

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (COST-PLUS)**

THIS AGREEMENT is by and between Santaquin City Corporation (“Owner”) and
VanCon, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- A. Upgrading the Center Street lift station to a triplex submersible pump system and associated valving, electrical, controls, piping, electrical building, and required bypass pumping during construction activities.
- B. Converting an existing biosolids holding tank to a third biological process train including all aeration equipment, pumping system, blowers, mixers, discharge piping, flow meters, electrical, controls, etc.
- C. Adding a new Veolia (GE, Suez) Zenon membrane bioreactor (MBR) train into an existing basin within the existing WRF building, including; piping, valves, gates, baffle plates, chemical feed system extension, actuators, pumping systems, motors, blowers, headers, controllers, meters, electrical systems, mechanical systems, and tank coating
- D. Adding an additional reclaimed water pump and related equipment for operation
- E. Constructing a new biosolids holding tank with associated piping, valves, controls, pumps, tank cover, etc.
- F. Constructing a new solids handling support building including blowers, dewatering feed pumps, and associated electrical and HVAC/plumbing.
- G. Add solids load out facilities to existing dewatering building including screw conveyors, controls, building addition, roll-up doors, electrical, and HVAC improvements.
- H. Upgrade UV disinfection system; add new bulbs and relocate equipment to existing channel.
- I. Retrofit former treatment lagoons to additional storage ponds at the existing winter storage ponds facilities.
- J. Site civil and yard piping as required, offsite piping improvements, electrical, instrumentation, HVAC, and plumbing improvements as indicated in the Contract Documents, and all other items needed for a complete and functioning system.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Santaquin City WRF Phase 3 Upgrades.

2.02 *ENGINEER*

- A. The Project has been designed by J-U-B Engineers.
- 2.03 The Owner has retained J-U-B Engineers (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 – CONTRACT TIMES

3.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before August 01, 2026, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before August 31, 2026.

3.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion*: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$200 for each day that expires after such until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 4 – CONTRACT PRICE

- 4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work related to Design Phase Services, a lump sum of: \$65,000 (Sixty-Five Thousand and no/100).
 - B. For all Work related to Construction Phase Services, specifically for Construction Supervision and Management, a lump sum of: \$735,000 (Seven Hundred Thirty-Five Thousand and no/100).

- C. For all Work other than Unit Price Work, if any, the Cost of the Work plus a Contractor’s fee for overhead and profit, both of which shall be determined as provided in Articles 6 and 7 below, subject to additions and deletions as provided in the Contract Documents and subject to the limitations set forth in Article 8 below.
- D. For all Unit Price Work, if any, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work, if any, by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
No Unit Price Work is being established with the Agreement. If Unit Price Work is to be used for Construction purposes, Unit Pricing and quantities will be established by Change Order or by being included within a Guaranteed Maximum Price (GMP) (addendum/change order) at a later date.					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract or by GMP or Change Order are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- E. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit or by future GMP or Change Order.

ARTICLE 5 – COST OF THE WORK

5.01 Cost of the Work shall be determined as provided in Paragraph 13.01 of the General Conditions.

ARTICLE 6 – CONTRACTOR’S FEE

6.01 Contractor’s fee shall be determined as follows:

- A. A fee based on the following percentages of the various portions of the Cost of the Work:
 1. Payroll costs (see Paragraph 13.01.B.1 of the General Conditions) 7%.
 2. Material and equipment costs (see Paragraph 13.01.B.2 of the General Conditions) 7%.
 3. Amounts paid to Subcontractors (see Paragraph 13.01.B.3 of the General Conditions) 7%.
 4. Amounts paid to special consultants (see Paragraph 13.01.B.4 of the General Conditions) 7%.
 5. Supplemental costs (see Paragraph 13.01.B.5 of the General Conditions) 7%.
 6. No fee will be payable on the basis of costs itemized in Paragraph 13.01.C of the General Conditions.

- B. Contractor guarantees that the maximum amount payable by Owner in accordance with Paragraph 7.01.A as a percentage fee (Guaranteed Maximum Price (Fee)) will not exceed 7%, subject to increases or decreases for changes in the Work as provided in Paragraph 9.01.B.

ARTICLE 7 – GUARANTEED MAXIMUM PRICE

- 7.01 Contractor guarantees that the maximum amount payable by Owner for the sum of the Cost of the Work Plus Contractor's fee under Article 7 (Guaranteed Maximum Price) will not exceed \$To Be Determined by GMP/Change Order at a later date, subject to increases or decreases for changes in the Work. The Guaranteed Maximum Price will not apply to Unit Price Work.

ARTICLE 8 – CHANGES IN THE CONTRACT PRICE

- 8.01 The amount of any increases or decreases in Contractor's fee, in any Guaranteed Maximum Price, or in any Guaranteed Maximum Fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:
 - A. If Contractor's fee is a percentage fee, Contractor's fee will adjust automatically as the Cost of the Work changes, subject to any Guaranteed Maximum Fee and Guaranteed Maximum Price.
 - B. Wherever there is a Guaranteed Maximum Price or Guaranteed Maximum Fee:
 - 1. In the case of net additions in the Work, the amounts of any increase in either Guaranteed Maximum (Price or Fee) shall be proportional to the increase in Contract Price for such additions to the Work, exclusive of any mark-ups for profit, overhead, or fees of Contractor, Subcontractors, or Suppliers.
 - 2. In the case of net deletions in the Work, the amount of any decrease in either Guaranteed Maximum (Price or Fee) shall be proportional to the decrease in Contract Price for such deletions to the Work.

ARTICLE 9 – PAYMENT PROCEDURES

9.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of Contractor's fee then payable. Applications for Payment will be processed by Engineer as provided in the General Conditions.

9.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer on or about the 25th day of each month during construction as provided in Paragraphs 10.02.A.1 and 10.02.A.2 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. *For Cost of the Work:* Progress payments on account of the Cost of the Work will be made:

- a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
 - 1) 95 percent Cost of Work completed (with the balance being retainage).
 - 2) 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - b. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
2. *For Contractor's fee:* Progress payments on account of the Contractor's fee will be made as follows:
- a. If Contractor's fee is a fixed fee, payments prior to Substantial Completion will be in an amount equal to 95 percent of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work on the number of units completed), and upon Substantial Completion in an amount sufficient to increase total payments to Contractor on account of his fee to 95 percent of Contractor's fee. In the event there is no Schedule of Values the progress of the Work will be measured as provided elsewhere in the Contract.
 - b. If Contractor's fee is a percentage fee, payments prior to Substantial Completion will be in an amount equal to 95 percent of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion in an amount sufficient to increase total payments to Contractor on account of that fee to 95 percent of Contractor's fee.

9.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph.

9.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 10 – INTEREST

- A. All amounts not paid when due shall bear interest at the rate of 12 percent per annum.

ARTICLE 11 – CONTRACTOR’S REPRESENTATIONS

- 11.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to any Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor,; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
 - K. Contractor shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring the Contractor’s compliance with any Laws or Regulations.

ARTICLE 12 – ACCOUNTING RECORDS

12.01 Contractor shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 13.01.E of the General Conditions and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner.

ARTICLE 13 – CONTRACT DOCUMENTS

13.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 10, inclusive).
 2. Performance bond (pages █ to █, inclusive).
 3. Payment bond (pages █ to █, inclusive).
 4. General Conditions (pages 1 to 71, inclusive).
 5. Supplementary Conditions (pages █ to █, inclusive).
 6. Specifications as listed in the table of contents of the Project Manual.
 7. Drawings (not attached but incorporated by reference) consisting of To be Determined at a later date sheets with each sheet bearing the following general title: █ [or] the Drawings listed on the attached sheet index.
 8. Addenda (numbers █ to █, inclusive).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Owner's Request for Proposal (RFP) (pages 1 to 21, inclusive).
 - b. Contractor's Proposal and Bid (pages 1 to 9, inclusive).
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 14.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 14.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 14 – MISCELLANEOUS

14.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

14.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

14.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 14.05:
 1. "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

14.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

Santaquin City Corporation

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

110 South Center Street

Santaquin, Utah 84655

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)