after rebuilt pump is reinstalled
Final Clarifiers – Field touchup to painting clarifier components
Digester Lids –
 Exterior
 Surface Prep: SSPC-SP10 Near white metal
 Primer & Intermediate: Tnemec Series N69
 Finish Coat: Tnemec Series 73
 Interior
 Surface Prep: SSPC-SP10 Near white metal
 Primer & Intermediate: Tnemec Series N69
 Finish Coat: Tnemec Series 73 & Series 446 Perma-Shield MCU

REV 03

Digester Complex – Coating of new valves and touchup on piping as required, no coating of new stainless gas piping, coating of masonry infill
Color coded painting of exposed-to-view piping
All process piping to have color coded labels and directional arrows
No coating of concrete

10500 FIRE EXTINGUISHERS

Approved fire extinguishers with wall brackets
5 lbs Clean Agent Type in Electrical Building

11001 BAR SCREEN CONVEYOR

EQUIPMENT MANUFACTURER: Serpentix Conveyor Corp

Conveyor Length: 23'-2"

Conveyor Width: 20"

Capacity: 0.4 Tons/Hr

Drive Motor: 2HP

Support Structures: 304 Stainless Steel

Spare Parts & Accessories:

Five (5) Belt Pans with hardware

Ten (10) guide blocks

Five (5) intermediate chain attachments

Five (5) scraper blade inserts

Startup to include one (1) trip for startup and instruction services totaling two (2) days onsite

11002 VORTEX GRIT SYSTEM

EQUIPMENT MANUFACTURER: Smith & Loveless, Inc.

One (1) Grit Removal System: Model 7.0 Pista 270 Grit Chamber System

Dive: 1.0 HP, explosion proof motor

One (1) Grit Pump: Model 4B2H Top Mounted Grit Pump

Motor: 10HP Explosion proof

One (1) Vacuum priming panel, NEMA 4X, 304 SS

One (1) Grit Concentrator Classifier: Model 250 Pista Grit Concentrator

One (1) Conveyor: Model 15 Pista screw conveyor

Spare Parts & Accessories: None

Startup to include Two (2) trips for startup and instruction services totaling Five (5) days onsite

11003 TRICKLING FILTERS

EQUIPMENT MANUFACTURER: Walker Process Equipment

Two (2) Mast Type Rotary Distributors for 80' filter beds

Max Flow Rate: 3,250 GPM

Min Flow Rate: 1,500 GPM

Center Column: 15" Dia

Four (4) Arms per distributor, 10" Dia.

Distributors to be hot dip galvanized

Spare Parts & Accessories: None

REV 03

Startup to include Two (2) trips for startup and instruction services totaling Two (2) days onsite

11004 CLARIFIER

EQUIPMENT MANUFACTURER: Clearstream Environmental

One (1) 80'0" Dia x 8.83' side water depth Final Clarifier Mechanism

Drive Motor: 1HP

Access Bridge and center platform with aluminum grating and 2-rail aluminum handrailing

Influent Dispersion well: 6'0 Dia x 3'0 Deep

Two (2) Scum skimmer assemblies with scum deflector blade. 4'0 wide hinged skimmer with neoprene wipers

Coatings:

Immersion Service:

Surface Prep: SSPC-SP10, near white blast

Coating: Two Coats Tnemec N69

Non-Immersion Service

Surface Prep: SSPC-SP6, commercial blast

Coating: One Coat Tnemec N69 and One coat Urethane Finish

One (1) Scum Box, 4'0 Wide, 304Stainless with wall supports, and scum flushing valve

One (1) NEMA 4X, 304SS, control panel

Spare Parts & Accessories:

Six (6) Shear pins

Two (2) sets of all gaskets

Two (2) sets of shaft seals for drive

Two (2) Skimmer wipers

Startup to include Three (3) trips for startup and instruction services totaling Five (5) days onsite

11005 CLARIFIER WIERS / BAFFLES / LAUNDERS / LAUNDER COVERS

EQUIPMENT MANUFACTURER: NEFCO Systems

FRP Components for One (1) 80'0 Final Clarifier

Launder Trough

Weirs

Scum Baffles

Density Current Baffles

Walkable Launder Covers

Spare Parts & Accessories: None

11006 POSITIVE DISPLACEMENT BLOWERS

EQUIPMENT MANUFACTURER: Aerzen

Three (3) Model GM 35S Blowers

Motor: 60 HP

Airflow: 955icfm

Discharge pressure: 8.00 psig

Sound Enclosures with cooling fans rated for outside / uncovered installation

REV 03

Spare Parts & Accessories:

- Three (3) sets Air Filters
- Three (3) Belt Sets
- Three (3) 5-Gal Pails of Delta Lube
- One (1) Quart Touch-up Paint

Startup to include One (1) trips for startup and instruction services totaling Four (4) days onsite

11007 RECIRCULATION PUMP REBUILD

EQUIPMENT MANUFACTURER: Fairbanks/DXP

Rebuild Existing Fairbanks Pump, Model 12" 8312B Serial Number: K3E2-051315

Rebuild to include:

- Ship pump to Kansas City KS repair facility

- Disassembled pump complete

- Blast Clean all components

- Reuse the following components:

 - Suction Bell

 - Discharge Bowl

 - Discharge Head

 - Pump Shaft

 - Line Shaft

 - Propeller

 - Column

- Replace the following components:

 - All Bearing

 - Propeller Hardware

 - Line Shaft Couplings

 - Connector Bearings

 - Top Tube Tension Nut

 - Enclosing Tubes

 - Misc. Gaskets, O-rings, and hardware as needed

- Dynamically balance propeller to FN Standards

- Straighten pump shaft/line shaft as necessary

- Reassemble pump complete

- Coat Pump with Tnemec N140

Spare Parts & Accessories: None

11008 UV EQUIPMENT

EQUIPMENT MANUFACTURER: Glassco

- One (1) Channel, Two (2) Modules per channel

- Average Flow 2.1 MGD, Peak Flow 8 MGD

- One (1) Ballast Control Center

- One (1) System Control Center

REV 03

- One (1) Automatic quartz cleaning center
- Six (6) Lamp Modules with Forty Eight (48) UV Lamps per module
- One (1) Low Level Probe
- One (1) Ultrasonic level sensor
- One (1) UVT Analyzer
- One (1) Actuated control gate
- One (1) Module Rack
- One (1) Hoist
- Two (2) Channel width reducing bump outs, 304SS

Spare Parts & Accessories:

- 10% UV Lamps
- 10% Quartz Sleeves
- 10% Lamp Seals
- 5% Lamp Ballast
- One (1) UV Intensity Monitor
- One (1) Face Shield
- Two (2) Pairs Gloves
- One (1) UV Area warning sign

Startup to include One (1) trip for startup and instruction services totaling three (3) days onsite

11009 SLUDGE RECIRCULATION PUMP

EQUIPMENT MANUFACTURER: Vaughan

Vertical Pedestal Chopper Pump Model: PE4L6CS-089

Motor: 7.5 HP Explosion Proof

Inlet: 6"

Discharge: 4"

Performance: 236 GPM @ 33 Ft TDH

Spare Parts & Accessories: None

Startup to include One (1) trips for startup and instruction services totaling One (1) day onsite

11010 DIGESTER GAS HANDLING SYSTEM

EQUIPMENT MANUFACTURER: Varec Biogas, Inc.

Four (4) Pressure relief valves with flame arrestors & insulating jacket

Two (2) Safety selector valves with insulating jacket

Six (6) 8" Sampling & Gauging Hatch

Two (2) 4" Condensate/Sediment Traps with sight glass

Three (3) Drip traps, 6 Qt Capacity

One (1) insulating jacket for drip trap

Three (3) Well-Type Manometer

One (1) 4" Pressure Relief and Flame Trap Assembly with insulating jacket

One (1) Waste Gas Burning & Ignition System

Spare Parts & Accessories: None

Startup to include One (1) trip for startup and instruction services totaling Four (4) days onsite

EQUIPMENT MANUFACTURER: FCI

REV 03

Two (2) 4" Gas Flow Meters
Spare Parts & Accessories: None
Startup to include One (1) trip for startup and instruction services totaling Two (2) day onsite

11011 DIGESTER FLOATING GAS HOLDING LIDS

EQUIPMENT MANUFACTURER: Clearstream

Two (2) Gas Holder Radial Beam Digester Cover: 50'0 Dia

Gas Storage Volume: 2,700 CF

Maximum Liquid Level Elevation: 92.83'

Minimum Operating Liquid Level Elevation: 82.25'

Spare Parts & Accessories: None

Startup to include Two (2) trips for startup and instruction services totaling Four (4) day onsite

13000 INSTRUMENTATION & CONTROLS

One (1) WWTP Main PLC Panel

NEMA 12 Wall Mounting enclosure

AB ControlLogix PLC Equipment

Touchscreen PC

DC power supplies

UPS System

Managed Ethernet Switch

Fiber Optic Patch Panel

UHF Ethernet Radio with Antenna, coax cable equipment, and FCC licensing

One (1) Raw Water Pump Station Remote IO

Prewired Sub-panel

AB ControlLogix Remote IO equipment

DC Power Supplies

UPS System

Managed Ethernet Switch

Fiber Optic Patch Panel

One (1) Admin Building Network Enclosure

NEMA 12 Wall Mount

Remote Access Firewall

Managed Ethernet Switch

Fiber Optic Patch Panel

UPS System

One (1) Admin Bldg. SCADA PC Workstation

Dell Desktop Computer with 24" LCD Monitor

UPS System

Plant Control System Software

Two (2) Wonderware Intouch HMI 2020 60k with IO

One (1) Wonderware Historian 2020 with Client desktop

Two (2) Digester Pressure Sensing Level Transmitters

Two (2) Digester Level Radar Transmitter

One (1) Raw Water Wet Well Bubbler Level System

REV 03

SCADA system programming and screen development
Telemetry System Startup, testing, and tie-in with the Water Treatment Plant

15001 PIPING

Above Grade Process Piping for Grit System

Pipe: Ductile Iron, Cement Lined

Fittings: Ductile Iron, Class 125 Flanges, Cement Lined

Buried Gravity Sewer for Grit System

Pipe: Ductile Iron Min. Pressure Class 150 Mechanical Joint, Cement Lined

Fittings: Ductile Iron, Pressure Class 150 Mechanical Joint, Restrained, Cement Lined

Buried Blower piping at Aeration Basin

Pipe: Ductile Iron Pressure Class 150 Mechanical Joint, Unlined

Fittings: Ductile Iron, Pressure Class 150 Mechanical Joint, Restrained, Unlined

Above Grade Blower Piping at Aeration Basin

Pipe: 304L Stainless, Sch. 10

Fittings: 304L Stainless, Sch 10

Flanges: 304L Stainless, AWWA C228 SD Class 150

Digester Gas Piping

Pipe: 304L Stainless, Sch. 10

Fittings: 304L Stainless, Sch 10

Flanges: 304L Stainless, AWWA C228 SD Class 150

Digester Gas piping to Flare

Pipe: Fiberglass Reinforced Pipe Centricast RB-1520 or approved equal

Fittings: Socket-Type, solvent cemented joints

15002 VALVES

Valves shall be as detailed on the Process and Instrumentation Diagrams for type and duty service and shall have handwheel operators unless noted differently.

15003 PIPE SUPPORTS

Hangers and pedestals as required for adequate support

15004 PIPE INSULATION

Above Grade Exterior Blower Piping at Aeration Basin

1" Thick fiberglass insulation with aluminum jacking and fitting covers

Exterior, exposed stainless steel gas piping at the Digester Complex

1" Thick fiberglass insulation with aluminum jacking and fitting covers

15500 PLUMBING

Interior Gas Service

Pipe: Sch 40 Steel

15600 HVAC

Raw Water Pump Station

One (1) 900 CFM Roof top exhaust fan

REV 03

One (1) Natural-gas unit heater, 60 MBH
Ductwork and controls as required

Grit Building

One (1) Intake air louver replacing existing window
One (1) 800 CFM Roof top exhaust fan
Two (2) Natural-gas unit heaters, 60 MBH
Ductwork and controls as required

Digester Complex

One (1) 2,800 CFM Roof top exhaust fan
Two (2) control dampers for existing louvers on South wall

Electrical Building

One (1) 2,250 CFM Package Air Handling Unit, Natural-gas fired, 6 ton cooling
Ductwork, controls, and monitoring

16000 ELECTRICAL

All work to be completed per National Electric Code
Demolition of existing electrical equipment as noted on the design drawings
Trench, excavation, unreinforced duct bank, marker tape, and backfill for electrical conduits
Handholes located at major underground conduit direction changes
Install of instruments
LED lighting for Electrical buildings
LED lighting at Electrical Exterior
Electrical gear as shown on one-line
Local Disconnections for new process equipment as shown on one-line
Fiber Optic to new Administration building to be located in the northeast corner of property
General Material Uses and Types
Multiconductor control wire shall be type XHHW copper
Underground Power Cabling shall be XHHW copper – no tinned
Interior power, lighting and branch cabling shall be type THHN copper – no tinned
All above grade/interior conduit shall be surface mounted aluminum conduit
All local disconnects shall be Type NEMA 4X 304 SS or NEMA 7 as required by area classification
Electrical Bldg. shall be EMT conduit
Underground conduit shall be PVC Sch 40 w/ PVC coated risers

16500 ELECTRICAL BUILDING

Building Size: 28'0" x 11'0", Ceiling Ht: 11'0"
Structure: Welding & Bolted Steel
Roof/Wall: 18ga pre-galvanized G90 sheet steel interlocking panels with manufacturer standard colors
Interior Ceiling/Liner: 18ga pre-galvanized G90 sheet steel interlocking panels with manufacturer standard colors
Roof Insulation: 3" Fiberglass Batt, R38
Wall Insulation: 3" Fiberglass batt with 1.5" Rigid board insulation, R23
Base Insulation: 5" spray applied Polyurethane Insulation, R30

REV 03

One (1) Door, 6070 Galvanized Door/Frame with removable transom above door

Gutters and downspouts with manufacturer standard colors

Ductwork to be galvanized with 1" duct liner

Plumbing: None

Lighting:

- Four (4) interior LED light fixtures

- Two (2) Exterior LED wall packs

- One (1) Emergency Existing Sign/Emergency light

Exhibit D

Performance and Payment Bonds
(signed version to be included after execution
of Agreement)

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____ Signature: _____

Name
and Title:

Name
and Title: Attorney-in-Fact

Surety Phone No.

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Exhibit E

KDHE SRF Contract Provisions

KDHE SRF CONTRACT PROVISIONS

**KDHE SRF Forms and Certifications
(Must be submitted with Bids)**

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY Arkansas City, KS

KPWSLF NO. 1812-01

CONTRACTOR'S
SIGNATURE 

TITLE President

DATE 8/11/2021

Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name 2021 Wastewater Treatment Plant Improvements Project

KPWSLF or KWPCRLF Project No. 1812-01

Prime Contract Bidder/Engineering Firm Burns & McDonnell / CAS Constructors Arkansas City JV

Address 3500 SW Fairlawn Road, Suite 200 Topeka, KS 66614

Contact Person: Travis Stryker Telephone No. 785-354-9953

The following DBE firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted N/A

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

Comments We are continuing to notify DBE firms of opportunities related to this project.

Prepared By: 

Date: 8/11/2021

(Use additional copies of this sheet if needed)

1812-01
KDHE PROJECT #

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Travis Stryker, President

Typed Name & Title of Authorized Representative

 8/11/2021

Signature and Date of Authorized Representative

American Iron and Steel Certification

1. Identification of American-made Iron and Steel Products: The Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron and steel products for every component contained in the bid solicitation where such American-made components are required. The term "iron and steel products" means the following products made primarily of iron or steel - lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
2. Verification of U.S. Production: If this bid is accepted, the Bidder agrees that it will provide, to the Owner, reasonable, sufficient, and timely verification of the U.S. production of each Iron and Steel Product incorporated into the project.
3. Documentation Regarding Non-American-made Iron and Steel: The Bidder certifies that for any Iron or Steel Product that is not American-made but was incorporated in the development of this bid, is allowed by waiver of the U.S. Environmental Protection Agency and such waiver is attached to this certification.



Signature

8/11/2021

Date

Travis Stryker, President

Name and Title of Signer (Please Print)

Q & A's, Waiver request instructions, and a list of approved waivers can be found at
http://water.epa.gov/grants_funding/aisrequirement.cfm

KDHE SRF Provisions

Contract Provisions for Equal Opportunity

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Equal Employment Opportunity is **THE LAW**

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

Contract Provisions for the Kansas Act Against Discrimination

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

- (1) Who employs fewer than four employees during the term of such contract; or
- (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

Contract Provisions for right of entry by KDHE

The Contractor shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

Contract Provisions for Historical and Archeological Deposits

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6th Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has

been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

Contract Provisions for NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities

The owner or Contractor must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.

Contract Provisions for Restrictions on Lobbying

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

Contract Provisions for the Trafficking Victims Protection Act of 2000

The Contractor, its employees, sub-contractors, and sub-contractors employees under any KPWSLF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

Contract Provisions for Suspension and Debarment

The Contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions." The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Contractor agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Contract Provisions for Non Discrimination

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

Contract Provisions for Non Segregated Facilities

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; *Provided*, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

Contract Provisions for American Iron and Steel

All of the iron and steel products used in the project must be produced in the United States. The term "iron and steel products" means the following products made primarily of iron or steel - lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. **A Certification form must be submitted with the bid documents.**

The following definitions apply to this provision.

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are access hatches, ballast screen, benches (Iron or Steel), bollards, cast bases, cast iron hinged hatches, square and rectangular; cast iron riser rings, catch basin inlet, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes (boot, inlet), drainage grates, frames and curb inlets, inlets; junction boxes, lampposts, manhole covers, rings and frames, and risers.

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

Mechanical and electrical components, equipment and systems are NOT considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings

(such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

Noncompliance with this provision is only allowed through a waiver issued by the U.S. Environmental Protection Agency. Q&A documents, waiver request instructions, and a list of proposed and approved waivers can be found at http://water.epa.gov/grants_funding/aisrequirement.cfm .

Davis Bacon Wage Rate Contract Provisions

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster

(WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Loan Recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Loan Recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall coordinate with the Department of Labor Wage and Hour Division to approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Loan Recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Loan Recipient (s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the Loan Recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer award official or will notify the contracting officer award official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Loan Recipient(s) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security

number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Loan Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the Loan Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls.

Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Loan Recipient (s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Loan Recipient (s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period (1) contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage

determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Loan Recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(11) Contract Provision for Contracts in Excess of \$100,000.

(a) The following provisions apply to all contracts that are in excess of \$100,000. As used in these provisions, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The municipality, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in (a)(3), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Disadvantaged Business Enterprise Contract Provisions

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

A Disadvantaged Business Enterprise (DBE) includes Women's Business Enterprises, (WBE) Minority Business Enterprises (MBE), a Small Business Enterprises (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

The contractor must also adopt a fair share objective of awarding 4.1% of the contract amount to Minority Business Enterprises (MBE's) and 6.9% of the contract amount to Women's Business Enterprises (WBE's). This fair share objective is not a quota and the contractor cannot be penalized for failure to meet this objective.

The contractor is required to make the Good Faith Efforts and apply the administrative requirements listed below for any subcontracts.

Good Faith Efforts

1. Ensure DBEs are made aware of subcontracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the prime contractor;
 - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

DBE Administrative Requirements

The contractor:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.

Determination of Compliance

If Prime contractors award any subcontracts, they must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



**REQUEST FOR AUTHORIZATION OF
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX
 SERVICE CONTRACT
 CONSTRUCTION CONTRACT

OMB No.: **9000-0089**
 Expires: **04/30/2005**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210	2. FROM: (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
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5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) <i>(Use reverse or attach additional sheets, if necessary)</i>	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
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16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
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TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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WAGE RATE DETERMINATION

The wage rate determination found on the following pages must be utilized for the duration of the contract. Each class of workers (including workers in subcontracts) must be paid at least the indicated hourly rate and fringe for such class. If worker compensation includes fringe benefits recognized by the U.S. Department of Labor, then verification of payment of these benefits must be made to the Municipality (Owner) with the first submitted payroll report. If worker compensation does not include fringe benefits then workers must be paid the indicated fringe rate in cash.

If a particular class of worker is not listed on the wage rate determination, but is utilized for the project, Standard Form 1444 must be completed by the contractor and submitted to the Municipality (Owner). The U.S. Department of Labor will determine if the wage rate indicated on the submitted Standard Form 1444 is acceptable.

Workers must be paid weekly. Any worker who works more than 40 hours a week must be paid one and one-half times the base pay plus all fringe benefits. Weekly payroll reports shall be submitted to the Municipality (Owner) for every week until the job is complete even if no work is performed.

The Contractor is responsible for all subcontractor compliance and reporting.

"General Decision Number: KS20210044 06/25/2021

Superseded General Decision Number: KS20200044

State: Kansas

Construction Type: Building

Counties: Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Elk, Ellsworth, Ford, Gove, Graham, Grant, Gray, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jewell, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, Marion, Marshall, McPherson, Meade, Mitchell, Morris, Morton, Nemaha, Neosho, Ness, Osborne, Pawnee, Phillips, Pratt, Rawlins, Republic, Rooks, Rush, Russell, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Wilson and Woodson Counties in Kansas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	01/22/2021
2	02/05/2021
3	03/05/2021
4	04/09/2021
5	06/25/2021

ASBE0027-002 10/01/2020

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 37.55	27.82

BRKS0015-015 05/01/2020

	Rates	Fringes
BRICKLAYER.....	\$ 24.53	13.29

ELEV0012-004 01/01/2021

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.68	35.825+a+b

a. VACATION PAY: 6% for 6 months to 5 years service; 8% with 5 or more years of service.

b. PAID HOLIDAYS: Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

IRON0010-031 04/01/2021

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 34.50	31.99

PAIN2012-007 04/01/2020

	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 32.91	17.86

* PLUM0441-015 06/01/2021

	Rates	Fringes
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PIPEFITTER (Excludes HVAC
Pipe and Unit Installation).....\$ 35.24 18.36

* PLUM0441-016 06/01/2021

Rates Fringes

PIPEFITTER (HVAC Pipe
Installation Only).....\$ 37.85 18.99

SFKS0669-002 01/01/2021

Rates Fringes

SPRINKLER FITTER (Fire
Sprinkler).....\$ 34.47 23.38

SHEE0002-016 07/01/2015

Rates Fringes

SHEET METAL WORKER (Excludes
HVAC Duct and Unit
Installation).....\$ 36.89 19.94

* UAVG-KS-0001 01/01/2019

Rates Fringes

ELECTRICIAN (HVAC/Temperature
Controls Installation Only).....\$ 32.22 14.71

SUKS2015-013 07/08/2015

Rates Fringes

CARPENTER (Drywall Hanging
Only).....\$ 17.92 2.09

CARPENTER, Excludes Drywall
Hanging, and Form Work.....\$ 19.04 3.95

CEMENT MASON/CONCRETE FINISHER...\$ 18.01 3.33

ELECTRICIAN, Excludes
Installation of
HVAC/Temperature Controls.....\$ 27.63 10.96

FORM WORKER.....\$ 13.33 0.00

GLAZIER.....	\$ 18.92	6.64
IRONWORKER, STRUCTURAL.....	\$ 23.02	15.09
LABORER: Common or General.....	\$ 12.37	2.77
METAL BUILDING ERECTOR.....	\$ 11.19	1.83
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 15.72	1.95
PLUMBER, Excludes HVAC Pipe and Unit Installation.....	\$ 27.79	10.85
ROOFER.....	\$ 14.48	2.96
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 23.18	5.83
SHEET METAL WORKER (HVAC Unit Installation Only).....	\$ 28.20	10.85

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

"General Decision Number: KS20210037 07/30/2021

Superseded General Decision Number: KS20200037

State: Kansas

Construction Type: Heavy

Counties: Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chautauqua, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Elk, Ellsworth, Ford, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jewell, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, Marion, McPherson, Meade, Mitchell, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Wilson and Woodson Counties in Kansas.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	07/30/2021

ELEC0226-001 09/01/2019

	Rates	Fringes
ELECTRICIAN.....	\$ 31.35	17.79

 * IRON0024-007 06/01/2021

	Rates	Fringes
IRONWORKER (REINFORCING AND STRUCTURAL).....	\$ 27.99	13.62

 SUKS2014-022 07/09/2014

	Rates	Fringes
CARPENTER.....	\$ 17.67	1.62
CEMENT MASON/CONCRETE FINISHER...	\$ 13.67	0.00
LABORER: Common or General.....	\$ 13.06	0.00
LABORER: Pipelayer.....	\$ 14.13	1.30
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 18.84	3.97
OPERATOR: Bulldozer.....	\$ 16.75	0.00
OPERATOR: Crane.....	\$ 28.00	0.00
OPERATOR: Loader.....	\$ 16.17	0.00
OPERATOR: Scraper.....	\$ 15.68	0.00
OPERATOR: Tractor.....	\$ 15.90	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 18.03	0.78
TRUCK DRIVER: Dump (Tandem) Truck.....	\$ 15.70	3.58

 WELDERS - Receive rate prescribed for craft performing

operation to which welding is incidental.

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