

## **AGREEMENT**

**THIS AGREEMENT** made and entered into this 1st day of January, 2024, by and between the Board of County Commissioners of Johnson County, Kansas, hereinafter referred to as the "OWNER" and TC Fuller Construction, LLC hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

**WHEREAS**, the OWNER desires to retain the services of the CONTRACTOR for services generally described in Request for Proposal No. 2023-045 for Wastewater Sewer Collection System Infrastructure Repairs; and

**WHEREAS**, the CONTRACTOR desires to provide such services to the OWNER in accordance with the terms and conditions of this AGREEMENT.

**NOW, THEREFORE**, in consideration of the above and foregoing recitals, the mutual promises, covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties to these presents do hereby agree as follows:

### **ARTICLE 1 – OWNER'S REPRESENTATIVE**

The General Manager of Johnson County Wastewater (hereinafter "JCW") shall be the OWNER'S designated representative, and is authorized to act on behalf of the OWNER with respect to all work tasks required of the PROJECT for which services are to be rendered by the CONTRACTOR. The General Manager will issue a PROJECT AUTHORIZATION and the Notice to Proceed to the CONTRACTOR for a specific scope of services for each authorized project (hereinafter the "AUTHORIZED PROJECT") to be completed under this AGREEMENT. The CONTRACTOR shall, upon receipt of a Notice to Proceed, furnish the services in relation to the scope of any AUTHORIZED PROJECT.

### **ARTICLE 2 - ENGINEER**

Any Engineering Firm who designs projects to be constructed under this AGREEMENT, who is hereinafter referred to as ENGINEER and who shall 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 performance completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3 – SCOPE OF SERVICES**

The specific services which the CONTRACTOR agrees to furnish are as indicated in Attachment A "Scope of Services". Changes in the Scope of Services shall be subject to renegotiations and implemented through an Amendment to this AGREEMENT. The Wastewater Sewer Collection System Infrastructure Repairs Term and Supply Contract (Request for Proposal No. 2023-045 hereinafter referred to as "RFP No. 2023-045"), and all contractor AGREEMENTS resulting from this RFP, have a combined annual maximum dollar amount of PROJECT AUTHORIZATIONS that can be awarded, as established by the BOCC. The combined total amount of AUTHORIZED PROJECTS issued during the initial term of this AGREEMENT, or during any like renewal term thereof, shall not exceed **One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00)** without the prior approval of the BOCC. CONTRACTOR understands and acknowledges there is no guarantee minimum of quantity of services that would be purchased or required by OWNER from CONTRACTOR under this Agreement.

## **ARTICLE 4 – BASIS OF PAYMENT**

As a consideration for providing the services enumerated in Article 3, the OWNER shall pay the CONTRACTOR in the following manner:

4.1 Compensation of a Cost Not-to-Exceed. For services, as enumerated in Article 3, the OWNER shall pay the CONTRACTOR based upon the CONTRACTOR'S cost with an agreed maximum. Payments as described hereinafter shall represent full compensation to the CONTRACTOR for payroll costs, direct expenses, current overhead, profit and all other costs in connection with the performance of these services. Upon request, the CONTRACTOR shall provide documentation to the OWNER of all costs in connection with the performance of these services.

Total payment to the CONTRACTOR for the services, as enumerated in Article 3, shall not exceed a maximum cost, which shall be agreed to for each AUTHORIZED PROJECT. Each AUTHORIZED PROJECT maximum shall remain in effect unless changed by an ADDENDUM to the AUTHORIZED PROJECT. Personnel changes in CONTRACTOR'S staff or billing rates related to staff salary increases during the term of the AUTHORIZED PROJECT shall not be cause for an increase to the maximum cost.

The CONTRACTOR'S cost shall be calculated in accordance with the Measurement and Payment Section of the Contract Documents listed in Section 4.B.3 of RFP No. 2023-045. Attachment B to this AGREEMENT, "Schedule of Billing Rates and Percentage Markups", shall remain in effect for the duration of the initial term of this AGREEMENT, and for the duration of any AUTHORIZED PROJECT during the initial term.

4.2 Changes of Scope. In the event additional, related construction services are required through changes in the scope of an AUTHORIZED PROJECT, or other unusual or unforeseen circumstances are encountered, CONTRACTOR shall, upon written ADDENDUM by and between the parties to an AUTHORIZED PROJECT, perform the additional services.

4.3 Basis of Costs. Compensation is based on actual time and material (or other direct expense) costs, plus overhead and profit. However, at the discretion of the Owner, some costs such as sub-contract work not listed on Attachment B may be based on lump-sum bids.

## **ARTICLE 5 - PAYMENT FOR SERVICES**

5.1 Payment for Services. Payment for services rendered shall be made to the CONTRACTOR at the end of each monthly billing cycle upon presentation of the CONTRACTOR 'S Application for Payment. The format of Applications for Payment shall conform to the OWNER'S standards and CONTRACTOR shall attach documents substantiating actual costs incurred and included in the Applications for Payment. OWNER shall make prompt payments in response to CONTRACTOR'S Applications for Payment. Total payment to CONTRACTOR shall not exceed the AUTHORIZED PROJECT amount except by ADDENDUM to the AUTHORIZED PROJECT.

5.2 Payment Procedures. OWNER shall pay the CONTRACTOR in the manner specified in the Contract Documents. Applications for Payment shall be submitted by the CONTRACTOR and processed in accordance with the Contract Documents.

5.2.1 Progress Payments. OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER or OWNER'S AGENT. Upon ENGINEER's recommendation and OWNER's approval of CONTRACTOR'S Application for Payment, OWNER will pay or cause to be paid an amount equal to the submitted actual expenses, plus overhead and profit and other expense markups allowed by the Contract Documents less a retained amount in accordance with the following schedule and subject to the applicable provisions of the Contract Documents.

5.2.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below:

1. Ninety five percent (95%) with five percent (5%) retained until the Work is substantially complete.
2. OWNER shall release retainage, if any, on any undisputed payment due within thirty (30) days after substantial completion; provided, however, if any subcontractor is still performing work on the Project under its subcontract, OWNER may withhold that portion of the retainage attributable to such subcontract until thirty (30) days after such work is completed.”

5.2.2 Final Payment. Upon final completion and acceptance of the Work, OWNER shall pay the remaining amount owed as recommended by ENGINEER in accordance with the applicable provisions of the Contract Documents.

## **ARTICLE 6 – OBLIGATIONS OF THE CONTRACTOR**

6.1 Construction Cost Proposals. CONTRACTOR shall prepare itemized cost proposals, utilizing contract pricing, for each AUTHORIZED PROJECT assigned to CONTRACTOR. The final cost proposal accepted by OWNER for each AUTHORIZED PROJECT shall be a maximum not-to-exceed price for the Project that can only be increased by an Addendum to the PROJECT AUTHORIZATION.

6.2 Project Completion Time. For the services described in Article 3, the CONTRACTOR shall make every reasonable effort to schedule manpower and work elements in a diligent manner so as to complete said services within the agreed upon time schedule included for each AUTHORIZED PROJECT starting upon issuance of the Notice to Proceed. This time schedule applies only if any reviews, approvals, and information to be furnished and services to be performed by persons and agencies not under the control of the CONTRACTOR are furnished and/or completed in accordance with the schedule to be agreed upon between the OWNER and the CONTRACTOR.

## **ARTICLE 7 – OBLIGATIONS OF THE OWNER**

7.1 Authorization of Work. The OWNER shall issue a PROJECT AUTHORIZATION for each construction project assigned to the CONTRACTOR. The PROJECT AUTHORIZATION shall reference this AGREEMENT, and shall include a description of the Work, the not-to-exceed maximum compensation for the PROJECT, and an agreed upon PROJECT COMPLETION TIME. The OWNER shall also notify the CONTRACTOR in writing to proceed with the construction services through issuance of a Notice to Proceed prior to the CONTRACTOR providing services listed under the PROJECT AUTHORIZATION.

7.2 Owner-Furnished Data. The OWNER shall provide to the CONTRACTOR a detailed set of plans and specifications for each project, unless it is agreed that informal drawings/sketches, specifications, and instructions are all that is required. OWNER shall also provide any technical data in the OWNER'S possession, including as-built drawings from previous projects, previous reports, maps, surveys, and any other information reasonably required by the CONTRACTOR to perform the construction services on the AUTHORIZED PROJECT. Such information shall include, but not be limited to, the OWNER'S requirements for the AUTHORIZED PROJECT, and any criteria or constraints. CONTRACTOR may rely upon the accuracy, timeliness, and completeness of the information provided by the OWNER in performing CONTRACTOR'S services to the OWNER.

7.3 Access to Facilities and Property. Unless otherwise agreed upon, the OWNER shall make its wastewater facilities and properties available and accessible for inspection and work by CONTRACTOR during regular business hours and shall arrange for access to make all provisions for the

CONTRACTOR to enter upon public property as may be reasonably required for the CONTRACTOR to perform its services.

7.4 Timely Review. The OWNER shall examine all studies, reports, proposals, certifications, and other documents presented by CONTRACTOR, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as OWNER deems appropriate for such examination and, as necessary, render written decisions pertaining thereto in accordance with the schedule agreed upon between the OWNER and the CONTRACTOR so as not to delay the services of CONTRACTOR.

7.5 Prompt Notice. The OWNER shall give prompt written notice to CONTRACTOR whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S work, or any defect in the CONTRACTOR'S work.

## **ARTICLE 8 – GENERAL PROVISIONS**

8.1 Acceptance of CONTRACTOR'S Services. Upon completion of the services required of the CONTRACTOR under this AGREEMENT, or of any phases of such services, the OWNER and/or ENGINEER will inspect the Work for conformance with the Contract Documents, including any plans and specifications and instructions issued with a PROJECT AUTHORIZATION. If OWNER or ENGINEER finds that such services do conform to the Contract Documents, the OWNER'S Representative shall accept such services and authorize payment therefore. If OWNER or ENGINEER finds that such services do not conform to the Contract Documents, the OWNER'S Representative shall immediately notify the CONTRACTOR, in writing, of all deficiencies and reasons for nonacceptance and shall permit the CONTRACTOR a reasonable time, not to exceed ninety (90) days, to complete or correct the services. If, after ninety (90) days, the services do not conform to the Contract Documents, and if the CONTRACTOR fails to demonstrate to the satisfaction of the OWNER that the delay is beyond the CONTRACTOR'S control, the CONTRACTOR will be deemed in default of this AGREEMENT.

8.2 No Assignment. CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of neither this Agreement nor any of its rights and obligations hereunder, without the prior written consent of OWNER, but in no event shall such consent relieve CONTRACTOR from its obligations under the terms of this Agreement.

8.3 Consumer Protection. The CONTRACTOR and the OWNER herein agree that the term "consumer" as construed in the Kansas Consumer Protection Act, K.S.A. 50-623 et seq. shall include the Board of County Commissioners of Johnson County, Kansas, acting as the Governing Body of Johnson County Wastewater.

8.4 Nondiscrimination. CONTRACTOR agrees to not discriminate on the basis of race, religion, color, sex, disability, national origin, ancestry, or other circumstance prohibited by federal, state or local law, rule or regulation in its operation, management and employment practices and with respect to availability and accessibility of products and services to the public. CONTRACTOR agrees to comply with all applicable laws of the State of Kansas and of the United States of America, regarding such non-discrimination and equality of opportunity.

8.5 Force Majeure. This Agreement is subject to, and CONTRACTOR shall not be responsible or liable for, delay, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the videotaping, production, or delivery hereunder. In the event that any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.

8.6 Hold Harmless. The CONTRACTOR agrees to protect, defend, indemnify and hold the OWNER, its officers, employees and agents free and harmless from and against any and all losses,

penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission or negligent act of the CONTRACTOR. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The CONTRACTOR further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

8.7 Insurance. CONTRACTOR shall, while performing the services required under and for the duration of this Agreement, comply with the insurance requirements of Special Condition No. 9.1 of RFP No. 2023-026.

8.8 Severability. All agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

8.9 Standards of Performance. The CONTRACTOR shall perform all services under this AGREEMENT in accordance with generally acceptable industry standards of the wastewater facility construction industry for projects similar in scope, size and complexity to the AUTHORIZED PROJECT, and the laws of the State of Kansas.

8.10 Termination for Cause. Should CONTRACTOR be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. OWNER shall thereupon notify CONTRACTOR, in writing, of such violation, giving CONTRACTOR thirty (30) days to cure such breach. Should CONTRACTOR fail to cure such breach, OWNER shall then have the right to terminate this Agreement for cause by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. In the event of termination for cause, CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER, less costs and damages incurred by OWNER as a result of CONTRACTOR's breach.

8.11 Termination for Lack of Funds. Should, for whatever reason, adequate funding not be made available to the OWNER to support or justify continuation of the level of services to be provided by the CONTRACTOR under this Agreement, the OWNER may terminate or reduce the amount of service to be provided by the CONTRACTORS under this Agreement. In such event, the OWNER shall notify the CONTRACTOR in writing at least fifteen (15) days in advance of such termination or reduction of services for lack of funds, in which case, the CONTRACTOR shall be reimbursed for all costs and expenses incurred prior to the date of such notice.

8.12 Termination for Convenience. OWNER reserves the right to terminate this Agreement, at any time, for the convenience of OWNER, without penalty or recourse, by giving ONTRACTOR written notice of such termination thirty (30) days prior to termination. CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER.

8.13 Termination for Lack of Payment. The CONTRACTOR reserve the right to terminate this Agreement for lack of payment by the OWNER for services performed by the CONTRACTOR under this Agreement and accepted by the OWNER.

8.14 Termination Compensation. In the event of termination, the CONTRACTOR shall be paid in full for all accepted services performed up to the termination date, unless such termination is for the convenience of the OWNER, then CONTRACTOR shall be paid in full for all accepted services performed

up to the termination date, plus any reasonable termination expenses incurred by CONTRACTOR (including but not limited to cancellation or demobilization costs or fees as a result of such a termination).

If no termination is implemented, relationships and obligations created by this AGREEMENT shall terminate upon completion of all applicable requirements of this AGREEMENT.

8.15 Term of Contract. This Agreement is effective as of January 1<sup>st</sup>, 2024 (“Effective Date”). The term of this AGREEMENT shall be for a twelve (12) month period beginning on the Effective Date. The CONTRACTOR agrees that the OWNER has the option to renew this AGREEMENT for four (4) additional twelve (12) month periods on the same terms and conditions as set forth herein or as amended. Billing rates established from OWNER’S Request for Proposal No. 2023-045 shall remain in effect with renewals, unless both parties agree to new, negotiated rate increases or decreases.

8.16 No Waiver. The waiver by the OWNER or CONTRACTOR of any breach of any covenant in this AGREEMENT shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant in this AGREEMENT, nor shall any custom or practice which may arise between the OWNER and CONTRACTOR in the administration of this AGREEMENT be construed to waive or lessen the right of the OWNER or CONTRACTOR to insist upon the performance by the OWNER or CONTRACTOR in strict accordance with this AGREEMENT.

8.17 Venue. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

8.18 Headings. The headings contained in this AGREEMENT are for reference purposes only and shall not affect the meaning or interpretation of this AGREEMENT.

8.19 Cooperative Procurement. CONTRACTOR agrees that pricing, terms, and conditions of this CONTRACT may be made available to any Municipality, County Public Utility, Hospital, Education Institution, or any other non-profit organization.

There shall be no obligation under the cooperative procurement agreement for any organization to utilize the RFP or contract unless they are specifically named in the Request for Proposal.

All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All deliveries shall be F.O.B. Destination. All receiving, inspection, payments, and other contract administration will be the responsibility of the ordering jurisdiction.

## **ARTICLE 9 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 9.1 This Agreement (pages A-1 to A-7, inclusive).
- 9.2 OWNER’S Request for Proposal No. 2023-045 (hereinafter “RFP No. 2023-045”) and RFP Addenda numbers 1 and 2; and
- 9.3 CONTRACTOR’S written Response to RFP No. 2023-045, signed and duly submitted to the OWNER (hereinafter “CONTRACTOR’S Response”); and
- 9.4 OWNER-issued Notice of Award of term and supply contract; and
- 9.5 OWNER-issued PROJECT AUTHORIZATIONS, complete with scope descriptions, plans and specifications, instructions, additional bonds and insurance, Additional Supplementary Conditions, Supplementary Division 01000 specifications, and/or other documents as required for each assigned project; and
- 9.6 OWNER-issued Notice to Proceed with each PROJECT AUTHORIZATION; and

- 9.7 General Conditions (pages 1 to 43, inclusive).
- 9.8 Supplementary Conditions (pages SC-1 to SC-17, inclusive).
- 9.9 Executed and filed Bonds; and
- 9.10 Certificate of Insurance; and
- 9.11 Other documents, if any, listed below:

Additional Supplementary Conditions (pages ASC-1 to ASC-8, inclusive)

- 9.12 The documents listed in paragraphs 9.2 et. seq. above, whether or not attached to this Agreement, are hereby incorporated by reference as if set forth fully herein and shall be made binding on OWNER and CONTRACTOR.

**ARTICLE 10 – ENTIRE AGREEMENT**


This AGREEMENT represents the entire agreement between the OWNER and the CONTRACTOR with respect to the provision of services required of CONTRACTOR and OWNER under this Agreement, and supersedes all prior understandings or promises, whether oral or written, between the parties pertaining to or in connection with this Agreement.

IN WITNESS WHEREOF, CONTRACTOR and OWNER have caused this Agreement to be executed in multiple counterparts by their duly authorized representatives and made effective on the day and year first above written.


**CONTRACTOR**

**JOHNSON COUNTY, KANSAS**

By   
Tina Fuller (Jan 23, 2024 17:45 PST)  
 Tina or Charlie Fuller  
 Owner

By   
Robin Lynes (Jan 24, 2024 10:27 CST)  
 Robin Lynes  
 Purchasing Manager

APPROVED AS TO FORM:

  
Ryan Haga (Jan 24, 2024 08:03 CST)  
 Ryan Haga  
 Assistant County Counselor

**ATTACHMENT A**  
to  
Agreement for Construction Services  
RFP No. 2023-045

**Scope of Services**

The CONTRACTOR shall perform some or all of the services described below. The extent and complexity of each construction project will vary. However, these basic services listed below may be required. Each CONTRACTOR selected by the OWNER, together with approved subcontractors, shall be capable and qualified to perform the following:

1. **PROJECT DEVELOPMENT AND CONSTRUCTION ADMINISTRATION/MANAGEMENT**
  - a. Assist OWNER and ENGINEER when requested with project development, including constructability assessments and cost-saving alternatives.
  - b. Prepare detailed cost proposals for assigned construction projects and change order work.
  - c. Plan, schedule, direct and supervise construction projects from Notice to Proceed to final completion.
  - d. Coordinate work with JCW operation and maintenance staff in order to keep essential wastewater treatment processes in service and meet regulatory permit requirements.
  - e. Conduct work in compliance with all federal, state, and local regulations. Obtain all required permits for the Work.
  - f. Conduct work in a safe manner and in compliance with all federal, state, and local safety regulations. Consider and act upon safety concerns of JCW's Safety Manager and other JCW staff.
  - g. Meet the Administrative Requirements of the Division 01000 General Construction Requirements
  
2. **GENERAL CONSTRUCTION REQUIREMENTS**

CONTRACTOR shall perform the services included in the Division 01000 General Construction Requirements for all assigned projects unless OWNER deems any requirements as unnecessary for a project. These requirements generally include:

  - a. **SITE REQUIREMENTS**
  - b. **EQUIPMENT REQUIREMENTS**
  - c. **SAFETY AND SECURITY REQUIREMENTS**
  - d. **COMMUNICATION AND COORDINATION REQUIREMENTS**
  - e. **GENERAL CONSTRUCTION REQUIREMENTS**
  - f. **SUPPLEMENTARY DIVISION 01000 REQUIREMENTS**



3. TYPES OF CONSTRUCTION

CONTRACTOR shall perform the following types of construction at OWNER'S wastewater facilities, as authorized:

- a. Gravity Sewer Piping and Manhole Repair
- b. Sanitary Force Main and Air Release Valve Repair/Replacement/Maintenance
- c. Sanitary Stream Crossing Repairs/Replacement and Stream Restoration
- d. Low Pressure Sewer Pipeline and Valve Repair/Maintenance
- e. Civil Site Work – earthwork, trenching, pavement, modification or replacement of landscaping, fencing, traffic control, etc.
- f. And all other projects as requested

Note: Work may include bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, coordination with property owners, and restoration of private property.

*(End of Scope of Services)*

ATTACHMENT B  
to  
Agreement for Construction Services  
RFP No. 2023-045C  
**Schedule of Billing Rates and Percentage Markups**

Contractor: TC Fuller Construction, LLC

Effective Dates: January 01, 2024 through December 31, 2024

**Table 6-1 Labor Billing Rates**

JOB CLASSIFICATION	BILLING RATE (\$/Hr) <sup>1</sup>		
	Regular	Overtime <sup>2</sup>	Premium <sup>3</sup>
<b>Management, Supervision, Engineering:</b>			
Project Manager/Project Engineer <sup>4</sup>	\$102.00	\$153.00	\$192.00
Project Supervisor/Superintendent <sup>4</sup>	\$93.43	\$123.48	\$153.53
Foreman	\$93.43	\$123.48	\$153.53
Documents Coordinator <sup>6</sup>	\$55.00		
Restoration/Landscape Project Manager/Project Engineer <sup>4</sup>			
Restoration/Landscape Project Supervisor/Superintendent <sup>4</sup>			
Restoration/Landscape Foreman			
<b>Construction Trades:</b>			
Equipment Operator	\$86.57	\$115.00	\$143.43
Apprentice <sup>5</sup>	N/A	N/A	N/A
Laborer	\$72.10	\$95.90	\$120.00
Truck Driver/Hauler/Teamster	\$71.46	\$94.92	\$118.37
Restoration/Landscape Laborer	\$60.00	\$90.00	\$120.00

<b>Additional Labor Rates (Optional)<sup>7</sup>:</b>			
Pipefitter - Journeyman	\$102.26	\$157.34	\$217.51
Carpenter - Journeyman	\$87.62	\$116.37	\$145.11
Cement Finisher - Journeyman	\$81.49	\$106.33	\$129.16
Cement Finisher - Lead Finisher	\$82.90	\$108.44	\$133.96
Cement Finisher- Foreman	\$93.43	\$123.48	\$153.53
Ironworker - Superintendent	\$113.27	\$149.19	\$188.28
Ironworker - General Foreman	\$111.02	\$145.87	\$183.77
Ironworker - Foreman	\$108.78	\$142.54	\$179.28
Lead Journeyman Ironworker	\$105.78	\$138.12	\$173.29
Journeyman Ironworker	\$103.52	\$134.79	\$168.78

Apprentice Ironworker	\$89.56	\$114.28	\$139.79
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<sup>1</sup>Refer to General Requirements, Measurement and Payment for what is included in the Billing Rates

<sup>2</sup>Defined as hours in excess of regular daily or weekly work hours - not reimbursable unless negotiated in advance with JCW

<sup>3</sup>Premium rates are defined as emergency or holiday hours, and must be pre-approved by JCW

<sup>4</sup>The Project Manager/Engineer oversees the project, supervises invoices and submittals, and helps finalize shop drawings and operations and maintenance manuals. The Superintendent is defined as the person assigned to run the day-to- day operations of the construction site, coordinate the delivery of materials, and oversee subcontractors. Refer to General Requirements, Section B.3 - Measurement and Payment.

<sup>5</sup>Apprentice rates are optional, if not applicable please fill in "N/A"

<sup>6</sup>Documents Coordinator can be billed if tasks related to shop drawings, submittals, O&Ms, etc. are not handled by the Project Manager/Project Engineer. General administration shall be handled by the overhead and profit markup.

<sup>7</sup>Additional labor rates may be added if contractor desires. Failure to add additional labor rates will not affect the price component of the bid.

## Contract Markups:

**Table 6-2 - Overhead & Profit (Line D)<sup>1</sup>**

Subtotal 1: Less than \$100,000	10%
Subtotal 1: \$100,001 - \$500,000	12%
Subtotal 1: \$500,001+	15%

<sup>1</sup>Markup shall be multiplied by Subtotal 1. Subtotal 1 is defined as the cost of wastewater equipment, materials incorporated into the work, contractor's labor, and contractor's equipment costs to perform the work. This does not include markups on subcontractor or preferred subcontractor work.

**Table 6-3 - General Contractor Markup on Subcontractor Work (Line F)<sup>2</sup>**

Line F:	10%
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<sup>2</sup>Markup shall be multiplied by the sum of the costs of all subcontractors on the project (both Preferred Subcontractors and other subcontractors).

**Table 6-4 - Bonds & Insurance (Line G)<sup>3</sup>**

Subtotal 4: Less than \$100,000	6.5%
Subtotal 4: \$100,001 - \$500,000	6.5%
Subtotal 4: \$500,001+	6.5%

<sup>3</sup>Markup shall be multiplied by Subtotal 4, which is defined as the sum of Subtotals 2 and 3.

**Table 6-5 - Johnson County Purchasing Card Charges<sup>4</sup>**

Decimal Percent Charge for Use of P-Card	N/A
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<sup>4</sup>For small expenditures (generally under \$10,000), JCW may elect to pay by Purchasing Card (P-Card). If your firm charges a markup for P-Card use, it must be documented here. If your firm does not, mark 0%.

**Table 7-1 - Contractor's Equipment Billing Rates**

EQUIPMENT TYPE AND SIZE	BILLING RATE (\$) <sup>1</sup>						
	Mobilization Charge	Hourly	Daily	Weekly		Monthly	
		Active	Active	Active	Standby	Active	Standby
Large Excavator (greater than 45,000 lbs)	\$1,400.00	\$268.00	\$2,140.00	\$7,700.00	\$4,500.00	\$24,500.00	\$11,700.00
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)	\$1,000.00	\$121.00	\$970.00	\$3,500.00	\$1,900.00	\$11,300.00	\$4,900.00
Small Excavator (20,000 lbs or less)	\$1,000.00	\$72.00	\$575.00	\$1,990.00	\$990.00	\$6,600.00	\$2,600.00
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)	\$1,000.00	\$109.00	\$873.00	\$2,644.00	\$1,644.00	\$7,749.00	\$3,749.00
Skid Loader (bobcat)	\$1,000.00	\$86.00	\$690.00	\$2,710.00	\$1,350.00	\$8,600.00	\$3,800.00
Dump Truck (Tandem Axle) *4 hr. minimum	N/A	\$60.38	\$483.00	\$12,168.00	\$11,000.00	\$48,160.00	\$44,000.00
Track Loader	\$1,400.00	\$325.00	\$2,598.00	\$7,771.00	\$5,091.00	\$20,770.00	\$11,570.00
Rubber Tire Backhoe	\$1,400.00	\$139.00	\$1,108.00	\$2,992.00	\$2,352.00	\$7,746.00	\$5,346.00
Wheel Loader	\$1,400.00	\$166.00	\$1,330.00	\$6,300.00	\$3,500.00	\$19,800.00	\$10,200.00
Pump with Generator	N/A	\$65.00	\$520.00	\$2,600.00	\$2,300.00	\$10,400.00	\$10,100.00
Pickup with Tools	N/A	\$30.00	\$240.00	\$1,200.00	N/A	\$4,800.00	N/A
Truck (2 ton or equal)	N/A	\$36.00	\$288.00	\$1,440.00	N/A	\$5,760.00	N/A
Trailer	N/A	\$12.25	\$98.00	\$233.00	\$233.00	\$528.00	\$528.00
Air Compressor and Jackhammer	N/A	\$49.00	\$392.00	\$1,960.00	\$1,600.00	\$7,840.00	\$7,500.00
Trench Shoring	\$1,000.00	\$38.50	\$308.00	\$1,540.00	\$1,540.00	\$6,160.00	\$6,160.00
Additional Equipment (Optional) <sup>2</sup>							
Hydraulic Breaker - large excavator	N/A	\$230.00	\$1,380.00	\$4,140.00	\$4,140.00	\$2,139.00	\$2,139.00
Hydraulic Breaker - medium excavator	N/A	\$145.00	\$870.00	\$2,610.00	\$2,610.00	\$7,830.00	\$7,830.00
Hydraulic Breaker - small excavator	N/A	\$72.00	\$576.00	\$1,728.00	\$1,728.00	\$5,010.00	\$5,010.00
Hydraulic Breaker for Skid Loader	N/A	\$222.00	\$557.00	\$1,671.00	\$5,013.00	\$2,067.00	\$2,067.00
Concrete Pump Truck - 61 Meter *4 hr. minimum	\$200.00	\$325/hr+\$3.50/ yd.	N/A	N/A	N/A	N/A	N/A

Notes:

<sup>1</sup> Refer to General Requirements, Section 4 – B.3 - Measurement and Payment, for a list of all that is included in the Contractor Equipment Rates.

<sup>2</sup>Additional equipment and rates may be added if contractor desires. Failure to add additional equipment will not affect the price component of the bid.

**Table 8-1 – Call Out Fee Cost Structure Rates**

Call Out Time Frame	Call out Fee (\$)
Called out during a normal work shift, immediate response <sup>1</sup>	\$435.00
Called out after normal work shift <sup>2</sup>	\$555.00
Called out during the weekend <sup>3</sup>	\$555.00
Call out during a Holiday <sup>4</sup>	\$675.00

Notes:

<sup>1</sup>Contractor normal work shift is defined as Monday, Tuesday, Wednesday, Thursday, Friday from 8:00 am – 5:00 pm. This fee only applies if Contractor work crew is required to pull off an active job during a normal work shift to respond and mobilize to an unplanned or emergency project. A notification during Contractor’s normal workday that can be scheduled to fit into the Contractor’s work schedule will be billed under the standard Time & Material rates and no Call-Out fee will be applied.

<sup>2</sup>This fee applies when Contractor is required to respond and mobilize to a new unplanned project site after the workday is over, or immediately after the shift ends, or on a non-workday.

<sup>3</sup>This fee applies when Contractor is required to respond and mobilize outside of the normal work week (Friday after 5:00 pm through Monday at 8:00 am)

<sup>4</sup>This fee applies when Contractor is required to respond and mobilize



# Financial Management & Administration

**REQUEST FOR PROPOSAL  
FOR  
ON-CALL WASTEWATER SEWER COLLECTION  
SYSTEM INFRASTRUCTURE REPAIRS**

**RFP NUMBER: 2023-045**

**ISSUE DATE: 7/25/23**

**OPEN DATE & TIME: 8/24/2023 2:00 PM**

**Purchasing Administrator: Lisa Robbins, CPPB**

**Contact Information: [lisa.robbsins@jocogov.org](mailto:lisa.robbsins@jocogov.org) 913-715-0590**

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## 1. TENTATIVE TIMELINE

<b>Issue RFP</b>	<b>7/25/2023</b>
<b>Pre-Proposal Meeting (Mandatory)</b>	<b>8/8/2023</b>
<b>Question Deadline</b>	<b>8/17/2023</b>
<b>Open RFP</b>	<b>8/24/2023</b>
<b>Interviews- Week of</b>	<b>9/25/2023</b>
<b>Board Approval</b>	<b>11/9/2023</b>
<b>Project Begins</b>	<b>12/15/2023</b>

## 2. INTRODUCTION

Johnson County is a local government organized on September 7, 1857 and located in the Kansas City metropolitan area of northeast Kansas. The County serves a diverse and expanding population through four county agencies and 26 county departments and offices. The County has more than 4,000 public servants serving in more than 52 offices located through-out the County and dedicated to helping Johnson County’s more than 600,000 residents remain part of a safe and vibrant community. Johnson County is governed by a seven-member, non-partisan, elected Board of County Commissioners (BOCC). The BOCC appoints a County Manager. Johnson County also has both an elected Sheriff and District Attorney.

In addition to the traditional governmental operations of public health and safety, codes regulations, and tax collection, Johnson County operates a major intermodal transportation system, two (2) airports, railroad and business park, fourteen libraries, four multi-service centers, a parks and recreation district, mental health and developmental support centers, a community corrections program, and a countywide wastewater system. More information on Johnson County can be found on our public website ([www.jocogov.org](http://www.jocogov.org)), as this site provides information on the organization and a complete directory of services provided as well as the wide range of public resources available.

## 3. PRE-PROPOSAL CONFERENCE

A **MANDATORY** Pre-Proposal Conference will be held on Tuesday, August 8<sup>th</sup>, 2023, 2:00 p.m. Central Time. **Participation in the pre-proposal meeting is mandatory for submitting a proposal.** The pre-proposal conference

will be held at Johnson County's Administration Building located at 111 S. Cherry Street Olathe, KS 66061. Please meet in the Lower-Level Room 211.

## 4. QUESTIONS

To ensure open and fair competition for all potential respondents, ALL questions and contact concerning this RFP shall be directed to the Johnson County Purchasing Administrator: Lisa.Robbins@jocogov.org 913-715-0590

We encourage you to submit questions up until the cutoff date and time by selecting 'Ask Question' on the solicitation event at: <https://jocogov.ionwave.net>

Respondent should make NO CONTACT concerning this RFP, either written or verbal, with the Board of County Commissioners, Johnson County legal counsel, department personnel, consultants, or other county boards beginning with the issuance of this document through approval of award.

## 5. SCOPE OF SERVICES

Johnson County Wastewater (JCW) is seeking to enter into a term and supply contract with one or more wastewater collection system construction firms near Johnson County, Kansas to provide on-call, planned, and emergency construction work on wastewater pumping and treatment infrastructure. This contract will be used to conduct construction work when JCW determines it is more cost-effective than the normal design-bid-construction process, or when the work must be expedited. The work is generally in response to wastewater collection system failures requiring an immediate response to minimize property loss or environmental damage and are generally expected to be of short duration. Additional repair jobs may include wastewater pumping and treatment facilities repairs and those for which the JCW Operations Divisions do not have immediate access to appropriate equipment or available resources to complete the work in a timely manner. The types of construction work to be authorized under this contract are outlined under the Scope of Work section below. The method of payment will be based on actual time and material expenses, as described in the Project Procedures section.

This contract may be awarded to more than one Contractor to ensure resources are available when they are needed, thereby providing prompt service to the community. Jobs to be assigned to the Contractor will be identified by Operation's and Engineering Management.

### 5.1 SCOPE OF WORK

The scope of work for each project will be to mitigate a failure in the collection system and fully restore the work site to equal or better condition. The Contractor shall furnish all labor, tools, equipment, supplies, materials, and appurtenances necessary to perform routine and emergency work authorized under this contract.

Examples of work that may be required include, but are not limited to, the following:

1. Gravity Sewer Piping and Manhole Repair
2. Sanitary Force Main and Air Release Valve Repair/Replacement/Maintenance
3. Sanitary Stream Crossing Repairs/Replacement and Stream Restoration
4. Low Pressure Sewer Pipeline and Valve Repair/Maintenance
5. Civil Site Work – earthwork, trenching, pavement, modification or replacement of landscaping, fencing, traffic control, etc.
6. And all other projects as requested.

Note: Work may include bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, coordination with property owners, and restoration of private property.

A list of examples of potential projects will be provided at the mandatory pre-proposal meeting.

### 5.2 PROJECT PROCEDURES

1. Project Initiation: The following are procedures for initiating unplanned and planned projects:

- a. **Unplanned Projects** - JCW, at its sole discretion, will select a Contractor from those selected from this RFP and approach them with the project. Contractors are required to respond with a company representative to the repair site within two (2) hours upon notification by JCW staff. Contractor will be given time to assess the scope of work and the appropriate equipment and personnel to complete the work. Contractor is required to begin mobilization on a timeline as directed by JCW after completing the initial site visit. Mobilization times will vary depending on the specific urgency of the project, typically 24 to 48 hours after the initial site visit. Because this work may involve the repair of buried infrastructure, the scope of each job may not be entirely known until work commences.
  - b. **Planned Projects:**
    - i. **Project Development** - JCW will identify projects that meet the stated purpose of this contract and develop a scope of work. One of JCW's contract consulting engineers may be utilized to assist with the scope of work and to develop detailed plans and specifications.
    - c. **Contractor Proposal** – JCW, at its sole discretion, will select a Contractor from those selected from this RFP and approach them with the project. The Contractor will review the details of the project (which may include plans and specifications) and will submit an itemized cost estimate for review by JCW and the engineer, if applicable. Estimates shall utilize contract pricing and shall be as firm and accurate as is possible without undue effort by the Contractor. JCW, the engineer, and Contractor shall discuss the proposal and make any necessary modifications until the proposal is acceptable to all parties.
2. **Project Award:** The following represent procedures for planned projects. For unplanned or emergency work, these steps will be streamlined to expedite the work.
- a. **Project Development** - JCW will identify projects that meet the stated purpose of this contract and develop a scope of work. One of JCW's contract consulting engineers may be utilized to assist with the scope of work and to develop detailed plans and specifications.
  - b. **Contractor Proposal** – JCW, at its sole discretion, will select a Contractor from those selected from this RFP and provide the project details. The Contractor will review the details of the project (which may include plans and specifications) and will submit an itemized cost estimate for review by JCW and the engineer, if applicable. Estimates shall utilize contract pricing and shall be as firm and accurate as is possible without undue effort by the Contractor. JCW, the engineer, and Contractor, shall discuss the proposal and make any necessary modifications until the proposal is acceptable to all parties.
  - c. **Authorization of Work** – JCW will issue a written Project Authorization, see Appendix B, to the Contractor (signed by both parties), which confirms acceptance of the Contractor's proposal and establishes the scope of work and special contract terms and conditions by adopting the plans and specifications into the Agreement (i.e. term and supply contract). The Project Authorization will be issued with an official notice to proceed date.
  - d. **Purchase Order** – Contractor is issued a Purchase Order. The Purchase Order amount is considered a maximum not to exceed cost that cannot be exceeded without a change order that has been approved by the JCW General Manager. If, during the course of a project, it becomes apparent that the maximum not to exceed cost needs to be increased due to a change in scope; Contractor will immediately inform JCW and submit a detailed cost estimate for the change in scope and expected increase.

### 3. Disclaimers:

- a. JCW is not obligated to use this term and supply contract for any work. The contract will be used at the sole discretion of JCW.
- b. If more than one Contractor is awarded this term and supply contract, JCW has sole discretion in selecting which Contractor is awarded each project. For some projects, JCW may interview Contractors prior to selecting one to submit a cost proposal.
- c. Although it is not the intent of this term and supply contract that bids be solicited for a project, this does not preclude JCW from obtaining a cost estimate from more than one term and supply Contractor.
- d. Contractors are not guaranteed the award of any project under this term and supply contract. There is no minimum number of projects or dollar amount of projects to be awarded.
- e. This term and supply contract has an annual not to exceed dollar amount that is authorized, as established by the Board of County Commissioners, at that time of contract authorization. The Board

of County Commissioners must authorize expenditures against term and supply contracts, which have not been previously authorized as part of a project when the total of the single purchase exceeds \$100,000.

#### 4. Measurement and Payment

- a. General –
  - i. Contractor shall be paid on a “time and materials not to exceed” basis with the general intent of being paid for actual costs plus a markup for overhead and profit.
  - ii. Contractor must make a conscientious effort to minimize all costs to JCW and should obtain multiple quotes from vendors and/or multiple firm bids from subcontractors for materials or services.
  - iii. Contractor must obtain multiple quotes from vendors and/or multiple firm bids from subcontractors for any materials or services specifically requested by JCW. Quotes/Bids requested by JCW must be sealed and opened in the presence of Contractor and a JCW representative, when requested by JCW. Contractor must track all work in a manner that provides details necessary to produce invoices that demonstrate conformity with contract pricing.
  - iv. Invoices, and supporting documentation, must be in a format approved by JCW.
  - v. Any approved costs not specifically addressed in the contract pricing must be negotiated and paid in accordance with the stated intent. The criteria for measurement and payment shall also apply to sub- contract work.
  - vi. All markups must be calculated by multiplying the cost of the markup item by the decimal percentage markup + 1 (e.g. 1.15 for a 15% markup).
- b. Payment Structure – This term and supply contract is based on time and materials costs, with adjustable percentage markups for the size and complexity of the project. The following table shows how markups shall be applied to costs incurred on the project. The following sections detail each line item.

In general, the contract payment shall be as follows. Refer to **Form 6** for a numerical example.

Table 1 – Term and Supply Contract Markup Method

Line	Cost Item or Calculation (using Form 6 for Markups)
A	Equipment & Materials Incorporated into the Work
B	General Contractor Labor
C	Construction Equipment Used to Perform the Work
Subtotal 1	A + B + C
D	Overhead and Profit (i.e. OHP Decimal Markup x Subtotal 1)
Subtotal 2	Subtotal 1 + D
E	Subcontractor Costs
F	Contractor Markup on Subcontractor (i.e. Contractor Decimal Markup x E)

Subtotal 3	E + F
Subtotal 4	Subtotal 2 + Subtotal 3
G	Bonds and Insurance (i.e. B&I Decimal Markup x Subtotal 4)
H	Call Out Fee for Unplanned or Emergency Project
I	At-Cost Items (i.e. Permit Fees, Maintenance Bond if requested)
<b>Total Cost</b>	<b>Subtotal 4 + G +H</b>

- c. Line A – Equipment and Materials Incorporated into the Work – The following categories of expenses shall be included in Line A expenses:
- i. Equipment and Materials Incorporated into the Work – Contractor shall be paid for the cost of new equipment and materials purchased for, and incorporated into, the project. Construction materials do not include expendable supplies, which are included in the Labor Billing Rates. Purchase receipts are required for all cost reimbursements. JCW has the option to take possession of surplus materials that are purchased for the work, or to not pay for surplus materials.
  - ii. Equipment Startup and Training – Equipment suppliers shall include startup and training for JCW employees in their cost proposals, unless specified otherwise. The startup and training scope and cost is to be approved by JCW prior to Contractor placing an order.
  - iii. Asset Onboarding – Equipment suppliers shall include completion of electronic ESS sheets for the purposes of Asset Onboarding in their costs proposals, unless specified otherwise.
  - iv. Other – Direct expenses incurred by the Contractor that are specific to the project, but not addressed under the Measurement and Payment section, shall be paid according to actual cost. Administrative expenses and any office-type expenses do not apply to this category.
  - v. Note: An overhead and profit markup will be applied to all Line A expenses (See Line D).
- d. Line B – General Contractor Labor:
- i. General Contractor Labor shall be paid in accordance with the Billing Rates entered on the Labor Price Sheet (**Form 6 – Table 6-1**) for employees of the Contractor’s firm including field personnel as well as specific office personnel with dedicated functions on the project such as project manager or project engineer. General office staff such as executives, accountants, purchasing agents, general administrative staff, etc., shall not be included. Contractor shall track the dates and times worked by each employee on a time sheet and submit to JCW on a weekly basis. All work shall be performed at regular hourly rates, not overtime rates, unless approved in advance by JCW. Contractor shall not use a crew larger than is required to perform the work. Billing Rate for any labor that does not fall under one of the job classifications on the Labor Price Sheet (**Form 6**) shall be negotiated. JCW reserves the right to add other labor classifications as required.
  - ii. Billing Rates for each job classification shall include the following:
    1. Employee salary and benefits
    2. Travel time for employee (employee paid only for hours worked at jobsite or for travel related to the performance of the work (example: picking up materials))

3. Travel expenses, including use of company vehicles (e.g., pickup trucks and passenger cars)
  4. Safety gear and clothing
  5. Personal electronic devices (cell phones, computers, cameras, etc.)
  6. Hand tools and minor equipment (includes small, powered hand tools/equipment)
  7. Expendable supplies (e.g., fuel, cleaning supplies, lubricants/sprays, wiring & plumbing supplies, etc.)
- iii. The prices quoted by the successful bidder shall remain firm during the initial contract period. Prices for contract renewal periods shall be negotiated and mutually agreed upon.
  - iv. An overhead and profit markup will be applied to Line B expenses (see Line D).
- e. Line C - Construction Equipment and Materials (Used to Perform the Work):
    - i. Construction equipment is defined as wheeled vehicles, track vehicles, and powered (electric, pneumatic, hydraulic) construction equipment such as portable pumps, portable generators, concrete mixers, etc. It does not include hand tools or small powered hand tools, nor pickup trucks and passenger vehicles (unless the vehicle is actively engaged in a work activity specific to the project), which are included in Labor Billing Rates. Construction equipment may be Contractor-owned or rented equipment.
    - ii. Construction equipment usage shall be paid in accordance with the Billing Rates on the Equipment Price Sheet (**Form 7**). **Form 7** includes common construction equipment, and additional equipment may be added as the Contractor desires when filling out the forms (although the additional equipment will not impact the cost component of this RFP). Any equipment not listed on the Equipment Price Sheet that is owned by the Contractor will be paid in accordance with a standard equipment cost reference such as RS Means Building Construction Cost Data, bare cost only indexed to Kansas City, Kansas (reference to be mutually agreed to prior to beginning the work).
    - iii. The rates for Contractor-owned equipment will be based on the actual duration of when the equipment is needed on-site and will be the lesser of either the weekly rate or the sum of the daily rates, or the lesser of either the monthly rate or the sum of the weekly rates. Standby rates shall apply in lieu of full usage rates when equipment must remain on-site but is idle. Standby time shall be limited to 2 weeks unless otherwise agreed.
    - iv. Equipment required for the work that the Contractor does not own and is not included in **Form 7** will be paid based on rental receipts. Contractor shall endeavor to minimize rental costs by shopping for the best rental price and by minimizing the hours the equipment is tied-up on the job-site. JCW shall be billed only for the days and hours the equipment was required for the project and maintained in working condition, in a similar manner as for Contractor-owned equipment.
    - v. Mobilization/Demobilization – The Contractor will be paid a onetime charge for mobilization and demobilization based on stated equipment billing rates provided on **Form 7**.
    - vi. Construction Trailer – For projects that require a construction office trailer, the Contractor will be reimbursed for the actual cost of the trailer rental only, and not for any additional furnishings. For Contractor-owned trailers, the Contractor will be paid according to RS Means as defined above or Blue Book pricing.
    - vii. Materials used for Construction of the Work – These materials are mostly reusable, such as scaffolding, shoring materials, concrete forms, and safety fencing. Rented construction materials shall be reimbursed at cost. The use of Contractor-owned construction materials shall be paid in accordance with a standard equipment cost reference such as RS Means as defined above (reference to be mutually agreed to prior to beginning the work).
    - viii. Contractor shall track the dates and times the equipment was used on a time sheet and submit to JCW on a weekly basis.
    - ix. An overhead and profit markup will be applied to all Line C expenses (See Line D).
  - f. Line D - Overhead and Profit:

An Overhead and Profit Markup will be paid as a percentage markup of Subtotal 1 (see **Table 1**). Overhead and Profit percentage markups are to be entered in **Form 6 (Table 6-2)**. Because actual costs will not be known until the conclusion of the project, the Contractor's estimate will be used as the basis for selecting the percentage markup from the table in **Form 6**.

The Overhead and Profit shall account for company administration and overhead (office personnel not included under B.2.d and expenses including printing and office equipment costs) as well as the Contractor's participation in project development (constructability reviews) and preparation of the Contractor's cost proposal.

g. Lines E and F - Subcontractors (Prime Contractors Preferred Subcontractor and Other Subcontractors):

There are two classifications of subcontractors on this contract:

- 1) Prime Contractors Preferred Subcontractor – This is the Restoration & Landscaping subcontractor that is a member of the project team. The Preferred Subcontractor will have pre-negotiated labor rates as entered in **Form 6** and may work on a not to exceed time and material basis. Preferred Subcontractor invoices shall be itemized, conform to the contract rates, and include the Preferred Subcontractor's materials and equipment. The Preferred Subcontractor's labor, materials, and equipment rates shall include any mark-up for overhead and profit by the Preferred Subcontractor. The Preferred Subcontractor invoice may be marked up by the General Contractor (per Line F, see **Form 6 - Table 6-3**).
- 2) Other Subcontractors – For subcontracted work, excluding prime Contractors Preferred Subcontractor work, the Contractor should obtain multiple quotes from Subcontractors for materials or services. Contractor must obtain multiple quotes from subcontractors for any materials or services. Quotes/Bids requested by JCW must be sealed and opened in the presence of Contractor and a JCW representative, when requested by JCW. Subcontractor quotes shall include all labor, materials, and equipment necessary for the Subcontractor to perform the work. Alternatively, Owner may elect to require pricing of Subcontractor work based on hourly rates (i.e. time and material with an overhead and profit markup). Sealed quotes/bids will be opened in the same manner as for lump-sum work, when requested by JCW. For time and material subcontract work, the same methodology for payment outlined in Section 4, Items B.2.c., d., e., and f. shall be followed. The Contractor is allowed an additional markup on Subcontractor work per Line F (see **Form 6, Table 6-3**).

h. Line G - Bonds and Insurance:

Contractor shall obtain all bonds and insurance required for each project. The Bonds and Insurance Markup will be paid as a percentage markup of Subtotal 4 (see Table 1). The Bonds and Insurance percentage markup is to be entered in **Form 6 (Table 6-4)**. Because actual costs will not be known until the conclusion of the project, the Contractor's estimate will be used as the basis for selecting the percentage markup from the table in **Form 6**. The bonds and insurance include:

- A Performance Bond
- A Statutory Bond
- Insurance Requirements as noted in Section 9.1.

See Part (j) - Line I – Miscellaneous Costs of this section for reimbursement for Bonds or Insurance not mentioned above (i.e.- maintenance bond)

- i. Line H – Call Out Fee for Unplanned or Emergency Projects  
Contractor may submit a Call Out Fee if required to respond and mobilize immediately for an unplanned or emergency project. Call Out fees are to be entered in **Form 8**.
- j. Line I - Miscellaneous Costs (No Markup Allowed):
  - i. Permits –The Contractor shall obtain all necessary permits for the project and pay any permit fees, unless JCW elects to pay the fees directly. Contractor shall be reimbursed for the actual cost of the permit fees only (i.e. no labor or administrative costs to obtain permits). Contractor shall provide JCW with a copy of all permits obtained for the project and a copy of receipts for permit fee reimbursement. Note – this supersedes Section 8.35 of the Standard Terms and Conditions.
  - ii. Disposal and Salvage – Disposal costs, such as landfill fees, shall be paid according to actual cost. JCW shall have first right of refusal for salvage equipment and materials. Contractor salvage revenue shall belong to the Contractor. Contractor shall submit documentation from disposal transactions for reimbursement.
  - iii. Travel Expenses – Local travel expenses are not reimbursable under the contract as they are included in the Labor Billing Rates. The Contractor’s office locations are considered local. Out-of-town travel should not normally be required but will be reimbursed when approved in advance by JCW, per Special Conditions, 8.29. No markup shall be allowed on travel expenses.
  - iv. Insurance requirements requested by the Owner and not found in Section 9.1.
  - v. Bonding requirements excluding the Performance and Statutory Bond. Maintenance Bonds may be required and will be requested by JCW depending on the type of repair project. Cost for maintenance bond will be invoiced as a miscellaneous cost without markup.
- k. Non-Reimbursable Costs:
  - i. Licenses and Certifications – Contractor shall be responsible for obtaining all licenses and certifications required to perform the work required by the project and to pay the cost of the licenses. No reimbursement shall be made for licensing/certification costs.
  - vi. Errors in the Work – Materials, labor, construction equipment, Subcontractor costs, and overhead and profit shall not be paid for if these costs are a result of errors in the work arising through the Contractor, subcontractor, or vendor’s failure to comply with the contract documents. The Contractor is responsible for working with vendors on errors or omissions in the materials supplied. Time and materials spent by Contractor resolving issues with subcontractor or vendor’s work shall be tracked separately. Contractor shall notify the owner as soon as an error associated with their work, their subcontractors work, or vendor supplied equipment or material is identified.

5. Changes in the Work (i.e. any work that deviates from the adopted plans and specifications, and that results in an increase or decrease in the construction cost.)

- a. Initiation - Work change proposals may be initiated by JCW, Engineer, or Contractor
- b. Evaluation - Engineer (or JCW, if no Engineer is involved) will lead the effort to evaluate potential work changes. Contractor shall assist in developing and evaluating options and provide detailed cost estimates.
- c. Approval - Engineer will obtain JCW approval of all work changes, then prepare a Work Change form to issue to the Contractor. The Work Change form will have an estimated cost and time to perform the work. Contractor shall accept direction for work changes only from the Engineer (or JCW’s Project Engineer, if no Engineer is involved).
- d. Payment – Contractor will be paid for work changes on a time and material basis, as specified under the Measurement and Payment section (B.3 above). No separate tracking of the costs for work changes is required.



- e. Addendums – An addendum (i.e. change order) to the construction Project Authorization is required whenever an increase in the Project Authorization amount is needed to cover the cost of approved work changes. The additional work should be related to the original scope of work. Addendums must be signed/approved by the JCW General Manager.
- f. Purchase Order Revision - JCW will process a Purchase Order increase for the Contractor with each Addendum, if necessary.
- g. New Authorizations - New Project Authorizations are required for work changes that are not related to the original scope of work. All Project Authorizations must be signed/approved by the JCW General Manager. Each Project Authorization will have its own Contractor Purchase Order and Contractor shall provide separate invoices for each Project Authorization.

## 5.3 CONSTRUCTION REQUIREMENTS

### 1. Standard General Conditions

**Appendix A** contains the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the contract, as well as the County’s Supplementary Conditions that shall apply to all projects authorized under this term and supply contract. Additional Supplementary Conditions are included as an example and may be modified on a project-by- project basis and included with each authorization.

**Appendix B** includes Sample Contracting forms that will be used for the term and supply contract.

### 2. General Construction Requirements (Division 01000 Specifications)

**Appendix C** all repairs will be subject to the general requirements and standards outlined in the Johnson County Wastewater [Construction and Material Specifications for Sanitary Sewers](#) and [Service Line Design & Construction Standards \(SLDCS\)](#) Documents. These may be modified on a project-by-project basis.

### 3. Technical Construction Requirements

All repairs will be subject to the technical requirements and standards included in the Johnson County Wastewater [Construction and Material Specifications for Sanitary Sewers](#) and [Service Line Design & Construction Standards \(SLDCS\)](#) Documents

Contractor will be provided technical plans and specifications for each project, as appropriate. When such plans and specifications are included in a Project Authorization, they are considered to be incorporated into this term and supply contract.

## 6. CONTRACT TERM & OPTION TO RENEW

Contract(s) resulting from this RFP shall be effective for the approximate twelve (12) month period from the date of the notice of award. Although a minimum is not guaranteed, the annual maximum dollar value is estimated to be \$1,750,000 total for all contracts resulting from award of the RFP. The County reserves the sole right to renew said contract for four (4) additional twelve (12) month periods at the same specifications and terms and conditions of any contract that may be derived from this request for proposal if mutually agreed upon by both parties.

## 7. QUALIFICATIONS

### 7.1 TECHNICAL QUALIFICATIONS

- 1. While many types of work may be required, as outlined in the Scope of Work, JCW is requesting project teams experienced in wastewater collection system infrastructure construction.

The intent of this RFP is to contract with a General (Prime) Contractor who will self-perform a majority of the work. It is also the intent of this RFP for the Prime Contractor to include a Preferred Subcontractor who will perform the Restoration & Landscaping work. In this RFP, the Prime Contractor and Preferred Restoration & Landscaping Subcontractor are referred to as the “Project Team”. The Preferred Subcontractor shall submit rates and markups just as the Prime Contractor. It

is not expected nor required that the Prime Contractor and Preferred Subcontractor be contractually bound, such as through a joint venture. Other subcontractor work, other than Restoration & Landscaping, may be required on a project-by-project basis. These subcontractors may, but are not required to, be named in this RFP.

The Project Team shall provide labor billing rates for the job classifications listed in **Form 6**. Work requiring additional disciplines or job classifications, such as Structural or Architectural work, will be handled separately, as discussed in the Project Procedures. No additional points will be given a Project Team for including additional disciplines or subcontractors beyond the job classifications listed in **Form 6**.

2. All work performed under this contract shall be performed by technically qualified and skilled craftsmen, directly employed or subcontracted, and supervised by the Contractor. Firms shall provide information concerning the experience of principal workers with their proposal.
3. The Project Team must have the capability to perform the types of work outlined in the above Scope of Work, utilizing subcontractors as necessary. To demonstrate this capability, respondents to the RFP should meet the following minimum experience qualifications:
  - a. Prime Contractor should have minimum five (5) years' experience in wastewater collection system repair and replacement construction as a prime Contractor. Experience should include major construction with large diameter pipe, deep excavations requiring shoring, bypass pumping, stream crossing repairs and restoration, force main repair, and low-pressure sewer repairs.
  - b. Prime Contractor's Project Manager(s) and Superintendent(s) to be assigned to JCW projects should each have a minimum 10 years' experience in wastewater collection system construction, including a minimum five (5) years in these respective positions.
  - c. Prime Contractor shall have successfully completed at least five (5) wastewater collection system projects within the past five years. Total construction value for all projects should be at least \$2.5 million. Water distribution projects or Water/Wastewater Treatment and Pumping Projects, including repair and rehabilitation at existing facilities, may also be considered, but priority will be given to wastewater collection system repair projects.
  - d. Prime Contractor should be located within an approximate 1-hour drive of Johnson County, Kansas, or approximately 50 miles.
  - e. Contractor shall be a licensed contractor in Johnson County
  - f. The Contractor shall provide service seven (7) days a week, twenty-four (24) hours a day.
  - g. All work shall be performed by skilled worker supervised by the Contractor. Contractor will provide information concerning the experience of principal workers.
  - h. The Contractor shall have sufficient resources (workforce, supervision, equipment, and financial) necessary to perform the Work of the Specifications and/or requests. To confirm payment for equipment, Contractor may be required to submit specific makes, models, and classifications of equipment used for the work..
  - i. Preferred Subcontractor – should have a minimum of five (5) years' experience in construction.

## 8. EVALUATION PROCESS

The proposals will be evaluated by an Evaluation Committee usually composed of County personnel and/or other governmental agencies. Members of the Evaluation Committee will independently review and rate each proposal based on the listed criteria.

The County's RFP process is usually a two-step process. The first step consists of an Evaluation Committee scoring all responsive proposals. This scoring is determined by allocating points totaling 100, which are assigned to evaluation criteria similar to the sample scoring and categories below.

Numerical scores will be tabulated and ranked by the Purchasing Administrator. The finalists will be determined by the rank and will be "short listed" for the interview/cost proposal phase of the RFP. In some circumstances, interviews

may be waived with mutual consent of the Purchasing Administrator and the Evaluation Committee. In the case interviews are waived, cost proposals will be requested from all who responded to the solicitation.

Finalist firm interviews shall be independently evaluated by each Evaluation Committee member based on points totaling 100. Points are assigned to criteria similar to the sample scoring and categories below.

**Form 6 - Cost Proposal: Project Team Labor Billing Rates and Percentage Markups** will only be required of finalists and due at the time of the interview. The cost proposal shall not be opened until all of the technical/qualification evaluation of the interview is complete. The Purchasing Administrator will award maximum points to the lowest fee/cost proposal and add to appropriate firms' total.

Following the interviews, the Evaluation Committee will select and/or recommend one (1) or more firm(s) to provide the County the services required in this RFP. The staff will then endeavor to negotiate a contract with the successful firm. In the event that a mutually agreeable contract cannot be negotiated with said firm, the staff will then enter into contract negotiations with the next highest rated firm, and so on until a mutually agreeable contract can be negotiated. Final contract authorization will be made by the County.

	SAMPLE SCORING GUIDELINES						
	35 Point	30 Point	25 Point	20 Point	15 Point	10 Point	5 Point
	Question	Question	Question	Question	Question	Question	Question
Outstanding	29-35	25-30	21-25	17-20	13-15	9-10	4-5
Exceeds Acceptable	22-28	19-24	16-20	13-16	10-12	7-8	3
Acceptable	15-21	13-18	11-15	9-12	6-9	5-6	2
Marginal	0-14	0-12	0-10	0-8	0-5	0-4	0-1

**PROPOSAL**

**Maximum Points**

**1. Prime Contractor's Qualification and Project Experience: 25**

Consider previous project experience and references listed in the proposal. The Prime Contractor of the Project Team demonstrates experience in wastewater sewer collection system projects. Experience should include emergency repairs in variety of site conditions, large diameter sewer repair, bypass pumping set up, stream crossing repair projects. Experience should include managing teams, including subcontractors to achieve quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed Project Team should be emphasized. Refer to Section 6 – Qualifications and **Forms 1, 3A, and 4.**

Is the Prime Contractor of the Project Team experienced in providing services similar to that requested in the RFP?

**2. Prime Contractor's Personnel Qualifications and Experience: 30**

Consider resumes of key staff, project managers and superintendents, to determine the level of experience working on wastewater sewer collection system projects. Review years of experience as well as relevant project experience. Qualifications and experience shall be evaluated for all project team members. Refer to Section 6 – Qualifications and **Form 2A.**

Consider comparable experience and background of the specific personnel that shall be assigned to the County's project(s) as outlined in the proposal. Also consider the specific involvement of those persons in projects noted in the proposal.

**3. Preferred Subcontractor's Personnel Qualifications and Project Experience: 15**

Consider previous project experience and references listed in the proposal. The “Preferred Subcontractor” on the Project Team demonstrates experience in surface restoration on utility or public works projects. Experience should include quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed project team should be emphasized. Refer to **Forms 2B** and **3B**.

Consider the Preferred Subcontractors’ experience, and specific personnel assigned to the County’s projects as outlined in the proposal. Have the Preferred Subcontractors teamed with the prime Contractor previously?

**4. Project Understanding and Approach: 15**

Evaluate the Project Team’s project approach and understanding of the Scope of Services required in the RFP as evidenced by their proposal. Project Team indicates a clear understanding of the project and approach. Project Team has a previous history of term and supply type projects. Refer to **Form 1**.

**5. Available & Applicable Resources: 10**

Project Team has access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair. The Project Team demonstrates other resources which may make the team uniquely qualified for work on wastewater sewer collection systems. Note: The Contractor is not required to own equipment. Refer to **Form 5**.

Evaluate the extent of applicable resources available to the firm to complete the County’s project(s).

**6. Overall Responsiveness to the RFP: 5**

The information provided is complete, organized, and in accordance with the instructions in the RFP.

Consider whether all requested information was furnished by the firm in the format required by the RFP.

**INTERVIEW**

**Maximum Points**

**1. Project Experience: 25**

Project Team appears to have appropriate experience and history of satisfactory project outcome for similar type projects. Project Team is able to meet schedules and budgets. Project Team appears to be committed to safety and has documented protocols. References related to these issues may be contacted prior to interviews.

Evaluate the Project Team’s experience with similar projects. Based upon the proposal/interview and any contact with previous clients of Project Team determine capability and demonstrated ability to meet schedules and deadlines. Project Team appears to have a commitment to safety.

**2. Project Understanding and Approach: 20**

Project Team presents a clear understanding of the term and supply contract and has a feasible approach. Project Team presented sufficient information in an organized and professional manner. Able to address questions posed during the interview in a thoughtful and satisfactory manner.

Does the proposed project approach expressed in the proposal/interview appear to be realistic and feasible? Has the Project Team demonstrated that they have a good understanding of term and supply contracts?

**3. Personnel and Other Resources: 20**

Based on the interview and resumes of key staff. Project Team demonstrates having a team of project managers, superintendents, and other supporting personnel that are experienced in wastewater sewer collection system construction projects.

Based on the proposal/interview consider the involvement and experience of key personnel that will be assigned to the proposed project(s). Evaluate their response to questions, knowledge demonstrated, and involvement in discussion.

**4. Staff Utilization: 10**

5. Based on the interview and any contact with previous clients of firm, determine the capability and demonstrated ability to meet schedules and deadlines.

**6. Cost Proposal Worksheet (Forms 6, 7, 8 and 9): 25**

(Will only be required of finalists and is due at the time of the interview.)

## 9. STANDARD TERMS AND CONDITIONS

### 9.1 TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in this solicitation document or any amendment hereto, the definition or meaning described below shall apply.

**Agency and/or Department** mean(s) the statutory unit of County government in Johnson County, Kansas for which the equipment, supplies, and/or services are being purchased by the Financial Management and Administration, Purchasing Division.

**Amendment/Addendum** means a written, official modification to a solicitation document or to a contract.

**Attachment** applies to all forms which are included with a solicitation document to incorporate any informational data or requirements related to the performance requirement.

**RFP Opening Date and Time** and similar expressions mean the exact deadline required by the solicitation document for the electronic submission of the Request for Proposal by the Financial Management and Administration, Purchasing Division.

**Respondent** mean(s) the person, firm, or organization that responds to a solicitation document by submitting a proposal with price to provide the equipment, supplies, and/or services as required in the solicitation document.

**Board of County Commissioners or BOCC** means the governing body of Johnson County, Kansas.

**Purchasing Administrator** means the procurement staff member of the Financial Management and Administration, Purchasing Division. The **Contact Person** as referenced herein is usually the Purchasing Administrator.

**Contract** means a legal and binding agreement between two or more competent parties for the purchase of equipment, supplies, and/or services.

**Contractor** means a person, firm, or organization who is a successful respondent as a result of a proposal and who enters into a contract.

**County** means Johnson County, Kansas.

**Exhibit** applies to forms which are included with a proposal for the respondent to complete and return with the electronic submission prior to the specified opening date and time.

**Request for Proposal (RFP)** means the solicitation document issued by the Financial Management and Administration, Purchasing Division, to potential respondents for the purchase of equipment, supplies, and/or services as described in the document. This definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.

**May** means that a certain feature, component, or action is permissible, but not required.

**Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a proposal being considered non-responsive and not evaluated any further.

**Shall** has the same meaning as the word **must** and is an obligation to the condition.

**Should** means that a certain feature, component and/or action is desirable and not mandatory.

### 9.2 OPEN COMPETITION

It shall be the respondent's responsibility to ask questions, request changes or clarification, or otherwise advise the Financial Management and Administration, Purchasing Division, in writing, if any language, specifications, or requirements of a proposal appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the proposal to a single source. Any and all communication from respondents regarding specifications, requirement, competitive RFP process, etc., must be directed to the Purchasing Administrator from the Financial Management and Administration, Purchasing Division, as indicated

on the first page of the proposal. Such communication should be received at least seven (7) calendar days prior to the official RFP opening date.

Every attempt shall be made to ensure that the respondent receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an amendment to the proposal, of any relevant or pertinent information related to the procurement. Therefore, respondents are advised that unless specified elsewhere in the proposal, any questions received by the Financial Management and Administration, Purchasing Division, less than seven (7) calendar days prior to the proposal opening date may not be answered.

Respondents are cautioned that the only official position of the County is that position which is stated in writing and issued by the Financial Management and Administration, Purchasing Division, in the proposal or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement from the County.

The Financial Management and Administration, Purchasing Division, monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among respondents, price-fixing by respondents, or any other anti-competitive conduct by respondents which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Kansas Attorney General's Office for appropriate action.

The Financial Management and Administration, Purchasing Division, reserves the right to officially modify or cancel a solicitation after issuance. Such a modification shall be identified by an amendment/addendum.

### 9.3 PREPARATION OF PROPOSAL

Respondents must examine the entire proposal carefully. Failure to do so shall be at respondent's risk.

Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications/requirements.

Unless otherwise specifically stated in the RFP, any manufacturer's names, trade names, brand names, information and/or catalog number listed in a specification and/or requirement are for informational purposes only to indicate level of quality required and are not intended to limit competition. The respondent may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the RFP. In addition, the respondent shall explain, in detail: (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements; and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection.

Proposals lacking any written indication of intent to respond with an alternate brand or to take an exception shall be received and considered to be in complete compliance with the specifications and requirements as listed in the RFP.

All equipment and supplies offered in a proposal must be new and of current production and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.

Firm fixed prices shall include all packing, handling and shipping charges FOB destination, freight allowed unless otherwise specified in the RFP.

The firm fixed prices shall remain valid for 90 days from RFP opening, unless otherwise indicated. If the proposal is accepted, prices shall be firm for the specified contract period.

### 9.4 SUBMISSION OF PROPOSAL

A proposal must be submitted electronically at <https://jocogov.ionwave.net> by a respondent and must: (1) be signed electronically by a duly authorized representative of the respondent's organization; and (2) contain all information required by the RFP. If there is difficulty submitting a proposal electronically, contact the Purchasing Administrator for assistance. Arrangements may be made to receive sealed paper proposals by solicitation close by the Department of Financial Management and Administration, Purchasing Division, Johnson County Administration Building, 111 South Cherry Street, Suite 2400, Olathe, Kansas 66061-3486. You must register as

a supplier at <https://jocogov.ionwave.net> at least two (2) business days prior to the proposal opening to ensure a successful registration. No other method of submitting proposals will be accepted.

A response may be modified or withdrawn prior to the official opening date and time specified. No respondent may submit more than one response.

## 9.5 PROPOSAL OPENING

Virtual proposal openings are held via Zoom Meeting publicly on the opening date and at the opening time specified on the RFP document at the link provided below. Respondents may notify the Purchasing Administrator no less than two (2) business days before the bid opening if they wish to attend the bid opening in person for accommodation.

Zoom Meeting:

<https://zoom.us/j/98734131503?pwd=bThMQmNZSVA4Q2ttVUxJa3Z3UE5vZz09>

It is the respondent's responsibility to ensure that the proposal is submitted electronically by the official opening date and time at <https://jocogov.ionwave.net>. Late submissions will not be considered regardless of the degree of lateness or the reason related thereto, including causes beyond the control of the respondent.

Unofficial results of all proposals that have been submitted will be available electronically at <https://jocogov.ionwave.net> within 24 hours of the RFP opening.

## 9.6 EVALUATION/AWARD

Any pricing information submitted by a respondent pursuant to the requirements of the RFP but not reflected on the pricing page shall be subject to evaluation if deemed by the Financial Management and Administration, Purchasing Division, to be in the best interests of the County.

Unless otherwise stated in the RFP, cash discounts for prompt payment of invoices shall not be considered in the evaluation of prices. However, such discounts are encouraged to motivate prompt payment.

Awards shall be made to the respondent whose RFP (1) complies with all mandatory specifications and requirements of the proposal and (2) is the best RFP, considering price, responsiveness and responsibility of the respondent, and all other evaluation criteria specified in the RFP.

When evaluating a proposal, the County reserves the right to consider relevant information and fact, whether gained from a proposal, from a respondent, from respondent's references, or from any other source.

Any award of a contract shall be made by written notification from the Financial Management and Administration, Purchasing Division.

All submitted proposals and associated documentation shall be subject to the provisions of the Kansas Open Records Act (K.S.A. 45-215 et seq.). The Kansas Open Records Act does permit limited materials to be protected from disclosure. Generally, protected exceptions are financial information submitted as qualification statements and materials privileged under the rules of evidence. These documents should be properly labeled proprietary or confidential. The technical and cost/pricing response documents should not be labeled proprietary, confidential, or in any other manner to restrict dissemination.

The Financial Management and Administration, Purchasing Division, reserves the right to request written clarification of any portion of the respondent's response in order to verify the intent of the respondent. The respondent is cautioned, however, that respondent's response shall be subject to acceptance without further clarification.

The Financial Management and Administration, Purchasing Division, reserves the right to award by item, groups of items, or on all or none basis; and reserves the right to reject any or all proposals in part, or in its entirety, to waive any minor technicality or irregularities of proposals received.

In the event of a discrepancy between the unit price and the extension, the unit price shall prevail.

Respondents who protest the conditions, specifications or scope of services, or other requirements contained in this solicitation are encouraged to review the County's Administrative Purchasing Policies and Procedures located at the County's website at [Johnson County Administrative Policy & Procedures](#).

## 9.7 CONTRACT/PURCHASE ORDER

By submitting a proposal, the respondent agrees to furnish any and all equipment, supplies and/or services specified in the RFP, pursuant to all requirements and specifications contained herein.

A binding contract shall include: (1) The RFP and any amendment thereto; (2) the respondent's proposal submitted in response to the RFP; and (3) the County's acceptance of the respondent's proposal, in writing.

The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment.

## 9.8 INVOICING AND PAYMENT

The Contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the County.

Payment for all equipment, supplies, and services shall be made in arrears. Johnson County shall not make any advance deposits, unless provided for in the contract.

The County assumes no obligation for equipment and supplies shipped in excess of the quantity ordered. Any unauthorized quantity is subject to the County's rejection and shall be returned at the Contractor's expense.

The County and its agencies are exempt from state and local sales and use taxes by KSA 79-3606. Situs of all transactions under the order(s) that shall be derived from the RFP shall be deemed to have been accomplished within the State of Kansas.

## 9.9 DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

Prior to delivery of equipment, each unit must be completely serviced and lubricated in accordance with factory service specifications. Successful respondent is responsible to furnish any equipment needed for unloading of equipment at the F.O.B. destination point.

## 9.10 INSPECTION AND ACCEPTANCE

No equipment, supplies, and/or services received by an agency of the County pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.

All equipment, supplies, and/or services which do not comply with the specifications or requirements, or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective, or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

The County reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.

The County's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies available to the County.

## 9.11 WARRANTY

The Contractor expressly warrants that all equipment, supplies, and/or services in accordance with generally accepted industry standards, practices and principles applicable to the work and shall: (1) conform to each and every specification, drawing, sample or other description which was furnished or adopted by the Financial Management and Administration, Purchasing Division; (2) be fit and sufficient for the purpose expressed in the RFP; (3) be of good materials and workmanship; and (4) be free from defect. The Contractor shall replace a defective product at its own cost.



## 9.12 CONFLICT OF INTEREST

The Contractor hereby covenants that at the time of the submission of the proposal the Contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The Contractor further agrees that during the term of this contract neither the Contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## 9.13 CANCELLATION/TERMINATION OF CONTRACT

In the event of material breach of the contractual obligations by the Contractor, the County, may cancel the contract. At its sole discretion, the County, may give the Contractor an opportunity to cure the breach or to explain how the breach will be cured. Unless otherwise provided for in the contract, the actual cure must be completed within no more than 10 working days from notification a written plan detailing how the Contractor intends to cure the breach.

If the Contractor fails to cure the breach or if circumstances demand immediate action, the Financial Management and Administration, Purchasing Division will issue a notice of cancellations terminating the contract immediately.

If the County cancels the contract for breach, the County reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the County deems appropriate and back charge the Contractor for any additional costs incurred thereby.

The County reserves the right to terminate the contract at any time for the convenience of the County, without penalty or recourse, by giving the Contractor a written notice of such termination at least 30 calendar days prior to termination. The Contractor shall be entitled to receive just and equitable compensation for the work completed pursuant to the contract prices prior to the effective date of termination.

The contract is subject to the provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and amendments thereto, (the "Act"). By virtue of this Act, the County is obligated only to pay periodic payments as contemplated by the contract as may lawfully be made from funds budgeted and appropriated for that purpose during the County's current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source. Should the County fail to budget, appropriate or otherwise make available funds for payments due under the contract in any budget year, the contract shall be deemed terminated on the last day of the then current budget year for which appropriations were received, without penalty or expense to the County of any kind whatsoever."

## 9.14 COMMUNICATIONS AND NOTICES

Any notice or other communication to the Contractor shall be made in writing via email, delivered personally, or by United States mail, postage prepaid, to the address listed in the Contractor's proposal.

## 9.15 INVENTIONS, PATENTS, AND COPYRIGHTS

The Contractor shall defend, protect, and hold harmless the County, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

## 9.16 NON-DISCRIMINATION IN EMPLOYMENT

In accordance with K.S.A. 44-1030, the Contractor agrees that:

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, color, sex, religion or creed, age, disability, pregnancy, ancestry or national origin, military status or membership or service in the military;

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 Kansas Human Rights Commission ("Commission");

If the Contractor fails to comply with the manner in which it 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 County;

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 County; and

The Contractor shall include the provisions of the subsections immediately above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this Section shall not apply to the Contractor if the Contractor employs fewer than four employees during the term of the present contract or the present contract cumulatively totals \$5,000 or less during the fiscal year of the County.

#### 9.17 AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the Contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

#### 9.18 GOVERNING LAW AND VENUE

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas, and the District Court of Johnson County, Kansas shall have jurisdiction over any controversy or claim arising out of, or relating to, the contractual agreements or their performance or interpretation.

#### 9.19 HOLD HARMLESS

The Contractor agrees to protect, defend, indemnify and hold the BOCC, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission, recklessness, negligent act or willful misconduct of the Contractor (collectively hereinafter "claims"). Without limiting the generality of the foregoing, any and all such claims, relating to personal injury or of any other tangible or intangible personal or administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims at Contractor's sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

#### 9.20 TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

#### 9.21 RIGHT TO EXAMINE AND AUDIT RECORDS

The Contractor agrees that the County, or any of its authorized representatives, shall have access to and the right to examine and audit any and all books, documents, papers and records of the Contractor hereunder, or any change order or contract modification thereto, or with compliance with any clauses thereunder. Such records shall include hard copy as well as computer readable data. The Contractor shall require all of its payees including but not limited to, Subcontractors, insurance agents or material suppliers to comply with the provisions of this clause by including the requirements hereof in a written agreement between the Contractor and payee. Further, the Contractor agrees to cooperate fully and will cause all related parties and will require all of its payees to cooperate fully in furnishing or making available to the County any and all such books, documents, papers, and records.

#### 9.22 HIPAA COMPLIANCE

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the privacy and security regulations promulgated under Title II, Subtitle F, §§ 261-264 of HIPAA, the administrative regulations issued by the Department of Health and Human Services ("DHHS") as found in 45 C.F.R. Parts 160 through 164 (the "HIPAA or DHHS regulations"), and the Health Information Technology for Economic and Clinical Health Act, Public Law 11-005 (the "HITECH Act"), as such laws and regulations may be amended from time to time, and enter into a Business Associate Contract with the County, as may be required, so as to provide necessary reasonable assurances to the County that the Contractor as an Business Associate will

comply with the portions of those laws and regulations made applicable to business associates by HIPAA and the HITECH Act.

### 9.23 TAX CLEARANCE FOR TAXES OWED TO LOCAL GOVERNMENTS

The local governments of Johnson County, KS, City of Kansas City, MO, Jackson County, MO, and the Unified Government of Wyandotte County, KS (collectively the “Local Governments”), have agreed to cooperate with each other to ensure that tax funded contracts are performed by Contractors in compliance with the Tax Laws of the Local Governments. Contactor agrees that the Contractor shall be in compliance with the respective Tax Laws of the Local Governments throughout the term of this contract and any contract renewals and that proof of Contractor’s compliance with the Tax Laws of the Local Governments shall be a condition of award. Upon award of contract and all subsequent renewals with Johnson County in the amount of \$100,000.00 or more, Contractor must obtain a Tax Clearance Certification. The Tax Clearance Certification must be signed by an authorized official from all four (4) of the “Local Governments” and submitted to the Johnson County Purchasing Department prior to a notice of award (or) contract renewal. The Tax Clearance Certification shall be valid for a period of one year from the date of issuance and shall not be dated more than sixty (60) days prior to any notice of intent to contract by the County.

### 9.24 TIME LIMIT TO SUBMIT SUPPORTING DOCUMENTS

Within ten (10) calendar days after notification to enter into contract, the successful respondent must furnish the specified insurance and bonds required, if any. If any successful respondent fails to furnish said documents within ten (10) calendar days, the award to that respondent may be withdrawn and awarded to the next acceptable proposal.

### 9.25 MANNER OF PAYMENT

The Contractor agrees to accept payment from the County in the form of a procurement (credit) card and/or conventional check and/or electronically, at the County’s option, without imposing any additional fees, costs or conditions with respect to the manner and/or receipt of such payment.

### 9.26 SURCHARGES

Surcharges (fuel or otherwise) are not allowed under any agreement as a result of this RFP. Any such surcharges are to be included in the contract pricing.

### 9.27 ADDITIONAL SERVICES

The County reserves the right to add additional services to the contract with the mutual consent of the contracting parties within the contract period.

### 9.28 NEGOTIATIONS

The County reserves the right to negotiate any and all elements of a contract resulting from this RFP.

### 9.29 TRAVEL EXPENSES

The County will reimburse reasonable and necessary travel and related expenses to the successful Contractor based on the following conditions: travel expenses for airline expenses for business class based on actual cost. Lodging, mileage, and food will be based on the GSA per diem rates for the Kansas City Metro region. All such expenses will be up to but not in excess of the per diem rate for this area based on actual receipts. The applicable GSA per diem information can be located at <http://www.gsa.gov/portal>. Additional expenses such as ground transportation to and from the airport and vehicle rental may also be approved. All travel expenses are subject to the County's prior approval and must have receipts to verify expenses.

### 9.30 PUBLICITY CLAUSE

Respondent must obtain prior written approval from the County for use of information relating to the County or the contract in advertisements, brochures, promotional materials or media, press releases or other informational avenues.

### 9.31 OWNERSHIP

Any work product or deliverable report or data provided to the County as a result of work performed while under contract shall be considered property of the County and may be used in any fashion the County deems appropriate.

## 9.32 OBJECTIONS

Any objections or concerns to the RFP language, terms and conditions, scope or other elements of the RFP must be included with the respondent's response. Failure to note such concerns will indicate respondent's acceptance of the same.

## 9.33 SUSTAINABLE EFFORTS

The County desires to procure goods and services that are sustainable and maximize value to the County at both a cost and environmental level. Please describe your firm's environmental stance and what steps your firm has taken to support the goal of environmental stewardship.

## 9.34 SAM (System of Award Management)

Federal Grant shall be verified through SAM for supplier suspension or debarment:

<https://www.sam.gov/portal/public>

## 9.35 LICENSES AND PERMITS

The Contractor shall be, without expense to the County, responsible for obtaining any necessary licenses and permits.

## 9.36 CODES AND REGULATIONS

All work within the scope of this RFP shall be completed by the successful respondent to all applicable current prevailing codes and regulations.

## 9.37 CONTRACT PRICING

The prices quoted by the successful respondent shall remain firm during the initial contract period. Prices for contract renewal periods shall be negotiated and mutually agreed upon.

## 9.38 PERFORMANCE AND STATUTORY BONDS

The successful respondent may be required to furnish a Performance Bond and/or Statutory Bond equal to 100% of the contract. Such bond shall be executed by a surety company authorized to do business in the State of Kansas and requires the appointment of a Kansas Resident Agent.

## 9.39 CERTIFICATION OF BONDING CAPACITY

A notarized certification from the Contractor addressed to the Board of County Commissioners is required with the Contractor's Proposal stating that the Contractor has bonding capacity of 20% of the annual maximum contract amount, or \$1,00,000 to dedicate to this contract.

# 10. SPECIAL CONDITIONS

## 10.1 INSURANCE

Contractor shall be required to maintain and carry in force for the duration of the Contract, insurance coverage underwritten by insurer(s) lawfully authorized to write insurance in the State of Kansas with at least an A.M. Best A:VII rating, unless acceptable to and agreed to in writing by County, of the types and minimum limits as set forth below. If Contractor maintains broader coverage and/or higher limits than the minimum coverage outlined herein, County requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available proceeds in excess of the specified minimum limits herein, which are applicable to a given loss, shall be available to County. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor under this Contract.

### 10.1.1 Commercial General Liability:

- a. Must follow the most current ISO form CG 00 01, or an equivalent occurrence-based form with coverage at least as broad as the ISO form, with no amendments to the definition of an "insured contract" or limitations of "coverage territory";
- b. Coverage must include:
  - a. Products/Completed Operations;

- b. Personal & Advertising Injury;
  - c. Contractual Liability;
  - d. Independent Contractor Liability; and
  - e. Injury or damage caused by, or resulting from, explosion, collapse, and/or underground hazards.
3. Minimum required limits, which shall apply *per project*:
    - a. \$2,000,000 per occurrence;
    - b. \$4,000,000 general aggregate;
    - c. \$4,000,000 products/completed operations aggregate
  4. The Board of County Commissioners of Johnson County, KS, its officers, commissions, agencies and employees shall be named as Additional Insureds on this policy on a primary and non-contributory basis
  5. A copy of the following endorsement(s) must be attached to the certificate of insurance:
    - a. Additional Insured (e.g., CG 20 10 or 20 33, or similar form with coverage at least as broad as the ISO form);
    - b. Additional Insured status with respect to products/completed operations (CG 20 37, CG 20 39, CG 20 40, or similar form with coverage at least as broad as the ISO form);
    - c. Primary and Noncontributory (CG 20 01, or similar form with coverage at least as broad as the ISO form); and
    - d. Waiver of Transfer or Rights of Recovery Against Others to Us (CG 24 04, or equivalent) or similar subrogation waiver

10.1.2 Workers' Compensation and Employer's Liability:

1. Workers' Compensation coverage with statutory limits
2. Employer's Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy
3. The policy's other states (3.C.) status must include, "All states other than 3.A states and monopolistic states."
4. Must be endorsed to contain a subrogation waiver in favor of the County for the work performed by Contractor
5. A copy of the following endorsement(s) must be attached to the certificate of insurance:
  - a. Subrogation waiver endorsement

10.1.3 Commercial Automobile Liability:

1. Must follow the most current ISO form CA 00 01, or an equivalent form with coverage at least as broad as the ISO form, and shall contain, or be endorsed to contain, Additional Insured coverage for County.
2. Minimum required limits:
  - a. \$1,000,000 Combined Single Limit per accident covering all owned, hired, and non-owned autos
- c. If Contractor is transporting any type of hazardous materials under the Contract, then endorsements CA 99 48 or equivalent and MSC-90 (if the Contractor is a regulated motor carrier) are required.
- d. A copy of the following endorsement(s) must be attached to the certificate of insurance, if applicable and/or necessary:
  - a. Additional Insured; and
  - b. CA 99 48 or equivalent and MSC-90 (if required due to transport of hazardous materials as noted above)

10.1.4 Umbrella Liability:

1. \$2,000,000 per occurrence and aggregate *per project*
2. Following form of the Commercial General Liability policy required herein.
3. To be provided over the Commercial General Liability, Automobile Liability and Employers' Liability insurance policies.

10.1.5 Pollution/Environmental Liability:

1. Must provide coverage for liabilities arising out of the transport, dissemination, use, and/or release of pollutants.
2. Minimum required limits:
  - a. \$1,000,000 per claim;
  - b. \$2,000,000 aggregate.

10.1.6. Property Coverage: Installation Floater or Builders' Risk Insurance Coverage:

1. Contractor shall purchase and maintain an inland marine installation floater policy or a broad-form builders' risk insurance policy that is not limited to a particular site, which covers the full insurable value of the following against any and all physical loss or damage from any cause of loss (i.e., on an all-perils basis):
  - a. Buildings and other structures in the course of renovation, construction, erection, or fabrication;
  - b. Materials, fixtures, equipment and/or other similar property being used in the renovation of construction, whether in storage, in transit and/or at the Project site as well as prior to installation, during installation and during testing, until final acceptance by the Owner;
  - c. Scaffolding, cribbing, fencing, forms and temporary trailers, while located on the site, in storage or in transit.
2. This coverage shall apply to all parties to the Project who may have an insurable interest, including Owner, Contractor, Subcontractors and Sub-subcontractors and be at least in the amount of the actual cash value of the property being installed.
3. County must be identified as a loss payee on the policy.

10.1.7. Drone/Unmanned Aircraft Systems (UAS)/Unmanned Aerial Vehicle (UAV) Liability:

1. *If Contractor utilizes drones or other UAS at any time during the course of any Work or Project contemplated under this Contract*, Contractor shall provide drone/UAS/UAV liability Insurance covering bodily injury, property damage, and personal and advertising injury caused by owned and non-owned drones including the drone's payload and/or dispensable loads.
2. This insurance shall include premises liability, products and completed operations, contractual liability coverage for the indemnity provided under this Contract, and have no limitation of coverage to designated premises, project, operation or territory of operation.
3. Coverage shall be written on an occurrence basis in a combined single limit amount of not less than \$1,000,000 per occurrence.

10.1.8. Requirement to Provide Certificate of Insurance Evidencing Minimum Required Coverage: Notice of Changes. A certificate or certificates of insurance (COI) evidencing the minimum required coverage outlined herein must be filed with the County prior to commencement of the Work or Project.

1. Under "DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES," the following must be included:
  - a. a brief description of the service, work, or project, RFP/IFB/Contract number; and
  - b. "The Board of County Commissioners of Johnson County, KS, its officers, commissions, agencies and employees are Additional Insureds under the Commercial General Liability and Automobile Liability policies on a primary and non-contributory basis."
  - c. The Additional Insured requirement does not create a partnership or joint venture between the BOCC and Contractor under this Contract.
2. The Certificate Holder on each and every COI provided shall read as follows:

Board of County Commissioners of Johnson County, Kansas  
c/o Risk Manager  
111 South Cherry Street, Suite 2400  
Olathe, Kansas 66061-3486

3. Evidence of continuing coverage for the Contractor, Subcontractor or anyone directly or indirectly employed by any of them shall be made available, within five (5) days, upon request. Prior to any

reduction in coverage, cancellation, or non-renewal the Contractor or its Agent shall provide Certificate Holder not less than thirty (30) days' advance written notice of such change in Contractor's insurance coverage. It is Contractor's sole responsibility to provide this notice to Certificate Holder. Failure to provide notice shall not relieve Contractor of its obligations under this Contract.

- 10.1.9. Primary and Non-Contributory. For any claims related to this Contract, the Contractor's insurance coverage shall be primary and noncontributory. The Contractor understands and agrees that any insurance or self-insurance maintained by the Board of County Commissioners of Johnson County, Kansas, and its officers, commissions, agencies, and employees shall apply in excess of and not be contributory with any insurance or self-insurance maintained by Contractor.
- 10.1.10. Waiver of Subrogation. Contractor agrees to waive subrogation that any insurer may acquire from Contractor by virtue of the payment of any loss(es) relating to this Contract. Contractor agrees to obtain any endorsement to this effect as required by these provisions and agrees that even in the absence of such endorsement, Contractor's intent is to provide a broad waiver of subrogation against County for any loss(es) relating to this Contract.
- 10.1.11. Self-Insured Retentions. Self-insured retentions (SIRs) must be declared to and approved by County. The CGL and any policies, including any excess liability policies, may not be subject to a self-insured retention (SIR) that exceeds \$250,000 unless approved in writing by County. County may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within SIR. Policies shall not contain any SIR provision that limits the satisfaction of the SIR to the Named Insured. *Rather, the policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.* County may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the indemnified Additional Insured parties. The policy must also provide that defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. County reserves the right to obtain a copy of any policies and endorsements for verification.
- 10.1.12. Subcontractors and Sub-Subcontractors. Contractor shall either ensure that all subcontractors and sub-contractors are covered under Contractor's insurance or require all subcontractors and/or sub-subcontractors maintain insurance meeting all the requirements stated herein. Contractor shall further ensure that the additional insured requirements of Contractor as noted herein are met by any subcontractors and/or sub-subcontractors.
- 10.1.13. No Duty to Verify Satisfaction of Minimum Insurance Requirements. County reserves the right to review any and all of the required insurance policies and/or endorsements but has no obligation to do so. Failure to demand or verify evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.
- 10.1.14. Commencement of Work. Contractor shall not commence work under this Contract until the Contractor has obtained all required insurance and provided evidence of the same to County.
- 10.1.15. Claims-made Policies. In the event Contractor procures insurance coverage that is written on a claims-made basis, Contractor shall at all times, including without limitation, after the expiration or termination of this Contract for any reason, maintain insurance coverage for any liability directly or indirectly resulting from acts or omissions of Contractor occurring in whole or in part during the term of this Contract (hereinafter "Continuing Coverage"). Contractor may maintain such Continuing Coverage through the procurement of subsequent policies that provide for a retroactive date of coverage equal to the retroactive date of the insurance policy in effect as of the effective date of this Contract, the procurement of an extended reporting endorsement (commonly known as "tail coverage") applicable to the insurance

coverage maintained by Contractor during the term of this Contract, or such other method acceptable to County. The contractor shall maintain the full limit of coverage as stated above for the statute of repose.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  SAMPLE	CONTACT NAME:		
	PHONE (A/C, No. Ext):	FAX (A/C, No):	
E-MAIL ADDRESS:			
INSURER(S) AFFORDING COVERAGE		NAIC #	
INSURED  MUST INCLUDE CONTRACTOR TO WHOM CONTRACT HAS BEEN AWARDED	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL <input checked="" type="checkbox"/> PROD / COMPLETED OPER. GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		<input checked="" type="checkbox"/>	SAMPLE			EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ PER MED EXP (Any one person) \$ CONTRACT PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/POP AGG \$ \$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			SAMPLE			COMBINED SINGLE LIMIT (Ea accident) \$ PER BODILY INJURY (Per person) \$ CONTRACT BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ PER AGGREGATE \$ CONTRACT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			INCLUDE ALL STATES ENDT			<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER PER E.L. EACH ACCIDENT \$ CONTRAT E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	- PROFESSIONAL LIABILITY						PER TERMS OF CONTRACT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 INCLUDE: 1) RFP No. and Project description, 2) Board of County Commissioners, Johnson County, Kansas, its Officers, Commissions, Agencies, and Employees are Named Additional Insured under General Liability as evidenced by Endorsement CG2010, GC2033, Or Manuscript equivalent.

CERTIFICATE HOLDER	CANCELLATION
Board of County Commissioners, Johnson County, KS c/o Risk Manager 111 S. Cherry Street, Suite 2400 Olathe, KS 66061-3441	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	XX

## 11. COOPERATIVE PROCUREMENT WITH OTHER JURISDICTIONS

If Johnson County, Kansas awarded you the proposed contract, would you sell under the prices and terms of this Contract to any Municipality, County Public Utility, Hospital, Educational Institution, or any other non-profit organization? (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract). This section will not affect award.

YES\_\_\_\_\_ NO\_\_\_\_\_

- Sales will be made in accordance with the prices, terms, and conditions of the Request for Proposal and any subsequent contract.
- There shall, however, be no obligation under the cooperative procurement agreement for any organization to utilize the RFP or contract unless they are specifically named in the Request For Proposal.
- All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All receiving, inspection, payments and other contract administration will be the responsibility of the ordering jurisdiction.
- The principal contracting officer (PCO) is responsible to handle the solicitation and award the contract. The PCO has authority to modify the contract and handle disputes regarding the substance of the contract. The PCO is the Purchasing Administrator, Johnson County, Kansas.
- Each jurisdiction that is a party to the joint RFP has authority to act as Administrative Contracting Officer with responsibility to issue purchase orders, inspect and receive goods, make payments and handle disputes involving shipment to the jurisdiction.

## 12. INVOICE DISCOUNT TERMS

Is a discount offered for prompt payment of invoices? YES\_\_\_ NO\_\_\_

- a. Vendor Terms: \_\_\_\_\_
- b. % Discount: \_\_\_\_\_
- c. Net \_\_\_\_\_Days

## 13. INSTRUCTIONS FOR RESPONDING TO RFP

A proposal must be submitted electronically at <https://jocogov.ionwave.net> by a respondent and must: (1) be signed electronically by a duly authorized representative of the respondent's organization; and (2) contain all information required by the RFP. The Table of Contents and Forms 1-5 are required. Note that for this RFP, pricing Forms (Forms 6, 7, and 8) will only be required of finalists and is due at the time of the interview.

You must register as a supplier at <https://jocogov.ionwave.net> at least two (2) business days prior to the proposal opening to ensure a successful registration. No other method of submitting proposals will be accepted. If there is difficulty submitting a proposal electronically, contact the Purchasing Administrator for assistance.

It is your responsibility to follow the instructions and guidelines and provide appropriate response attachments where requested. Forms are provided as templates and should be used as you prefer. The intent of the sample forms is to provide your firm an understanding of the information requested by the County to appropriately evaluate your proposal. Should you choose to modify the forms and fail to provide the information requested, that may impact your evaluation scores.

## 14. RFP FORM DESCRIPTIONS AND FORM TEMPLATES

Completed forms should be signed by the Chief Executive Officer of the firm, or by the principal (from Form 1) responsible for the conduct of the work in the event the RFP is awarded to the organization submitting these forms. ALL INFORMATION CONTAINED IN THE FORMS SHOULD BE CURRENT AND FACTUAL.

### 14.1 TABLE OF CONTENTS

The following table sets forth the specific items to be addressed in your proposal. Respondents must return this or a similar page with their proposal and with corresponding page numbers indicated on the information submitted within their proposal.

### 14.2. FORM 1 – GENERAL INFORMATION: PROJECT UNDERSTANDING AND APPROACH

List the principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the policies and procedures of the agency to which this form is directed.

### 14.3. FORMS 2A AND 2B – PERSONNEL INFORMATION AND RESUMES

FORM 2A shall be filled out by the Prime Contractor of the Project Team with resumes of key personnel. Project Team Preferred Subcontractor should fill out FORM 2B with resumes of key personnel. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities.

### 14.4. FORMS 3A AND 3B – PROJECT EXPERIENCE AND REFERENCES

Form 3A shall consist of up to twelve (12) projects which demonstrate the firm's competence to perform work similar to that likely to be required on JCW projects. More recent projects are preferred. Prime consideration will be given to projects that illustrate respondent's capability for performing work similar to that being sought. Form 3B shall be filled out by the Preferred Subcontractor. Up to five (5) projects are requested, with similar information to Form 3A.

### 14.5. FORM 4 – PRIME CONTRACTOR PROJECT DETAIL

Form 4 is optional but shall be filled out by the Prime Contractor of the Project Team. Select up to five (5) of the twelve (12) projects from Form 3A for elaboration. Projects in which the proposed Project Team worked together are of particular interest. Through narrative discussion, show reasons why the firm submitting this RFP believes it is especially qualified to perform the types of projects that will be awarded. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by the firm or individuals for similar work, special approaches or concepts developed by the firm relevant to this RFP, etc. Respondents may say anything they wish in support of their qualifications.

### 14.6. FORM 5 – CONTRACTOR-OWNED RESOURCES

Form 5 shall be filled out for any equipment owned by or readily available for immediate mobilization by the Project Team within the surrounding area that may be used on this contract. In addition, list any other company-owned resources that may make the Project Team uniquely qualified for term and supply contract work.

### 14.7. FORMS 6, 7, 8, and 9 – COST PROPOSALS

Will only be required of finalists and is due at the time of the interview. **DO NOT SUBMIT FORMS 6, 7, AND 8 and 9 WITH PROPOSAL.**

### 14.8. DOCUMENTED SAFETY PROGRAM

Project Team may be asked to submit their documented safety program. This would require a documented program from both the Prime Contractor and Preferred Electrical Subcontractor. Documentation must include the confined space entry program. Note that safety and safety plans are the sole responsibility of the contractors, and any review by JCW is to ensure the plans exist and are documented.

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Response  
Page Number

<b>COVER SHEET OF THE RFP</b>	
<b>A. LETTER OF TRANSMITTAL:</b> Submit on firm’s letterhead; limit to two (2) single-sided pages. <ol style="list-style-type: none"> <li>1. Include additional relevant information not requested elsewhere in the RFP.</li> <li>2. The signature of the letter shall be that of a person authorized to represent and bind the firm</li> </ol>	
<b>B. TABLE OF CONTENTS:</b> Submit this page and include the appropriate page numbers.	
<b>C. FORM 1: GENERAL INFORMATION/PROJECT UNDERSTANDING AND APPROACH</b>	
<b>D. FORM 2A: PRIME CONTRACTOR PERSONNEL INFORMATION AND RESUMES:</b> Form 2A provided (Form 2A may be reproduced and attached in sequence if more space is required). Include/limit number of resumes to key personnel.	
<b>E. FORM 2B: PREFERRED ELECTRICAL SUB-CONTACTOR INFORMATION AND RESUMES:</b> Form 2B provided (Form 2B may be reproduced and attached in sequence if more space is required). Limit number of resumes to key personnel.	
<b>F. FORM 3A: PRIME CONTRACTOR PROJECT EXPERIENCE AND REFERENCES:</b> Form 3A provided. Provide the requested information for up to 12 projects.	
<b>G. FORM 3B: PREFERRED ELECTRICAL SUB-CONTRACTOR PROJECT EXPERIENCE AND REFERENCES:</b> Form 3B provided. Provide the requested information for up to 5 projects.	
<b>H. FORM 4: PRIME CONTRACTOR PROJECT DETAIL (OPTIONAL):</b> Form 4 provided. List up to five (5) projects from Form 3A (Form 4 may be reproduced and attached in sequence if more space is required).	
<b>I. FORM 5: CONTRACTOR-RESOURCES:</b> Form 5 provided. List equipment owned or readily available by the contractor and include any other resources that should be considered.	
<b>J. CERTIFIED STATEMENT OF BONDING CAPACITY:</b> See Requirements in Section 9.39.	
<b>K. FORMS 6, 7, 8, AND 9 ARE NOT TO BE SUBMITTED WITH INITIAL PROPOSAL:</b> SHORT LIST FIRM SUBMISSIONS: Sealed Forms 6, 7, or 8 (UPON REQUEST).	Upon Request
<b>L. DOCUMENTED SAFETY PROGRAM:</b> Include Confined Space Program (UPON REQUEST)	Upon Request

FORM 1 – General Information: Project Understanding and Approach

1. Project Team Prime Contractor Name & Address:	1b. Licensed to do business in the State of Kansas? _____ yes      no _____
	1c. Licensed to do business in Johnson County, KS? _____ yes      no _____
1a. Firm’s Principal Contact for this contract (Name, Title, Address, Phone No., and email address):	1d. Firm has been in business for _____ years.
	1e. Firm has been prime contractor for wastewater construction projects for _____ years.
2. Do you have prior experience with term and supply construction contracts, and with contracts paid on a time and material cost basis? If so, please explain. If not, do you have any experience with alternative delivery projects, such as design-build projects?	
3. Describe your understanding of this RFP. What is the purpose of this project from a JCW perspective? What would be your project approach to meeting JCW’s needs?	
4. Comment on your firm’s record of completing projects on-time and on-budget.	
5. How would your firm ensure quality work on JCW projects?	

6. How would your firm ensure JCW's costs are minimized on projects?

7. List up to three examples of change orders your firm has initiated to improve the outcome for the Owner.

- 1)
- 2)
- 3)

8. What type of work would be considered your firm's niche or specialty? What does your firm do that might be considered above the competition?

9. List some noteworthy accomplishments by your firm (no more than one page, attach to this form if more space is needed).

10. Has your firm ever failed to complete a project? If so, please explain.

11. Comment on your firm's safety record and commitment to safety. Provide your firm's Experience Modification Rate (EMR) and/or other metrics demonstrating your firm's commitment to safety.

12. List the Preferred Restoration & Landscaping Subcontractor that is part of the Project Team

Name & Address:

Worked with Prime Before (Y or N)?

## FORM 2A – Prime Contractor Personnel Information and Resumes

1. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).

2. How many people are employed by your firm (by categories such as Executive, Administrative, Number of crews and their specialties, etc.)?

3. Does the Project Manager(s), who will be assigned to lead JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Project Manager? Yes \_\_\_\_ No \_\_\_\_

Briefly explain:

Does the Superintendent(s), who will be assigned to JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Superintendent? Yes \_\_\_\_ No \_\_\_\_

Briefly explain:

4. Please attach resumes for key personnel of the Project Team's Prime Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

5. Brief resume of key persons who shall be assigned to the County's project.
a. Name and Title:
b. Proposed Role on this Contract (e.g. Construction Superintendent)
c. Name of firm with which associated:
d. Years' experience: With the firm _____ With other firms _____
e. Education or Trade: Degree(s)/Year/School/Specialization
f. Active Registration: Year First Registered/Discipline
g. Project Experience on Wastewater Projects listed in Form 3A: List all projects and role on those projects from Form 3A that apply (may simply use project number from Form 3A - for example: Project 1 – Project Manager for Emergency Line Repair Project).  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"><u>Project:</u></div> <div style="width: 45%;"><u>Role:</u></div> </div>
h. Project Experience on Wastewater Projects not in Form 3A: Describe any experience on wastewater projects not included in Form 3A. This may include experience with other firms.



## FORM 2B –Preferred Restoration & Landscaping Subcontractor Information and Resumes

(Provide Form 2B for each Project Team Preferred Sub-Contractor (if more than one))

1. Project Team Preferred Sub-Contractor Name and Address:
2. Type of Work Sub-Contractor Specializes in (attach company brochure, if available):
3. Licensed to do business in the State of Kansas: Yes ___ No ___
4. Licensed to do business in Johnson County, KS: Yes ___ No ___
5. Firm has been in business for ___ years.
6. Does your firm have a minimum of five (5) years' experience working on wastewater or utility projects? Yes ___ No ___ If yes, please explain:
7. Attach a list of projects your firm has completed during the past five years using Form 3B (list up to five projects).
8. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).
9. Please attach resumes for key personnel of the Preferred Sub-Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

10. Brief resume of key persons who shall be assigned to the county's project.
a. Name and Title:
b. Proposed Role on this Contract (e.g. Construction Superintendent):
c. Name of firm with which associated:
d. Years' experience:  With the firm_____With other firms _____
e. Education or Trade: Degree(s)/Year/School/Specialization
f. Active Registration: Year First Registered/Discipline
g. Project Experience on Wastewater Projects listed in Form 3B: List all projects and role on those projects from Form 3B that apply (may simply use project number from Form 3B - for example: Project 1 – Project Manager for Clarifier Mechanism Replacement).  <u>Project:</u> <u>Role:</u>
h. Project Experience on Wastewater or Utility Projects not in Form 3B: Describe any experience on wastewater or utility projects not included in Form 3B. This may include experience with other firms.

FORM 3A – Prime Contractor Project Experience and References

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
EX	7/1/2013	3	County Wastewater; Somewhere County, KS	Influent Pump Station Improvements at the County Line WWTP	Prime	\$300,000	Wastewater Engineering
			Contact: John McWastewater, Project Engr. / 555-555-5555 / McWastewater@countywastewater.org	Removed existing 4x4 sluice gates, added stop log provisions to four channels, replaced lower level lighting, replaced gas monitoring system. Bypass-pumping of flow (9 mgd avg) during construction.			
1							
2							
3							
4							
5							

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
6							
7							
8							
9							
10							

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
11							
12							

Notes:

1 - Provide information on up to 12 projects; "EX" is provided as an example to follow.

2 - If you were a sub-contractor on the project, list the value/cost for your firm's work only

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

Title: \_\_\_\_\_

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

FORM 3B – Preferred Restoration & Landscaping Subcontractor Project Experience and References

**Prime-Contractor Name:**

**Preferred Sub-Contractor Name:**

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost <sup>2</sup> (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
EX	7/1/2013	3	County Wastewater; Somewhere County, KS Contact: John McWastewater, Project Engr. / 555-555-5555 / McWastewater@countywastewater.org	Influent Pump Station Improvements at the County Line WWTP; Rehabilitation of pump station including pumps and piping; included building upgrades.	\$50,000	Wastewater Engineering
			Doe's Excavation; 4444 Main, Olathe, KS; John Doe, Project Manager; (913) 444-4444; Jdoe@does.com	Removed existing lighting that was damaged by flooding. Installed new explosion-proof lighting. Also, removed and replaced gas monitoring system, which included continuous air sampling from four locations in the lower levels of the pump station.		
1						
2						
3						

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost <sup>2</sup> (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
4						
5						

Notes:

1 - Provide information on up to five projects; "EX" is provided as an example to follow.

2 - List value/cost for your firm's work only

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

Title: \_\_\_\_\_

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

## FORM 4 – Prime Contractor Project Detail (Optional)

<p>Instructions:</p> <p>This form is optional, but it is intended to allow firms to provide more detailed information than could be provided on Form 3A. Firms may wish to describe the type of work, challenges (e.g. emergency work), solutions, efforts, customer satisfaction, etc. on some projects. Select up to five (5) projects reported on Form 3A, and then complete a separate Form 4 for each project.</p>	
<p>Firm:</p>	
<p>Project Title and Facility:</p>	
<p>Customer Name and Location:</p>	
<p>Project Notice To Proceed Date:</p>	
<p>Project Detail:</p>	
<p>The foregoing is a statement of facts.</p>	<p>Date:</p>
<p>Signature _____ Telephone Number: _____</p>	
<p>Typed Name and Title: _____</p>	



FORM 5 – Contractor-Owned Resources\*

Firm Name:

QTY	EQUIPMENT TYPE	SIZE	AGE (Yr)	CONDITION		
				Good	Fair	Poor
Wheeled Vehicles						
Track Vehicles						
Construction Equipment						
<b>OTHER RESOURCES</b> (Briefly describe any other company-owned resources (e.g. metal fabrication shop):						

\* Contractor may use existing form if one is available

**DO NOT SUBMIT FORMS 6, 7, 8 or 9 WITH YOUR RESPONSE TO THIS REQUEST FOR PROPOSAL**

**FORMS 6, 7, 8 and 9**

**BILLING RATES AND COST PROPOSAL**

**Short-listed Project Teams will complete FORMS 6, 7, 8 and 9 by entering standard billing rates for the given personnel classifications and equipment type, and percentage markups. Use the requirements of the RFP to prepare your rates, specifically Section 4 – Scope of Services, Paragraph B.3 Measurement and Payment. The entered values shall be used in FORM 9 to determine a Total Project Cost, which will be used in the cost component of the proposal evaluations. The billing rates and markups entered into Forms 6, 7, 8 and 9 will become part of the contract for the selected firm(s) and will remain in effect for the duration of the initial 12-month contract period. Adjustments to the billing rates may be negotiated for subsequent renewal periods.**

**Forms 6, 7, 8 and 9, may not be modified. Additional labor and equipment may be added to Forms 6 and 7, respectively, in the designated areas.**

**Unbalanced or irregular pricing, if deemed such by JCW, may be grounds to not accept the bid amount. Unbalanced or irregular pricing is the submittal of unit rates that are significantly greater or less than the industry standard in an attempt to take advantage of the bid price evaluation. In this case, the sample projects in Form 9 serve as the bid evaluation.**

FORM 6 – Project Team Labor Billing Rates and Percentage Markups (Page 1 of 4)

**DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.**

**Prime Contractor and Preferred Subcontractor:** \_\_\_\_\_

\_\_\_\_\_

**Table 6-1 – Labor Billing Rates**

JOB CLASSIFICATION	BILLING RATE (\$/Hr) <sup>1</sup>		
	Regular	Overtime <sup>2</sup>	Premium <sup>3</sup>
<b>Management, Supervision, Engineering:</b>			
Project Manager/Project Engineer <sup>4</sup>			
Project Supervisor/Superintendent <sup>4</sup>			
Foreman			
Restoration/Landscape Project Manager/Project Engineer <sup>4</sup>			
Restoration/Landscape Project Supervisor/Superintendent <sup>4</sup>			
Restoration/Landscape Foreman			
<b>Construction Trades:</b>			
Equipment Operator			
Apprentice <sup>5</sup>			
Laborer			
Truck Driver/Hauler/Teamster			
Restoration/Landscape Laborer			

FORM 6 – Project Team Labor Billing Rates and Percentage Markups (Page 2 of 4)

Additional Labor Rates (Optional) <sup>7</sup> :			

<sup>1</sup>Refer to General Requirements, Measurement and Payment, for what is included in the Billing Rates

<sup>2</sup>Defined as hours in excess of regular daily or weekly work hours – not reimbursable unless negotiated in advance with JCW

<sup>3</sup>Premium rates are defined as emergency or holiday hours, and must be pre-approved by JCW

<sup>4</sup>The Project Manager/Engineer oversees the project as a whole, supervises invoices and submittals, and helps finalize shop drawings and operations and maintenance manuals. The Superintendent is defined as the person assigned to run the day-to-day operations of the construction site, coordinate the delivery of materials, and oversee subcontractors. Refer to General Requirements, Section B.3 – Measurement and Payment.

<sup>5</sup>Apprentice rates are optional, if not applicable please fill in “N/A”

<sup>6</sup>Additional labor rates may be added if contractor desires. Failure to add additional labor rates will not affect the price component of the bid.

FORM 6 – Project Team Labor Billing Rates and Percentage Markups (Page 3 of 4)

**Prime Contractor and Preferred Subcontractor:** \_\_\_\_\_

This Contract requires the Prime Contractor to fill in four (4) categories of percentage markups based on all or a portion of the contract amount, Tables 6-2 through 6-5. Refer to the example project included on the next page for additional clarification on how the markups will be applied.

**Contract Markups:**

**Table 6-2 – Overhead & Profit (Line D)<sup>1</sup>**

Subtotal 1: Less than \$100,000	%
Subtotal 1: \$100,001 - \$500,000	%
Subtotal 1: \$500,001+	%

<sup>1</sup>Markup shall be multiplied by Subtotal 1. Subtotal 1 is defined as the cost of wastewater equipment, materials incorporated into the work, contractor's labor, and contractor's equipment costs to perform the work. This does not include markups on subcontractor or preferred subcontractor work.

**Table 6-3 – General Contractor Markup on Subcontractor Work (Line F)<sup>2</sup>**

Line F:	%
---------	---

<sup>2</sup>Markup shall be multiplied by the sum of the costs of all subcontractors on the project (both Preferred Subcontractors and other subcontractors).

**Table 6-4 – Bonds & Insurance (Line G)<sup>3</sup>**

Subtotal 4: Less than \$100,000	%
Subtotal 4: \$100,001 - \$500,000	%
Subtotal 4: \$500,001+	%

<sup>3</sup>Markup shall be multiplied by Subtotal 4, which is defined as the sum of Subtotals 2 and 3.

**Table 6-5 – Johnson County Purchasing Card Charges<sup>4</sup>**

Decimal Percent Charge for Use of P-Card	%
--	---

<sup>4</sup>For small expenditures (generally under \$10,000), JCW may elect to pay by Purchasing Card (P-Card). If your firm charges a markup for P-Card use, it must be documented here. If your firm does not, mark 0%.

FORM 6 – Project Team Labor Billing Rates and Percentage Markups (Page 4 of 4)

<b>Example Project</b>	<b>Example Markups</b>	
Line A: Equipment & Materials Incorporated into the Work:	\$100,000	
Line B: General Contractor Labor:	\$50,000	
Line C: Construction Equipment Used to Perform the Work:	\$10,000	
<hr/>		
Subtotal 1:	\$160,000	
Subtotal 1:	\$160,000	
Line D: Overhead and Profit:	\$17,600	11%
<hr/>		
Subtotal 2:	\$177,600	
Line E: Sum of Subcontractors' Costs (See Note 1):	\$25,000	
Line F: Contractor Markup on Subcontractors (See Note 1):	\$1,250	5%
<hr/>		
Subtotal 3:	\$26,250	
Subtotal 4:	\$203,850	
Line G: Bonds and Insurance:	\$2,039	1%
Line H: Call Out Fee for Unplanned Work	\$1,690	
Line I: At Cost Items (ex: Permit Fees)	\$1,500	
<hr/>		
<b>Total (Subtotal 4 + Line G + Line H):</b>	<b>\$209,079</b>	

Notes:

- 1) Sum of Subcontractor's costs includes both Preferred Subcontractor's costs and additional subcontractor's costs.

SUBMITTED: \_\_\_\_\_

Signature

Date

\_\_\_\_\_  
Title - Authorized Representative of

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone No.

FORM 7 – Contractor’s Equipment Billing Rates (Page 1 of 2)

**DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.**

Firm: \_\_\_\_\_

**Table 7-1 – Contractor’s Equipment Billing Rates**

EQUIPMENT TYPE AND SIZE	BILLING RATE (\$) <sup>1</sup>						
	Mobilization	Hourly	Daily	Weekly		Monthly	
	Charge	Active	Active	Active	Standby	Active	Standby
Large Excavator (greater than 45,000 lbs)							
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)							
Small Excavator (20,000 lbs or less)							
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)							
Skid Loader (bobcat)							
Dump Truck (Tandem Axle)							
Track Loader							
Rubber Tire Backhoe							
Wheel Loader							
Pump with Generator	N/A						
Pickup with Tools	N/A						
Truck (2 ton or equal)	N/A						
Trailer	N/A						
Air Compressor and Jackhammer	N/A						
Trench Shoring	N/A						
Additional Equipment (Optional) <sup>2</sup>							

Notes:

<sup>1</sup> Refer to General Requirements, Section 4 - B.3 – Measurement and Payment, for a list of all that is included in the Contractor Equipment Rates.

<sup>2</sup>Additional equipment and rates may be added if contractor desires. Failure to add additional equipment will not affect the price component of the bid.

FORM 7 – Contractor’s Equipment Billing Rates (Page 2 of 2)

SUBMITTED: \_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Title - Authorized Representative of

\_\_\_\_\_

Firm Name

\_\_\_\_\_

Address

\_\_\_\_\_

City and State

\_\_\_\_\_

Telephone No.



## FORM 8 – Call Out Fees for Unplanned or Emergency Projects

**DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.**

**Prime Contractor and Preferred Subcontractor:** \_\_\_\_\_  
 \_\_\_\_\_

**Table 8-1 – Call Out Fee Cost Structure Rates**

Call Out Timeframe	Call Out Fee (\$)
Called out during a normal work shift, immediate response: <sup>1</sup>	
Call out after normal work shift <sup>2</sup>	
Call out during the weekend <sup>3</sup>	
Call out during a Holiday <sup>4</sup>	

Notes:

1 - Contractor normal work shift is defined as Monday, Tuesday, Wednesday, Thursday. Friday from 8:00 am - 5:00pm. This fee only applies if Contractor work crew is required to pull off an active job during a normal work shift to respond and mobilize to an unplanned or emergency project. A notification during Contractor’s normal workday that can be scheduled to fit into the Contractor's work schedule will be billed under the standard Time & Material rates and no Call-Out fee will be applied.

2 – This fee applies when Contractor is required to respond and mobilize to a new unplanned project site after the workday is over, or immediately after the shift ends, or on non-workday.

3 – This fee applies when Contractor is required to respond and mobilize outside of the normal work week (Friday after 5:00pm through Monday at 8:00am)

4 - This fee applies when Contractor is required to respond and mobilize

SUBMITTED: \_\_\_\_\_

Signature

Date

\_\_\_\_\_  
 Title - Authorized Representative of

\_\_\_\_\_  
 Firm Name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 City and State

\_\_\_\_\_  
 Telephone No.

FORM 9 – Cost Proposal Worksheet (Page 1 of 10)

**DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.**

**Project A – Line Repair (ROW - street & curb)**

Project A consists of the repair and replacement of 25 feet of 8 inch VCP sanitary sewer main and replacement of one brick manhole with a new RCP manhole. Work will consist of setting up bypass pumping and replacing collapsed VCP with a new section of PVC pipe. Assume half the pipe is in the roadway and the other half is in public ROW. Pipe and manhole depth is 10 feet deep. Roadway is a busy four lane arterial, and one lane will have to be shut down with traffic control. Assume 10 foot by 20 foot section (200 sf) of pavement will have to be restored, 20 foot of curb replacement, and 200 sf of sod restoration in the ROW. The cost of materials for this project is \$15,000 to the Prime Contractor. The Preferred Subcontractor incurred \$500 in costs in materials for landscape/sod restoration incorporated into the work and equipment. The labor and equipment hours are included in the table below. Other subcontractor includes \$1,500 for traffic control. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

<b>Table 8-1.1 - Prime Contractor Labor Cost (Project A)</b>			
<b>Labor Classification</b>	<b>Hours Worked (Column A)</b>	<b>Hourly Rate (Column B)</b>	<b>A*B</b>
		<b>(\$/Hour)<sup>1</sup></b>	<b>(\$)</b>
Project Manager/Project Engineer	20		
Project Superintendent	40		
Foreman	40		
Documents Coordinator	4		
Equipment Operator	60		
Laborer	100		
Truck Driver/Hauler/Teamster	20		
<b>Prime Contractor Labor Total:</b>			
<b>Notes</b>			
<sup>1</sup> Use Regular Hourly Rates from Form 6			

FORM 9 – Cost Proposal Worksheet (Page 2 of 10)

Table 8.1.2 – Prime Contractor Equipment Cost (Project A)						
Equipment	Rate Type (Column A)			Rate (Column B) <sup>1</sup>	Mobilization Charge (Column C)	(A*B)+C
	Unit	Timeframe <sup>2</sup>	Active/ Standby	(\$/Rate Type)	(\$)	(\$)
Medium Excavator (20,000 lbs to 45,000 lbs)	5	Day	Active			
Skid Steer (bobcat)	5	Day	Active			
Dump Truck (Tandem Axle)	5	Day	Active			
<b>Construction Equipment Total:</b>						
<b>Notes</b>						
<sup>1</sup> Use Equipment Rates from Form 7 <sup>2</sup> For the purposes of filling in the worksheet, use timeframes given (i.e. use 4 weeks of the weekly rate, not 1 month).						

Table 8.1.3 – Subcontractor Costs (Project A)			
Labor Classification – Preferred Subcontractor	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour) <sup>1</sup>	(\$)
Restoration/Landscape Project Manager/Project Engineer <sup>1</sup>	2		
Restoration/Landscape Project Superintendent <sup>1</sup>	2		
Restoration/Landscape Foreman <sup>1</sup>	8		
Restoration/Landscape Laborer <sup>1</sup>	8		
<b>Labor Total:</b>			
Materials and Equipment– Preferred Subcontractor	Cost	Quantity	
Materials Incorporated Into the Work	\$500	1	\$500
<b>Materials Total:</b>			\$500
<b>Preferred Subcontractor – Total</b>		<b>Labor + Materials Total:</b>	
<b>Other Subcontractor Totals:</b>			\$1,500
<b>Total Subcontractor Cost:</b>			
<b>Notes</b>			
<sup>1</sup> Use Regular Hourly Rates from Form 6			

FORM 9 – Cost Proposal Worksheet (Page 3 of 10)

<b>Table 8.1.4 - Project A Cost with Markups</b>	
Line A: Cost of Materials	\$15,000
Line B: Labor Total (from Table 8.1.1)	
Line C: Construction Equipment Total (from Table 8.1.2)	
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	%
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.1.3):	
Subcontractor % Markup (From Table 6-3)	%
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	%
Line G: Bonds and Insurance Markup (\$):	
Line H: Call Out Fee for Unplanned or Emergency Project	\$0
Line I: Direct Costs:	\$0
<b>Project A Total = (Subtotal 4 + G + H):</b>	

FORM 9 – Cost Proposal Worksheet (Page 4 of 10)

**Project B – Large Diameter Pipe – Stream Crossing Repair (40 feet of 36” pipe)**

Project B consists of the repair to an existing 36” large diameter RCP pipe that located in the Indian Creek Streamway. Assume replacement of 40 feet of RCP with PVC pipe that is reinforced caged concrete encased. Project includes stream bank protection and restoration that includes hard armor rip rap and erosion control matting to the top of the bank, including any disturbed areas. Restoration will also include native plantings. Assume 40 feet of stream bank restoration on both sides of the creek. Access to the creek is in public stream park ROW off a walking trail.

The prime contractor will be responsible for the removal and replacement of pipe, concrete encasement, and rip rap placement. The contractor will incur \$30,000 of costs of materials. The stream bank restoration and plantings will be completed by the Preferred Restoration & Landscaping Subcontractor. The Preferred Subcontractor will include material costs of \$5,000. Other subcontractor for preconstruction video for \$500. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

<b>Table 8.2.1 - Prime Contractor Labor Cost (Project B)</b>			
<b>Labor Classification</b>	<b>Hours Worked (Column A)</b>	<b>Hourly Rate (Column B)</b>	<b>A*B</b>
		<b>(\$/Hour)<sup>1</sup></b>	<b>(\$)</b>
Project Manager/Project Engineer	10		
Project Superintendent	20		
Foreman	80		
Documents Coordinator	4		
Equipment Operator	120		
Laborer	160		
Truck Driver/Hauler/Teamster	60		
<b>Prime Contractor Labor Total:</b>			
<b>Notes</b>			
<sup>1</sup> Use Regular Hourly Rates from Form 6			

FORM 9 – Cost Proposal Worksheet (Page 5 of 10)

<b>Table 8.2.2 – Prime Contractor Equipment Cost (Project B)</b>						
<b>Equipment</b>	<b>Rate Type (Column A)</b>			<b>Rate (Column B)<sup>1</sup></b>	<b>Mobilization Charge (Column C)</b>	<b>(A*B)+C (\$)</b>
	<b>Unit</b>	<b>Timeframe<sup>2</sup></b>	<b>Active/Standby</b>	<b>(\$/Rate Type)</b>	<b>(\$)</b>	
Large Excavator (45,000+ lbs)	2	Weeks	Active			
Wheel Loader	2	Weeks	Active			
Skid Steer (bobcat)	2	Weeks	Active			
Dump Truck (Tandem Axle)	2	Weeks	Active			
Pickup with Tools	2	Weeks	Active			
Pump with Generator	5	Days	Active			
<b>Construction Equipment Total:</b>						
<b>Notes</b>						
<sup>1</sup> Use Equipment Rates from Form 7 <sup>2</sup> For the purposes of filling in the worksheet, use timeframes given (i.e. use 4 weeks of the weekly rate, not 1 month).						

<b>Table 8.2.3 – Subcontractor Costs (Project B)</b>			
<b>Labor Classification – Preferred Subcontractor</b>	<b>Hours Worked (Column A)</b>	<b>Hourly Rate (Column B)</b>	<b>A*B</b>
		<b>(\$/Hour)<sup>1</sup></b>	<b>(\$)</b>
Restoration/Landscape Project Manager/Project Engineer <sup>1</sup>	2		
Restoration/Landscape Project Superintendent <sup>1</sup>	4		
Restoration/Landscape Foreman <sup>1</sup>	8		
Restoration/Landscape Laborer <sup>1</sup>	20		
<b>Labor Total:</b>			
<b>Materials and Equipment– Preferred Subcontractor</b>	<b>Cost</b>	<b>Quantity</b>	
Materials Incorporated Into the Work & Equipment	\$5,000	1	\$5,000
<b>Materials Total:</b>			\$5,000
<b>Preferred Subcontractor Total</b>		<b>Labor + Materials Total:</b>	
<b>Other Subcontractor Totals:</b>			\$500
<b>Total Subcontractor Cost:</b>			
<b>Notes</b>			
<sup>1</sup> Use Regular Hourly Rates from Form 6			

FORM 9 – Cost Proposal Worksheet (Page 6 of 10)

<b>Table 8.2.4 - Project B Cost with Markups</b>	
Line A: Cost of Materials	<i>\$30,000</i>
Line B: Labor Total (from Table 8.2.1)	
Line C: Construction Equipment Total (from Table 8.2.2)	
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	%
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.2.3):	
Subcontractor % Markup (From Table 6-3)	%
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	%
Line G: Bonds and Insurance Markup (\$):	
Line H: Call Out Fee for Unplanned or Emergency Project	\$0
Line I: Direct Costs:	\$0
<b>Project B Total = (Subtotal 4 + G + H):</b>	

FORM 9 – Cost Proposal Worksheet (Page 7 of 10)

**Project C – Emergency Line Repair (Backyard on a Weekend)**

Project C consists of an emergency line repair on an 8” diameter VCP pipe in a backyard on a weekend with limited access requiring a mini excavator and trench shoring. Depth is approximately 8 foot deep. Replacement pipe will consist of 10 foot of PVC pipe. Restoration will include replacement of 20 foot of wood privacy fencing and 45 square yards of sod restoration. Preferred Subcontractor will complete sod restoration. The cost of the Prime Contractor’s materials is \$5,000. The Preferred Subcontractor had \$500 in materials. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

<b>Table 8.3.1 - Prime Contractor Labor Cost (Project C)</b>			
<b>Labor Classification</b>	<b>Hours Worked (Column A)</b>	<b>PREMIUM Hourly Rate (Column B)</b>	<b>A*B</b>
		<b>(\$/Hour)<sup>1</sup></b>	<b>(\$)</b>
Project Manager/Project Engineer	1		
Project Superintendent	1		
Foreman	12		
Equipment Operator	12		
Laborer	24		
Truck Driver/Hauler/Teamster	4		
<b>Prime Contractor Labor Total:</b>			
<b>Notes</b>			
<sup>1</sup> Use PREMIUM Hourly Rates from Form 6			



FORM 9 – Cost Proposal Worksheet (Page 8 of 10)

<b>Table 8.3.2 – Prime Contractor Equipment Cost (Project C)</b>						
<b>Equipment</b>	<b>Rate Type (Column A)</b>			<b>Rate (Column B)<sup>1</sup></b>	<b>Mobilization Charge (Column C)</b>	<b>(A*B)+C</b>
	<b>Unit</b>	<b>Timeframe<sup>2</sup></b>	<b>Active/Standby</b>	<b>(\$/Rate Type)</b>	<b>(\$)</b>	<b>(\$)</b>
Small Excavator (20,000 lbs or less)	12	Hourly	Active			
Skid Steer (bobcat)	12	Hourly	Active			
Dump Truck (Tandem Axle)	8	Hourly	Active			
Pickup with Tools	12	Hourly	Active			
Trench Shoring	8	Hourly	Active			
<b>Construction Equipment Total:</b>						
<b>Notes</b>						
<sup>1</sup> Use Equipment Rates from Form 7 <sup>2</sup> For the purposes of filling in the worksheet, use timeframes given (i.e. use 4 weeks of the weekly rate, not 1 month).						

<b>Table 8.3.3 – Subcontractor Costs (Project C)</b>			
<b>Labor Classification – Preferred Subcontractor</b>	<b>Hours Worked (Column A)</b>	<b>PREMIUM Hourly Rate (Column B)</b>	<b>A*B</b>
		<b>(\$/Hour)<sup>1</sup></b>	<b>(\$)</b>
Restoration/Landscape Project Manager/Project Engineer <sup>1</sup>	1		
Restoration/Landscape Project Superintendent <sup>1</sup>	1		
Restoration/Landscape Foreman <sup>1</sup>	4		
Restoration/Landscape Laborer <sup>1</sup>	8		
<b>Labor Total:</b>			
<b>Materials and Equipment– Preferred Subcontractor</b>	<b>Cost</b>	<b>Quantity</b>	
Materials Incorporated Into the Work & Equipment	\$500	1	\$500
<b>Materials Total:</b>			\$500
<b>Preferred Subcontractor - Total</b>		<b>Labor + Materials Total:</b>	
<b>Other Subcontractor Totals:</b>			\$0
<b>Total Subcontractor Cost:</b>			\$0
<b>Notes</b>			
<sup>1</sup> Use PREMIUM Hourly Rates from Form 6			

FORM 9 – Cost Proposal Worksheet (Page 9 of 10)

<b>Table 8.3.4 - Project C Cost with Markups</b>	
Line A: Cost of Materials	\$5,000
Line B: Labor Total (from Table 8.3.1)	
Line C: Construction Equipment Total (from Table 8.3.2)	
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.3.3):	
Subcontractor % Markup (From Table 6-3)	
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	
Line G: Bonds and Insurance Markup (\$):	
Line H: Call Out Fee for Unplanned or Emergency Project	
Line I: Direct Costs:	\$0
<b>Project C Total = (Subtotal 4 + G + H):</b>	

FORM 9 – Cost Proposal Worksheet (Page 10 of 10)

**DO NO SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.**

Project A Total (Table 8.1.4): \$ \_\_\_\_\_

Project B Total (Table 8.2.4): \$ \_\_\_\_\_

Project C Total (Table 8.3.4): \$ \_\_\_\_\_

Total Project Cost (A+B+C)<sup>1</sup> \$ \_\_\_\_\_

Notes:

<sup>1</sup>This is the value that will be used in the cost component of the proposal evaluations for this RFP.

SUBMITTED \_\_\_\_\_

Signature

Title

Authorized Representative of:

Firm Name

Address

City and State

Telephone No.

Date

August 18th, 2023

**ADDENDUM NO. 2**  
**RFP No. 2023-045**  
**On-Call Wastewater Sewer Collection System Infrastructure Repairs**

This Addendum addresses the following:

**1. CHANGES**

- A. Section 14, TABLE OF CONTENTS, lines E, shall be amended to, “*FORM 2B: PREFERRED RESTORATION & LANDSCAPING SUBCONTRACTOR INFORMATION AND RESUMES...*”
- B. Section 14, TABLE OF CONTENTS, line G, shall be amended to, “*FORM 3B: PREFERRED RESTORATION & LANDSCAPING SUB-CONTRACTOR PROJECT EXPERIENCE AND REFERENCES...*”

There are no further changes to RFP No. 2023-045 at this time.

August 11th, 2023

**ADDENDUM NO. 1**  
**RFP No. 2023-045**  
**On-Call Wastewater Sewer Collection System Infrastructure Repairs**

This Addendum addresses the following:

**1. ADDITIONS**

a) Attachments

- i. Mandatory Pre-Proposal Sign-In Sheet
- ii. Pre-Proposal Conference presentation slides.  
In the case of a discrepancy between the slides and the RFP, the RFP shall govern unless altered by an Addendum.
- iii. Questions and Answers during Pre-Proposal Conference

There are no further changes to RFP No. 2023-045 at this time. Additional questions can be submitted via IonWave prior to the Question Deadline or directed to: [lisa.robbins@jocogov.org](mailto:lisa.robbins@jocogov.org)

**ATTENDANCE LIST**  
**Purchasing Division**

**RFP NO: 2023-045**

**SUBJECT: On-Call Wastewater Sewer Collection System Infrastructure Repairs**

**CONFERENCE: Pre-Proposal Conference**

**DATE AND TIME: Tuesday, August 8, 2023, 2:00 PM, CDT**

NAME	FIRM REPRESENTING	Email Address
Lisa Robbins	Johnson County Purchasing	<a href="mailto:Lisa.robbs@jocogov.org">Lisa.robbs@jocogov.org</a>
Mike Piller	Johnson County Wastewater	<a href="mailto:Mike.piller@jocogov.org">Mike.piller@jocogov.org</a>
Shannon Mathes	Johnson County Wastewater	<a href="mailto:Shannon.mathes@jocogov.org">Shannon.mathes@jocogov.org</a>
Shannon Parks	Johnson County Wastewater	<a href="mailto:Shannon.parks@jocogov.org">Shannon.parks@jocogov.org</a>
Dan Ott	HDR, Inc.	<a href="mailto:Daniel.ott@jocogov.org">Daniel.ott@jocogov.org</a>
Ramona Chappell	TC Fuller Construction	<a href="mailto:ramona@tcfullerconstruction.com">ramona@tcfullerconstruction.com</a>
Kris Johnson / Mike Atkins	SheDigsIt	<a href="mailto:Kris@shedigsit.com">Kris@shedigsit.com</a>
Sherry Meyersburg	Black and McDonald	<a href="mailto:smeyersburg@blackandmcdonald.com">smeyersburg@blackandmcdonald.com</a>
Dwayne Star	Rodriguez Mech	<a href="mailto:Dwayne@RMC KC.COM">Dwayne@RMC KC.COM</a>
Jeremy Carlton	Infrastructure solutions	<a href="mailto:bikenberry@i-solutionsllc.com">bikenberry@i-solutionsllc.com</a>
Dan Forbes	Wiederemann Inc	<a href="mailto:dan@wiederemanninc.com">dan@wiederemanninc.com</a>



# RFP 2023-045

## On-Call Wastewater Sewer Collection System Infrastructure Repairs

Pre-Proposal Conference

August 08, 2023

2:00 PM



# Welcome! & Introductions

- **Welcome and thank you for attending!**
- Lisa Robbins, Senior Purchasing Administrator
  - All correspondence shall be directed to Purchasing
  - Questions submitted before the documented deadline, August 17<sup>th</sup>, 2023. Answers to questions will be posted in IonWave.
- Mike Piller, Johnson County Wastewater (JCW)
- Shannon Mathes, JCW
- Dan Ott, HDR, Inc.

# RFP Process - Overview

- **Purpose of Request for Proposal (RFP) method**
  - The RFP process is used for the qualitative selection process.
  - Cost is just one of the many evaluation criteria.
  - Low bid is not the method of award.

# RFP Process - Evaluation

- **Described in Section 8 of RFP**
- **Two-step process**
  1. Proposal: Contractors submit their proposal and bonding capacity information
  2. Interview: Short-listed contracting firms are invited to interview and submit cost proposals (Forms 6 – 9).

# Purpose of the Contract

- Contractors under contract will perform work on a time and materials basis.
- Work may include:
  - Gravity Sewer Piping and Manhole Repair
  - Sanitary Force Main and Air Release Valve Repair/Replacement/Maintenance
  - Sanitary Stream Crossing Repairs/Replacement and Stream Restoration
  - Low Pressure Sewer Pipeline and Valve Repair/Maintenance
  - Civil Site Work – earthwork, trenching, pavement, modification or replacement of landscaping, fencing, traffic control, etc. (restoration)

See Section 5.1. Scope of Work for details

# Purpose of the Contract (continued)

- Work to be performed will be according to JCW specifications.
- In general, the contract will be used for smaller jobs less than \$100,000.
  - Larger jobs will go through a separate bidding process.
- Emergency and/or time sensitive work may be conducted under this contract.

# Contract Benefit

- **For Contractors**

- Lowered risk of losing money on a project
- Flexibility in scheduling work (especially on smaller projects)
- Target completion dates without Liquidated Damages

- **For Johnson County Wastewater**

- Productive and efficient project delivery option
- Cost savings over design/bid/build when used properly
- On-call contractors for urgent construction needs

# Types of Potential Projects

- Small Projects (\$10k to \$100k) – JCW shall provide a drawing or sketch, not detailed plans and specs, may have some inspection
- Medium Sized Projects (\$100k to \$500k) – JCW shall provide project-specific plans and specifications and partial to full time inspection
- Larger Projects (\$500k to \$1M) – JCW shall provide project-specific plans and specifications with full time inspection

# Example Projects

- Small Projects (\$10k to \$100k) –
  - Emergency or spot repairs
  - Manhole repairs
  - LPS repairs
  - Smaller stream crossing repairs
- Medium Sized Projects (\$100k to \$500k) –
  - Sewer realignment or relocation (multiple segments)
  - Large stream crossing repairs
- Larger Projects (\$500k to \$1M) –
  - Large diameter pipe segment replacement/realignment



# Keys to Success

- Experienced wastewater contractors
- Teamwork on projects
- Efficient construction practices
- Reasonable billing rates  
(impacts award of projects and use of the Term & Supply contract over bidding all projects individually)
- Invoice documentation
- Success creates success



# Potential Challenges

- Invoicing – must be complete, descriptive, and organized
- Open communication about the contract
  - Contract may require adjustment after conclusion of first year to result in a win-win for both the County and the contractor
- Scheduling – must be defined and dedicated staff with smaller projects

# Project Team

- Johnson County Wastewater is seeking to enter into a Term and Supply contract with one or more wastewater collection system construction firms.
- Intent is to contract with General (Prime) Contractors which will self-perform the majority of the work.
- Intent is for each Prime Contractor to submit with a Preferred Subcontractor to do restoration and landscaping work.
  - Preferred subcontractor will be evaluated as part of the RFP process and will provide rates and labor/materials markups but would not be contractually bound to Prime Contractor.
- **The Primes and Preferred Subs are referred to as the “Project Team.”**
- Other subcontractor work may be required on a project-by-project basis and proposed subcontractors may be named in the RFP.

# Project Team Qualifications

- RFP Contract will be awarded based on the evaluation criteria outlined in the RFP and the firms scores and ranking, which includes a cost component in phase 2 should the County decide to conduct interviews
- **Criteria include:**
  - Prime Contractor's experience
    - Personnel's and Projects
  - Previous work, especially wastewater projects, completed by Project Team (either as separate entities or jointly)
  - Project understanding and approach
  - Availability of applicable resources (equipment)
  - Approach to this contract

# Summary of Forms for RFP

- Section 9.39. Certification of Bonding Capacity
  - Must be notarized and addressed to Board of County Commissioners. See Section in RFP for more details. **There is not a template form provided for this requirement – Contractors submit their own.**
- Section 14 – RFP Form Descriptions and Templates
  1. Table of Contents
  2. Form 1 – General Info: Project Understanding & Approach
  3. Form 2 – Key Personnel Resumes
    - A. Prime Contractor
    - B. Preferred Subcontractor
  4. Form 3 – Project Experience and References
    - A. Prime Contractor
      - Up to twelve (12) projects
    - B. Preferred Subcontractor
      - Up to five (5) projects
  - Form 4 – Prime Contractor Project Detail (Optional)
  - Form 5 – Contractor Resources
  - **Reminder: Forms 6, 7, 8 and 9 Cost Proposals shall not be submitted with your proposals.**

# Evaluation: Proposal Phase

<u>PROPOSAL</u>	<u>Maximum Points</u>
<p><b>1. Prime Contractor's Qualification and Project Experience:</b></p> <p>Consider previous project experience and references listed in the proposal. The Prime Contractor of the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include pumping projects, liquids treatment projects, and solids treatment projects. Experience should include managing multi-disciplinary teams, including subcontractors, to achieve quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed Project Team should be emphasized. Refer to Section 6 – Qualifications and <b>Forms 1, 3A, and 4.</b></p> <p>Is the Prime Contractor of the Project Team experienced in providing services similar to that requested in the RFP?</p>	<b>25</b>
<p><b>2. Prime Contractor's Personnel Qualifications and Experience:</b></p> <p>Consider resumes of key staff, project managers, and superintendents, to determine the level of experience working on wastewater treatment plant and pumping projects. Review years of experience as well as relevant project experience. Qualifications and experience shall be evaluated for all project team members. Refer to Section 6 – Qualifications and <b>Form 2A.</b></p> <p>Consider comparable experience and background of the <u>specific</u> personnel that shall be assigned to the County's project(s) as outlined in the proposal. Also consider the <u>specific</u> involvement of those persons in projects noted in the proposal.</p>	<b>30</b>
<p><b>3. Preferred Subcontractor's Personnel Qualifications and Project Experience:</b></p> <p>Consider previous project experience and references listed in the proposal. The preferred subcontractor on the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed project team should be emphasized. Refer to <b>Forms 2B and 3B.</b></p> <p>Consider the preferred subcontractors' experience, and specific personnel assigned to the County's projects as outlined in the proposal. Have the preferred subcontractors teamed with the prime contractor previously?</p>	<b>15</b>
<p><b>4. Project Understanding and Approach:</b></p> <p>Evaluate the Project Team's project approach and understanding of the Scope of Services required in the RFP as evidenced by their proposal. Project Team indicates a clear understanding of the project and approach. Project Team has a previous history of term and supply or design/build type projects. Refer to <b>Form 1.</b></p>	<b>15</b>
<p><b>5. Available and Applicable Resources:</b></p> <p>Project Team has access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair. The Project Team demonstrates other resources which may make the team uniquely qualified for work on wastewater facilities. Note: The Contractor is not required to own equipment. Refer to <b>Form 5.</b></p> <p>Evaluate the extent of applicable resources available to the firm to complete the County's project(s).</p>	<b>10</b>
<p><b>6. Overall Responsiveness to the RFP:</b></p> <p>The information provided is complete, organized, and in accordance with the instructions in the RFP.</p> <p>Consider whether all requested information was furnished by the firm in the format required by the RFP.</p>	<b>5</b>

# Evaluation: Interview Phase

## INTERVIEW

## Maximum Points

**1. Project Experience:**

**25**

Project Team appears to have appropriate experience and history of satisfactory project outcome for similar type projects. Project Team is able to meet schedules and budgets. Project Team appears to be committed to safety and has documented protocols. References related to these issues may be contacted prior to interviews.

Based on the interview, evaluate the Project Team's experience with similar projects. Based upon the interview and any contact with previous clients of Project Team determine capability and demonstrated ability to meet schedules and deadlines. Project Team appears to have a commitment to safety.

**2. Project Understanding and Approach:**

**20**

Project Team presents a clear understanding of the term and supply contract and has a feasible approach. Project Team presented sufficient information in an organized and professional manner. Able to address questions posed during the interview in a thoughtful and satisfactory manner.

Does the proposed project approach expressed in the interview appear to be realistic and feasible? Has the Project Team demonstrated that they have a good understanding of term and supply contracts?

**3. Personnel and Other Resources:**

**20**

Based on the interview and resumes of key staff, Project Team demonstrates having a team of project managers, superintendents, and other supporting personnel that are experienced in wastewater treatment facility and pump station construction projects.

Based on the interview consider the involvement and experience of key personnel that will be assigned to the proposed project(s). Evaluate their response to questions, knowledge demonstrated, and involvement in discussion.

**4. Staff Utilization:**

**10**

Based on the interview and any contact with previous clients of firm, determine the capability and demonstrated ability to meet schedules and deadlines.

**5. Cost Proposal (Forms 6, 7, and 8)**

**25**

**(Will only be required of finalists and is due at the time of the interview)**

# Award of the Contract

- Selection committee along with Purchasing recommends contractor(s) for award of the contract
- Recommendation is presented before the Board of County Commissioners for their review and consideration for authorization
- If awarded, required documents including certificates of insurance will be collected and then agreements will be signed



# Project Procedures

- JCW may solicit bids or select a Contractor from those awarded via the RFP process for a project.
- Negotiate a not-to-exceed price with Contractor
- JCW will issue an authorization and a purchase order for the not-to-exceed price
  - Authorization will establish project scope and any project specific terms and conditions
  - Authorization will adopt plans and specifications (when applicable) into the Agreement
- Maintenance Bonds may be requested by JCW

# Measurement and Payment

- Contractor will bill JCW for time and materials per the Measurement and Payment section of the RFP
  - Goal is to pay for actual time worked and actual materials used plus reasonable overhead and profit markups.
  - Most labor costs will be per Billing Rates provided on Form 6

# Measurement and Payment

- Section 5.2.4. Measurement and Payment

Line	Cost Item or Calculation (using Form 6 for Markups)
A	Equipment & Materials Incorporated into the Work
B	General Contractor Labor
C	Construction Equipment Used to Perform the Work
Subtotal 1	A + B + C
D	Overhead and Profit ( <u>i.e.</u> OHP Decimal Markup x Subtotal 1)
Subtotal 2	Subtotal 1 + D
E	Subcontractor Costs
F	Contractor Markup on Subcontractor ( <u>i.e.</u> Contractor Decimal Markup x E)
Subtotal 3	E + F
Subtotal 4	Subtotal 2 + Subtotal 3
G	Bonds and Insurance ( <u>i.e.</u> B&I Decimal Markup x Subtotal 4)
H	Call Out Fee for Unplanned or Emergency Project
I	At-Cost Items ( <u>i.e.</u> Permit Fees)
<b>Total Cost</b>	<b>Subtotal 4 + G + H</b>

# Form 6

- Section 14.7. and as a fillable form in IonWave under the Attachments tab
- Labor

JOB CLASSIFICATION	BILLING RATE (\$/Hr) <sup>1</sup>		
	Regular	Overtime <sup>2</sup>	Premium <sup>3</sup>
<b>Management, Supervision, Engineering:</b>			
Project Manager/Project Engineer <sup>4</sup>			
Project Supervisor/Superintendent <sup>4</sup>			
Foreman			
Restoration/Landscape Project Manager/Project Engineer <sup>4</sup>			
Restoration/Landscape Project Supervisor/Superintendent <sup>4</sup>			
Restoration/Landscape Foreman			
<b>Construction Trades:</b>			
Equipment Operator			
Apprentice <sup>5</sup>			
Laborer			
Truck Driver/Hauler/Teamster			
Restoration/Landscape Laborer			

# Form 6 (continued)

- Markups

**Table 6-2 – Overhead & Profit (Line D)<sup>1</sup>**

Subtotal 1: Less than \$100,000	%
Subtotal 1: \$100,001 - \$500,000	%
Subtotal 1: \$500,001+	%

<sup>1</sup>Markup shall be multiplied by Subtotal 1. Subtotal 1 is defined as the cost of wastewater equipment, materials incorporated into the work, contractor's labor, and contractor's equipment costs to perform the work. This does not include markups on subcontractor or preferred subcontractor work.

**Table 6-3 – General Contractor Markup on Subcontractor Work (Line F)<sup>2</sup>**

Line F:	%
---------	---

<sup>2</sup>Markup shall be multiplied by the sum of the costs of all subcontractors on the project (both Preferred Subcontractors and other subcontractors).

**Table 6-4 – Bonds & Insurance (Line G)<sup>3</sup>**

Subtotal 4: Less than \$100,000	%
Subtotal 4: \$100,001 - \$500,000	%
Subtotal 4: \$500,001+	%

<sup>3</sup>Markup shall be multiplied by Subtotal 4, which is defined as the sum of Subtotals 2 and 3.

**Table 6-5 – Johnson County Purchasing Card Charges<sup>4</sup>**

Decimal Percent Charge for Use of P-Card	%
--	---

<sup>4</sup>For small expenditures (generally under \$10,000), JCW may elect to pay by Purchasing Card (P-Card). If your firm charges a markup for P-Card use, it must be documented here. If your firm does not, mark 0%.

# Form 7

- Equipment Rates

EQUIPMENT TYPE AND SIZE	BILLING RATE (\$) <sup>1</sup>						
	Mobilization	Hourly	Daily	Weekly		Monthly	
	Charge	Active	Active	Active	Standby	Active	Standby
Large Excavator (greater than 45,000 lbs)							
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)							
Small Excavator (20,000 lbs or less)							
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)							
Skid Loader (bobcat)							
Dump Truck (Tandem Axle)							
Track Loader							
Rubber Tire Backhoe							
Wheel Loader							
Pump with Generator	N/A						
Pickup with Tools	N/A						
Truck (2 ton or equal)	N/A						
Trailer	N/A						
Air Compressor and Jackhammer	N/A						
Trench Shoring	N/A						
Additional Equipment (Optional) <sup>2</sup>							

# Form 8

- Call Out Fees for Unplanned or Emergency Projects

Call Out Timeframe	Call Out Fee (\$)
Called out during a normal work shift, immediate response: <sup>1</sup>	
Call out after normal work shift <sup>2</sup>	
Call out during the weekend <sup>3</sup>	
Call out during a Holiday <sup>4</sup>	

# Example Invoice Markup

Example Project		Example Markups
Line A: Equipment & Materials Incorporated into the Work:	\$100,000	
Line B: General Contractor Labor:	\$50,000	
Line C: Construction Equipment Used to Perform the Work:	\$10,000	
Subtotal 1:	\$160,000	
Subtotal 1:	\$160,000	
Line D: Overhead and Profit:	\$17,600	11%
Subtotal 2:	\$177,600	
Line E: Sum of Subcontractors' Costs (See Note 1):	\$25,000	
Line F: Contractor Markup on Subcontractors (See Note 1):	\$1,250	5%
Subtotal 3:	\$26,250	
Subtotal 4:	\$203,850	
Line G: Bonds and Insurance:	\$2,039	1%
Line H: Call Out Fee for Unplanned Work	\$1,690	
Line I: At Cost Items (ex: Permit Fees)	\$1,500	
<b>Total (Subtotal 4 + Line G + Line H):</b>	<b>\$209,079</b>	




# Form 9

- Scenarios

- This form contains three (3) unique scenarios or sample projects
- Scenarios include assumed hours needed to complete projects. Contractor fills in their hour rates and markups for each of the projects.
- Rates and markups should be identical to those provided in Forms 6, 7, 8, and 9.
- Each of the three (3) scenarios will be summed together and the total of all of the scenarios will be used as the comparative rate which all firms will be compared.

# Important Dates & Documents

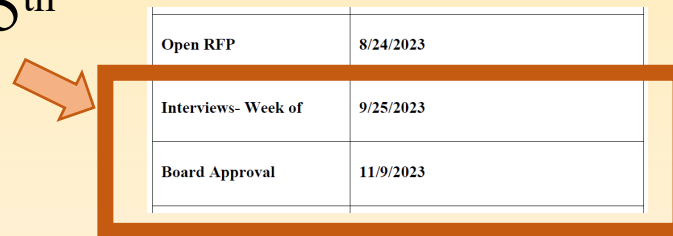
- A list of important deadlines can be found in Section 1. This schedule is tentative; should any changes occur, please see subsequent Addendum documents.
  - Questions are detailed in Section 4 and both questions & answers can be viewed in IonWave. The deadline to submit is 5 PM on deadline date.
  - Responding to RFP is detailed in section 13. Responses must be submitted by 2 PM.



<b>Pre-Proposal Meeting (Mandatory)</b>	<b>8/8/2023</b>
<b>Question Deadline</b>	<b>8/17/2023</b>
<b>Open RFP</b>	<b>8/24/2023</b>
<b>Interviews- Week of</b>	<b>9/25/2023</b>

# Important Dates & Documents (continued)

- Our goal is to notify shortlisted contractors by Friday, September 8<sup>th</sup>
- Interviews are tentatively scheduled during Week of September 25<sup>th</sup>




Open RFP	8/24/2023
Interviews- Week of	9/25/2023
Board Approval	11/9/2023

- Contractors invited to interviews must submit their Forms 6, 7, 8 and 9 in sealed envelopes at the time of the interview.
- Safety Program Documentation may be requested of shortlisted firms

# Important Dates & Documents (continued)

- Our goal is to notify Contractors whom we are recommending for award with notice by October 27<sup>th</sup>
  - Insurance Certificate and CORE4 Tax Clearance Documents will be requested at this time
- Award of RFP and contract authorization by BOCC is tentatively scheduled for November 9<sup>th</sup>
- Project start date is tentatively scheduled for December 15<sup>th</sup>



Open RFP	8/24/2023
Interviews- Week of	9/25/2023
Board Approval	11/9/2023
Project Begins	12/15/2023

# Important Dates & Documents (continued)

- For any **Notice to Proceed** to be issued, Purchasing must receive the Certificate of Insurance (to meet the standards set by this RFP), the CORE4 Tax Clearance documentation, and the contract must be fully executed.

# Required in Responses

**Reminder: Verify your access to IonWave *at least* two (2) days prior to the RFP Opening deadline (August 24<sup>th</sup> at 2 PM).**

- Your response (proposal) to the RFP
  - Notarized Statement of Bonding Capacity
    - Section J in Table of Contents
- Review of and response to all RFP Attributes
  - This will include acknowledgements of any addendums we issue
- If shortlisted and invited to interviews:
  - Sealed Forms 6, 7, 8, and 9
  - Documented Safety Program (upon request)

# Thank you!

- We appreciate your participation in this meeting today and your interest in working with the County!
- Questions may be directed to Lisa Robbins, Senior Purchasing Administrator via IonWave or via email at [Lisa.Robbins@jocogov.org](mailto:Lisa.Robbins@jocogov.org).
- Please register in IonWave, check your supplier account and update as needed, and verify accessibility at least two days prior to deadline.

### Pre-Proposal Conference Questions

**Question:** Who can submit a proposal?

**Answer:** If a person from the firm was represented at the Mandatory Pre-Proposal Conference, a Proposal can be submitted by the firm (Preferred Subcontractor not required to attend).

**Question:** How can I get experience on Water/Wastewater Projects with County?

**Answer:** The County advertises and bids wastewater projects regularly. Any construction firm may submit bids on projects that are advertised.

**Question:** Is a Bid Bond required?

**Answer:** No

**Question:** Is Certified Payroll required for invoices?

**Answer:** No

**Question:** What are the insurance requirements?

**Answer:** See Section 10.1 -Insurance of the RFP document

**Question:** What if additional or special insurance requirements are needed for a specific project or authorization?

**Answer:** Additional insurance can be added if needed for specific project authorizations and the firm can invoice this cost as a miscellaneous cost. See Section 5.2 – Project Procedures, Subsection 4.j Measurement and Payment - Line I - Miscellaneous Costs (No Markup Allowed).





# Financial Management & Administration

**REQUEST FOR PROPOSAL  
FOR  
ON-CALL WASTEWATER SEWER COLLECTION  
SYSTEM INFRASTRUCTURE REPAIRS**

**RFP NUMBER: 2023-045**

**ISSUE DATE: 7/25/23**

**OPEN DATE & TIME: 8/24/2023 2:00 PM**

**Purchasing Administrator: Lisa Robbins, CPPB**

**Contact Information: [lisa.robbsins@jocogov.org](mailto:lisa.robbsins@jocogov.org) 913-715-0590**



**TC Fuller Construction LLC**

August 22, 2023

Board of County Commissioners  
Johnson County, Kansas c/o Risk Manager  
111 South Cherry, Suite 2400  
Olathe, Kansas 66061-3441

Re: RFP No. 2023-045  
On-Call Wastewater Sewer Collection System Infrastructure Repairs  
Letter of Transmittal

TC Fuller Construction LLC is a small business that my wife and I started three years ago doing heavy civil work. We have over 29 years of experience in heavy civil work. Our focus is on site utilities, structural concrete, flatwork and excavation. We are in good standing with the State of Kansas and have applied for our Johnson County, Kansas License. We are a women owned business certified with the State of Missouri. We are also signatory with the local unions. This allows us to pull from the union experienced resources as needed for larger projects. We believe in mentoring and training new employees and having them a part of the TC Fuller Construction family.

Currently we have on call contracts with Missouri American Water, University of Kansas, City of Belton, MO and City of Raymore, Mo. We feel that we thrive on this type of work. Being a small company we are very hands on in all aspects of the work. We enjoy working closely with the Owner's and developing long term relationships.

We appreciate the opportunity to provide a proposal for your project.

Respectfully,

TC FULLER CONSTRUCTION LLC

Charlie Fuller  
Co-Owner

Note: We have experience with by pass pumping.

TC Fuller Construction  
35702 East State Route B  
Garden City, MO 64747  
Charles Fuller 816-564-6519  
[charlie@tcfullerconstruction.com](mailto:charlie@tcfullerconstruction.com)

# TABLE OF CONTENTS

Response  
Page Number

<b>COVER SHEET OF THE RFP</b>	<b>1</b>
<b>A. LETTER OF TRANSMITTAL:</b> Submit on firm’s letterhead; limit to two (2) single-sided pages. 1. Include additional relevant information not requested elsewhere in the RFP. 2. The signature of the letter shall be that of a person authorized to represent and bind the firm	<b>2</b>
<b>B. TABLE OF CONTENTS:</b> Submit this page and include the appropriate page numbers.	<b>3</b>
<b>C. FORM 1: GENERAL INFORMATION/PROJECT UNDERSTANDING AND APPROACH</b>	<b>4</b>
<b>D. FORM 2A: PRIME CONTRACTOR PERSONNEL INFORMATION AND RESUMES:</b> Form 2A provided (Form 2A may be reproduced and attached in sequence if more space is required). Include/limit number of resumes to key personnel.	<b>7</b>
Restoration & Landscaping <b>E. FORM 2B: PREFERRED <del>ELECTRICAL</del> SUB-CONTACTOR INFORMATION AND RESUMES:</b> Form 2B provided (Form 2B may be reproduced and attached in sequence if more space is required). Limit number of resumes to key personnel. Addendum #2	<b>16</b>
<b>F. FORM 3A: PRIME CONTRACTOR PROJECT EXPERIENCE AND REFERENCES:</b> Form 3A provided. Provide the requested information for up to 12 projects.	<b>23</b>
Restoration & Landscaping <b>G. FORM 3B: PREFERRED <del>ELECTRICAL</del> SUB-CONTRACTOR PROJECT EXPERIENCE AND REFERENCES:</b> Form 3B provided. Provide the requested information for up to 5 projects. Addendum #2	<b>26</b>
<b>H. FORM 4: PRIME CONTRACTOR PROJECT DETAIL (OPTIONAL):</b> Form 4 provided. List up to five (5) projects from Form 3A (Form 4 may be reproduced and attached in sequence if more space is required).	<b>28</b>
<b>I. FORM 5: CONTRACTOR-RESOURCES:</b> Form 5 provided. List equipment owned or readily available by the contractor and include any other resources that should be considered.	<b>29</b>
<b>J. CERTIFIED STATEMENT OF BONDING CAPACITY:</b> See Requirements in Section 9.39.	<b>34</b>
<b>K. FORMS 6, 7, 8, AND 9 ARE NOT TO BE SUBMITTED WITH INITIAL PROPOSAL:</b> SHORT LIST FIRM SUBMISSIONS: Sealed Forms 6, 7, or 8 (UPON REQUEST).	Upon Request
<b>L. DOCUMENTED SAFETY PROGRAM:</b> Include Confined Space Program (UPON REQUEST)	Upon Request

FORM 1 – General Information: Project Understanding and Approach

<p>1. Project Team Prime Contractor Name &amp; Address:</p> <p>TC Fuller Construction LLC 35702 East State Route B Garden City, MO 64747</p>	<p>1b. Licensed to do business in the State of Kansas? _____X___ yes      no _____</p>
<p>1a. Firm’s Principal Contact for this contract (Name, Title, Address, Phone No., and email address):</p> <p>Charlie Fuller, Co-Owner 35702 East State Route B, Garden City, MO 64747 816-564-6519 charlie@tcfullerconstruction.com</p>	<p>1c. Licensed to do business in Johnson County, KS? <u>Applied For</u> _____ yes      no ___</p>
<p>2. Do you have prior experience with term and supply construction contracts, and with contracts paid on a time and material cost basis? If so, please explain. If not, do you have any experience with alternative delivery projects, such as design-build projects?</p> <p>We have prior experience with term and supply contracts and contracts paid on a time and material cost basis. We are currently under an on call contract with Kansas University, Missouri American Water and the City of Belton, MO for water, storm, sanitary, paving and excavation on call services. We have done time and material contracts with Republic Foods and Midwest Scrap. We have had prior experience with design-build projects through a previous employer.</p>	<p>1d. Firm has been in business for <u>  3  </u> years.</p> <p>1e. Firm has been prime contractor for wastewater construction projects for <u>  3  </u> years.</p>
<p>3. Describe your understanding of this RFP. What is the purpose of this project from a JCW perspective? What would be your project approach to meeting JCW’s needs?</p> <p>This RFP would cover most projects less than \$1,000,000 dollars on a time and material basis. It would be for emergency and/or time sensitive work. The work may include gravity sewer piping and manhole repair, sanitary force main and air release valve repair/replacement/maintenance, bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, sanitary stream crossing repairs, replacement and stream restoration, low pressure sewer pipeline and valve repair/maintenance, civil site work including earthwork, trenching, pavement, modification or replacement of landscaping, fencing, traffic control, etc and any other projects as requested. Coordination with property owners and restoration of private property.</p> <p>Our opinion is that JCW would have several contractors under contract for urgent/emergency construction needs that their crews are not able to respond to at that time. Time and material rates for labor and equipment will already be established which will save time and costs on bidding projects and then award of work. JCW would also like to build long term relationships with the on call contractors</p> <p>Our approach would be to mobilize immediately, accessing the resources needed based on the information given from JCW at initial contact. If JCW contact is not based on an emergency, TC Fuller will access the project information provided and discuss with JCW how soon this work needs to be done and any time sensitive requirements. We would advise JCW immediately of any questions or concerns so they can be resolved immediately so work/repairs won’t be delayed.</p>	

4. Comment on your firm's record of completing projects on-time and on-budget.

TC Fuller Construction takes pride in completing all of our projects on-time and on-budget. To date all projects have been completed by the completion dates if not sooner and on budget.

5. How would your firm ensure quality work on JCW projects?

TC Fuller Construction would ensure that all of our team is familiar with your specifications and plans prior to starting work. We utilize electronic tablets in the field which have the JCW specifications on them as well as approved materials and plans at our fingertips. We have preconstruction meetings to discuss the work and answer any questions our team has prior to start of site work so we can hit the job running. We ensure that material submittals have been approved by the Engineer and the proper materials have been ordered and delivered prior to installation in order to meet the plans and specifications. We ensure that everyone knows what samples and tests are required to meet quality of the product prior to installation or during placements. We evaluate and procure the right equipment and tools to maintain quality. We discuss the roles and responsibilities, authority and resources during the different phases of the process of the project. We have ongoing progress meetings to discuss schedule, concerns, issues, resources, material & equipment requirements with your staff as required by the specific project.

6. How would your firm ensure JCW's costs are minimized on projects?

We would do a complete review of plans and specifications and advise any conflicts with dimensions or any obstructions for installation that may have been overlooked or unaware of by the design team prior to project starting. Discuss and coordinate with other contractor's for any access or scheduling conflicts that could delay project for Owner or other contractors. Discuss any concerns with Owner prior to starting work so it can be resolved before work is started and delaying project. Ensure that the materials are approved by JCW prior to installation.

7. List up to three examples of change orders your firm has initiated to improve the outcome for the Owner.

- 1) Advise alternate equipment/materials that could save on installation, equipment and material costs.
- 2) Identify issues before starting project to prevent change orders. Example architectural and structural dimensions don't match.
- 3) Advise rerouting of main or service lines to avoid obstructions and/or removal of existing foundations not shown on drawings.

8. What type of work would be considered your firm's niche or specialty? What does your firm do that might be considered above the competition?

Underground utilities such as water, storm and sanitary lines. Excavation and subgrade prep. Structural concrete and flatwork. Being a small business, we have a more hands on approach to our projects. More personal attention to safety, quality and customer service to our clients and their customer base.

9. List some noteworthy accomplishments by your firm (no more than one page, attach to this form if more space is needed).

- a) Getting approval through ISN Network to do business with Missouri American Water. They have strict requirements for training and safety program.
- b) Installing a sanitary line and a 32x14x26' deep storm interceptor in a 13' wide alley using a beam and lagging shoring system.

10. Has your firm ever failed to complete a project? If so, please explain.

No. We have completed all our projects on time.

11. Comment on your firm’s safety record and commitment to safety. Provide your firm’s Experience Modification Rate (EMR) and/or other metrics demonstrating your firm’s commitment to safety.

Our EMR Rating is 0.91. See attached from our insurance carrier. We have had 0 TRIR, LWCR, DART, Fatalities in the last three years.

TC Fuller Construction is committed to a Safety and Health Program designed to meet the needs of the ever-changing conditions, which are common to our industry. This includes continuing education of our employees of procedures, equipment and materials. We recognize that engineering techniques alone are not enough to ensure that exposure to hazards are controlled, the program includes coordination, monitoring and educating the personnel involved in constructing the project. We are dedicated to the goals, as stated by the Occupational Safety and Health Act, “To provide work and a place of work that is free from recognized hazards.” Our objective is to reduce the number of disabling injuries and illnesses to a minimum, not merely in keeping with, but surpassing the best experience of other operations similar to ours. Our goal is “Zero Unsafe Behaviors & Conditions.

12. List the Preferred Restoration & Landscaping Subcontractor that is part of the Project Team

Name & Address:

Worked with Prime Before  or N)?

Welch Silt Fence & Erosion Control, LLC  
P.O. Box 526  
Peculiar, MO 64078  
816-651-7358

FORM 2A – Prime Contractor Personnel Information and Resumes

<p>1. List your firm’s officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).</p> <p>Charlie Fuller, Co-Owner, Safety Manager, QC Manager, Operator Tina Fuller, Co-Owner, Human Resource Manager, Accounting Manager Ramona Chappell, Project Manager</p>
<p>2. How many people are employed by your firm (by categories such as Executive, Administrative, Number of crews and their specialties, etc.)?</p> <p>Executive – 2 Administrative – 3</p> <p>Concrete Crews – 2 Pipe Crews – 2 Excavation - 2</p>
<p>3. Does the Project Manager(s), who will be assigned to lead JCW projects, have at least 10 years’ experience in wastewater facility construction, and at least 5 years as a Project Manager? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Briefly explain: Ramona Chappell worked for Kissick Construction from September 4, 2000 until she retired on May 26, 2022. During that time frame, she worked on many heavy civil projects including wastewater facility construction. Please see attached partial list of projects that has more detailed information than what is shown on her resume.</p> <p>Does the Superintendent(s), who will be assigned to JCW projects, have at least 10 years’ experience in wastewater facility construction, and at least 5 years as a Superintendent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Briefly explain: Charlie Fuller has worked in the heavy civil construction industry for 29 years. He worked for Kissick Construction for 26 years installing mostly site utilities including water, storm, sanitary and excavation work before starting his own business. He has been a superintendent for over 20 years.</p>
<p>4. Please attach resumes for key personnel of the Project Team’s Prime Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.</p> <p>See attached resumes.</p>

5. Brief resume of key persons who shall be assigned to the County's project. See Attached	
a. Name and Title:	Ramona Chappell, Project Manager
b. Proposed Role on this Contract (e.g. Construction Superintendent)	Project Manager
c. Name of firm with which associated:	TC Fuller Construction LLC
d. Years' experience: With the firm <u>1</u> With other firms <u>27</u>	
e. Education or Trade: Degree(s)/Year/School/Specialization	Associate of Arts Mid Management, 1978, Kansas City Kansas Community College, Mid-Management
f. Active Registration: Year First Registered/Discipline	Not applicable
g. Project Experience on Wastewater Projects listed in Form 3A: List all projects and role on those projects from Form 3A that apply (may simply use project number from Form 3A - for example: Project 1 – Project Manager for Emergency Line Repair Project).	
<u>Project:</u>	<u>Role:</u>
See attached	
h. Project Experience on Wastewater Projects not in Form 3A: Describe any experience on wastewater projects not included in Form 3A. This may include experience with other firms.	
See attached	



# RAMONA CHAPPELL

## Project Manager



A valued project manager, Ramona’s approach focuses on commitment, efficiency and thoroughness. She has excellent organization, attention to detail and time management skills, and applies her expertise to every project.

Ramona’s background in deep foundations has allowed her to become an expert in managing a variety of projects for both piling and shoring construction as well as heavy civil projects. With vast knowledge of a variety of soil conditions across the Midwest, Ramona’s experience on projects in

challenging construction environments has translated into superior project management skills, especially in the areas of deep foundations. Ramona has developed a strong relationship with regional geotechnical engineers to solve challenging projects as a team, often in a design build delivery model.

As project manager, Ramona will handle schedule coordination, material procurement coordination, submittals and budget management assistance and project progress documentation.

### CREDENTIALS //

**Years of Experience: 28**

**Years with TC Fuller Construction 1**

**Years with Kissick: 22 Retired**

**Education:**

- Kansas City, Kansas Community College  
*Business Management*
- QA/QC Training
- Army Corps of Engineers  
*Kansas City District*
- Primavera P6 Scheduling and Contract Manager
- HCSS Heavy Job Manager
- HCSS Heavy Bid and Vista by Viewpoint Project Management & Accounting

**Certifications:**

- OSHA 30 Hour certification
- OSHA 10 Hour Supervisor Training
- OSHA Competent Person Training
- Concrete Technology Certification,  
Midwest Concrete Industry
- CPR/First Aid
- Working Above or Near Water

**Affiliations:**

- Deep Foundations Institute
- Design Build Institute of America  
Midwest Chapter

### PROJECT EXPERIENCE //

**Project: West Cambridge Culvert: Triple Box Culvert, Storm and Water**

Owner: City of Belton, MO  
 Contractor: TC Fuller Construction LLC  
 Contract Amount: \$905,491  
 Completion: 2023

**Project: Bannister Federal Complex Environmental Clean Up - BTD LLC**

Owner: BTD  
 Contractor: Kissick Construction  
 Contract Amount: \$72,290,087  
 Completion: April, 2022

**Project: Topeka Levee Concrete Improvement**

Owner: US Army Corps of Engineers KC District  
 Contractor: Kissick Construction  
 Contract Amount: \$1,652,800  
 Completion: January, 2020

**Project: Camp Funston Storm Sewer Improvements**

Owner: US Army Corps of Engineers KC District  
 Contractor: Kissick Construction  
 Contract Amount: \$1,316,520.00  
 Completion: May, 2021





**TC Fuller Construction LLC**

**Ramona Chappell  
Project Manager  
Partial Project Experience**

1. West Cambridge Triple Box Culvert, Belton, MO

Project Started: June 2022  
Project Completion: February 13, 2023  
Contract Amount: \$905,491  
Engineer: Wilson & Company  
Owner: City of Belton, MO Public Works

My role was the project manager with TC Fuller Construction who was the General Contractor for this project. The project consists of removal and replacement of an existing double box culvert with a triple 12'x7' box culvert and appurtenances, including upstream and downstream grading and riprap installation, roadway restoration with curb inlets and sidewalk construction. Our installation work was delayed due to Spire Gas Company relocating their gas line that was running through the new culvert location. We coordinated with City of Belton, Spire Gas and & AT&T for utility relocation. Installed new water line, restored residential driveways, curb and sidewalks.

2. 2014 Water System Improvements Transmission for Tri-County Water Authority

Project Started: July 8, 2016  
Project Completion: December 17, 2018  
Contract Amount: \$16,272,345.48  
Engineer: HDR Engineering, Lee's Summit, MO 64064  
Owner: Tri County Water Authority

My role was project manager for Kissick Construction who was the General Contractor for this project. The project consisted of construction approximately 135,000 linear feet of 16 inch DIP potable water transmission main, 2935 LF of 14" HDPE, 1,575 LF of 16" HDPE, 340 LF of 20" HDPE, 1,482 LF of street/highway/railroad bores as well as boring under Little Blue River and Mouse Creek utilizing 30 inch steel casing, site restoration and all associated appurtances. The construction covered from Tyer Road to Colbern Road, SW Wyatt Road between Cook Road to Shroust Road, Colbern Road to Jefferson Street, Jefferson Street to Byars Road and Byars Road to Robinson Pile Road. Coordinated with MODOT, Union Pacific Railroad, KC Southern Railroad, Grain Valley, Lee's Summit and Grandview, MO. The transmission line was installed through residential and commercial properties. The existing facilities had to be maintained during installation of the new line. After installation, we tied into the existing pump stations.

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35702 East State Route B  
Garden City, MO 64747  
Charles Fuller 816-564-6519  
[charlie@tcfullerconstruction.com](mailto:charlie@tcfullerconstruction.com)



**TC Fuller Construction LLC**

3. Fairfax-Jersey Creek Unit BPU Floodwall Underseepage Improvements, Kansas City, KS

Project Started: October, 2015  
Project Completion: July, 2017  
Contract Amount: \$653,029.23  
Owner/Engineer: Army Corps of Engineers

My role was the project manager and Kissick Construction worked as a subcontractor on this project. We installed 895' toe drain along the floodwall with two manhole structures. Installed 888 lineal feet of RCP Storm Line ranging from 18" to 36" diameter.

4. Turkey Creek Rainbow Interceptor, Wyandotte County, KS

Project Started: August 26, 2013  
Project Completion: July 14, 2014  
Contract Amount: \$4,415,181.73  
Engineer: Army Corps of Engineers  
Owner: Unified Government of Wyandotte County, KS

My role was the project manager for this project. Kissick Construction was the General Contractor. This project was the construction of a storm water collection system that will collect hillside runoff and discharge into Turkey Creek. It consisted of 2,220 lineal feet of RCP Pipe in various sizes along the southwest side of Rainbow Extension beginning at Turkey Creek passing beneath the existing Turkey Creek Levee and the BNSF Railroad Tracks, across Southwest Boulevard and ending at Rainbow Blvd. In addition to the interceptor, the project included street wide grate inlets, assorted storm sewer infrastructure, utility relocations and pavement remediation.

5. Turkey Creek Basin Cherokee Interceptor, Wyandotte County, KS

Project Started: February 18, 2013  
Project Completion: October 11, 2013  
Contract Amount: \$2,748,052.23  
Engineer: Army Corps of Engineers  
Owner: Unified Government of Wyandotte County, KS

My role was the project manager for this project. Kissick Construction was the General Contractor. The project consisted of the construction of storm water pipes to collect hillside drainage and to convey it to Turkey Creek. Alignment of the main interceptor passes down Cherokee Street from its south end, under BNSF railroad tracks and continues under an open area before outletting to Turkey Creek. The main interceptor extends approximately

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**TC Fuller Construction LLC**

1840 lineal feet from the inlet in an existing ditch just south of the southeast end of Cherokee Street to Turkey Creek. Project included approximately 510 lineal feet of 48" RCP storm pipe connecting a large drainage area along Minnie Street with the main interceptor. Installed lateral runs along Iowa and Seminary Street to reach Cherokee Interceptor.

6. National Starch Underseepage Control, North Kansas City Unit, Lower Section, North Kansas City, MO

Project Started: November 28, 2012

Project Completion: July 5, 2013

Contract Amount: \$739,210.56

Owner/Engineer: Army Corps of Engineers

My role was project manager. Kissick Construction was the General Contractor. We constructed seven pressure relief wells near the landward mid slope toe of the North Kansas City Levee Embankment; constructed discharge lines from the pressure relief wells to the existing pump station; perform all pressure relief well development; performed all relief well testing and restored area. Work included ten manhole structures, 1247 lineal feet of 18" RCP storm pipe.

TC Fuller Construction  
35702 East State Route B  
Garden City, MO 64747  
Charles Fuller 816-564-6519  
[charlie@tcfullerconstruction.com](mailto:charlie@tcfullerconstruction.com)

<p>5. Brief resume of key persons who shall be assigned to the County's project. See Attached</p>				
<p>a. Name and Title: Charlie Fuller, Owner &amp; Construction Superintendent</p>				
<p>b. Proposed Role on this Contract (e.g. Construction Superintendent) Construction Superintendent, Safety Officer, Quality Control Manager</p>				
<p>c. Name of firm with which associated: TC Fuller Construction LLC</p>				
<p>d. Years' experience:  With the firm <u>3</u> With other firms <u>26</u></p>				
<p>e. Education or Trade: Degree(s)/Year/School/Specialization  Operators Union, OSHA 10 &amp; 30 Hour, 40 hour Hazwopper Training, Competent Person Training</p>				
<p>f. Active Registration: Year First Registered/Discipline  Not applicable</p>				
<p>g. Project Experience on Wastewater Projects listed in Form 3A: List all projects and role on those projects from Form 3A that apply (may simply use project number from Form 3A - for example: Project 1 – Project Manager for Emergency Line Repair Project).</p> <table border="0"> <tr> <td style="padding-right: 100px;"><u>Project:</u></td> <td><u>Role:</u></td> </tr> <tr> <td colspan="2"><u>See attached</u></td> </tr> </table>	<u>Project:</u>	<u>Role:</u>	<u>See attached</u>	
<u>Project:</u>	<u>Role:</u>			
<u>See attached</u>				
<p>h. Project Experience on Wastewater Projects not in Form 3A: Describe any experience on wastewater projects not included in Form 3A. This may include experience with other firms.</p>				

# CHARLIE FULLER

## General Superintendent



As CO-Owner and Operations Manager, Charlie is recognized for his expertise in the field. He brings a high level of organization, on-site administration and problem solving skills to the project site.

Charlie is a team player and a strong leader. His experience managing projects with fast track schedules and complex environments has allowed him to build excellent relationships with clients and vendors in the industry.

Charlie brings more than 29 years' experience and specializes in piping, grading and complex concrete projects. He contributes his success to the wide range of projects he has completed as well as the quality team members he has been fortunate to work with through the years.

Charlie will be responsible for over-site, quality control, schedule coordination and control of field

coordination, material procurement, specification compliance and project documentation.

### Career Highlights //

Years of Experience: 29

Years with TC Fuller Construction: 3

Years with Kissick Construction: 26

#### *Certifications:*

OSHA 30 hour Supervisor Training

OSHA 10 hour Training

OSHA Competent Person Training

40 hour HazWoper Training

### PROJECT EXPERIENCE

Project: **West Cambridge Culvert: Triple Box Culvert, Storm and Water**

Owner: City of Belton, MO

Contractor: TC Fuller Construction LLC

Contract Amount: \$905,491.46

Completion: 2023

Project: **Country Lane Storm Inlet Rehabilitation**

Owner: City of Raymore, MO

Contractor: TC Fuller Construction LLC

Contract Amount: \$37,496.00

Completion: 2023

Project: **Bridge/Culvert Cleaning & Repairs**

Owner: City of Raymore, MO

Contract Amount: 75,589.00

Completion: 2022

Project: **KU Parking Lot 214 Waterline: Site Utilities**

Owner: University of Kansas

Contractor: Bettis Asphalt & Construction, Inc.

Contract Amount: \$48,000.00

Completion: 2022



TC Fuller Construction LLC

**Project: KU Medical Center Office Building:  
Site Utilities and Deep Foundations**

Owner: University of Kansas Medical Centre  
Contractor: Turner Construction  
Contract Amount: \$2,662,363  
Completion: 2011  
Contract Amount: \$518,029

**Project: Independence Regional Hospital: Site  
Utilities and Electrical Package**

Owner: Independence Regional Hospital  
Contractor: JE Dunn Construction  
Contract Amount: \$2,870,000.00  
Completion: 2005

**Project: Kansas State University Jayhawk-  
Phase 3**

Owner: State of Kansas  
Contractor: Kissick Construction Co.  
Contract Amount: \$2,900,000  
Completion: 2015

**Project: Irwin Army Community Hospital:  
Deep Foundations, Site Utilities**

Owner: Army Corps of Engineers  
Contractor: Walton Construction  
Contract Amount: \$2,427,331  
Completion: 2011

**Project: MoDOT Safe and Sound Bridge:  
Bridge Construction**

Owner: State of Missouri  
Contractor: Kiewit Construction Co.  
Contract Amount: \$4,500,000  
Completion: 2013



## FORM 2B –Preferred Restoration & Landscaping Subcontractor Information and Resumes

(Provide Form 2B for each Project Team Preferred Sub-Contractor (if more than one))

<p>1. Project Team Preferred Sub-Contractor Name and Address:</p> <p>Welch Silt Fence &amp; Erosion Control, LLC PO Box 526 Peculiar, MO 64078</p>
<p>2. Type of Work Sub-Contractor Specializes in (attach company brochure, if available):</p> <p>Turf restoration with seed or sod.</p>
<p>3. Licensed to do business in the State of Kansas: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
<p>4. Licensed to do business in Johnson County, KS: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
<p>5. Firm has been in business for <u>17</u> years.</p>
<p>6. Does your firm have a minimum of five (5) years' experience working on wastewater or utility projects? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please explain: Welch Silt Fence &amp; Erosion Control, LLC, has worked on multiple wastewater projects throughout the metro for many years, including some for Johnson County in 2018 at Indian Creek and Johnson County Wastewater SMTC1 in 2019.</p>
<p>7. Attach a list of projects your firm has completed during the past five years using Form 3B (list up to five projects).</p>
<p>8. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).</p> <p>Billy Elmore- Laborer- Foreman Nick Smith- Laborer Jasper Love- Laborer</p>



9. Please attach resumes for key personnel of the Preferred Sub-Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

10. Brief resume of key persons who shall be assigned to the county's project.

a. Name and Title: Billy Elmorer Foreman/Laborer

b. Proposed Role on this Contract (e.g. Construction Superintendent):

Foreman

c. Name of firm with which associated:

Welch Silt Fence + Erosion Control, Inc

d. Years' experience:

With the firm 15 With other firms -

e. Education or Trade: Degree(s)/Year/School/Specialization

OSHA 10

f. Active Registration: Year First Registered/Discipline

OSHA 10 2009

g. Project Experience on Wastewater Projects listed in Form 3B: List all projects and role on those projects from Form 3B that apply (may simply use project number from Form 3B - for example: Project 1 - Project Manager for Clarifier Mechanism Replacement).

Project:	Role:
<u>Project #1</u>	<u>Laborer</u>
<u>Project #2</u>	<u>Laborer</u>
<u>Project #3</u>	<u>Laborer</u>
<u>Project #4</u>	<u>Foreman</u>
<u>Project #5</u>	<u>Foreman</u>

h. Project Experience on Wastewater or Utility Projects not in Form 3B: Describe any experience on wastewater or utility projects not included in Form 3B. This may include experience with other firms.

—

9. Please attach resumes for key personnel of the Preferred Sub-Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

10. Brief resume of key persons who shall be assigned to the county's project.

a. Name and Title: Nickolas Smith Laborer

b. Proposed Role on this Contract (e.g. Construction Superintendent):

Laborer

c. Name of firm with which associated:

Welch Silt Fence & Erosion Control, LLC

d. Years' experience:

With the firm 7 With other firms 1

e. Education or Trade: Degree(s)/Year/School/Specialization

OSHA 10

2017

f. Active Registration: Year First Registered/Discipline

OSHA 10 2017

g. Project Experience on Wastewater Projects listed in Form 3B: List all projects and role on those projects from Form 3B that apply (may simply use project number from Form 3B - for example: Project 1 - Project Manager for Clarifier Mechanism Replacement).

Project:	Role:
<u>Project #1</u>	<u>Laborer</u>
<u>Project #2</u>	<u>Laborer</u>
<u>Project #3</u>	<u>Laborer</u>
<u>Project #4</u>	<u>Laborer</u>
<u>Project #5</u>	<u>Laborer</u>

h. Project Experience on Wastewater or Utility Projects not in Form 3B: Describe any experience on wastewater or utility projects not included in Form 3B. This may include experience with other firms.

—

9. Please attach resumes for key personnel of the Preferred Sub-Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

10. Brief resume of key persons who shall be assigned to the county's project.

a. Name and Title: Jasper Love Laborer

b. Proposed Role on this Contract (e.g. Construction Superintendent): Laborer

c. Name of firm with which associated: Welch Silt Fence + Erosion Control, LLC

d. Years' experience:  
With the firm 6 With other firms 7

e. Education or Trade: Degree(s)/Year/School/Specialization  
OSHA 10

f. Active Registration: Year First Registered/Discipline  
OSHA 10 2017

g. Project Experience on Wastewater Projects listed in Form 3B: List all projects and role on those projects from Form 3B that apply (may simply use project number from Form 3B - for example: Project 1 - Project Manager for Clarifier Mechanism Replacement).

Project:	Role:
Project #1	Laborer
Project #2	Laborer
Project #3	Laborer
Project #4	Laborer
Project #5	Laborer

h. Project Experience on Wastewater or Utility Projects not in Form 3B: Describe any experience on wastewater or utility projects not included in Form 3B. This may include experience with other firms.

FORM 3A – Prime Contractor Project Experience and References

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
EX	7/1/2013	3	County Wastewater; Somewhere County, KS	Influent Pump Station Improvements at the County Line WWTP	Prime	\$300,000	Wastewater Engineering
			Contact: John McWastewater, Project Engr. / 555-555-5555 / McWastewater@countywastewater.org	Removed existing 4x4 sluice gates, added stop log provisions to four channels, replaced lower level lighting, replaced gas monitoring system. Bypass-pumping of flow (9 mgd avg) during construction.			
1	7/2023	.5	Missouri American Water, St Joseph, MO	Missouri American Water Rehab Sanitary Garden City, MO	Prime	\$85,000	Missouri American Water
			Dennis Mason, Missouri American Water 816-529-4244	Remove and install 640' of 8" SDR 26 Sanitary line and 13- 4" Service Lines			
2	6/27/23	8	City of Belton, Public Works Department, Belton, MO	Cambridge West Culvert Belton, MO	Prime	\$905,491	Wilson & Company
			Contact: Ryan Haupt, PE, SIT City Engineer 816-892-1267 700 Seabee Road, Belton, MO 64012	Demo existing box culvert and install new 12'x7' triple reinforced box culvert, Install New C900 Water Line, 18" HDPE Storm, Water Main, Sanitary Sewer Encasement, concrete curb, sidewalk, driveways & asphalt paved road. Coordinated work around gas & fiber company relocation of lines.			
3	5/12/2023	1	Bettis Asphalt & Construction, Inc., Topeka, KS	University of Kansas KU Parking Lot 2 Poplar Lane – Storm, Lawrence, KS	Subcontractor	\$104,207	SK Design Group, Inc.
			Contact: Mark Bettis, Vice President/Project Manager 785-783-8850 1800 N.W. Brickyard Road Topeka, KS 66618	Install new storm line 81 LF of 15" RCP with 4 storm structures.			
4	5/11/2023	1	University of Kansas, Lawrence, Kansas	University of Kansas Water Line Replacement, Lawrence, KS Project LzH-12854	Prime	\$33,909.50	
			W. Gary Mohr PE The University of Kansas Facilities, Planning and Development 785-864-5637 w715m926@ku.edu	Replace 8" water line with 400 LF of 8" C-900, 100 LF of 6" service lines and replace fire hydrant			

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
5	7/2023	1	City of Belton Public Works Department, Belton, MO	1 Eagles Landing, Belton, MO	Prime	\$19,111.70	City of Belton Public Works
			Contact: Ryan Haupt, PE, SIT City Engineer 816-892-1267 700 Seabee Road, Belton, MO 64012	Replace 160 LF of 12" HDPE Storm Line			
6	5/2022	1	Bettis Asphalt & Construction, Inc.	KU Parking Lot 214 Waterline	Subcontractor	\$48,000	
			Contact: Mark Bettis, Vice President/Project Manager 785-783-8850 1800 N.W. Brickyard Road, Topeka, KS 66618	Remove and replace Water Line. Install 120 LF of new 4" C900 Water Line and 100 LF of 1" Copper service line			
7	3/2022	2	Kennedy & Kennedy Construction LLC	Midwest Scrap Storm Sewer	Prime	\$285,337	
			JC Kennedy 785-224-9674 2300 E. 205 <sup>th</sup> St. Lyndon, KS 66451 JC@K-KCONSTRUCTION.NET	Install shoring wall, pour foundation slab & set 32x14x26' precast box			
8	10/2022	1	City of Raymore, MO	Country Lane Storm Inlet Rehabilitation	Prime	\$37,496	
			Lori Crandell Stormwater Manager 816-582-5326	Excavated around existing storm structures and flow Filled to stop settlement. Restored with sod & seed.			
9	1/2022	2	C-Store	C-Store Storm, Sanitary & Water	Prime	\$400,000	WSKF Architects
			Alan Hoambrecker Hoambrecker Enterprises II LLC 14523 NW 74 <sup>th</sup> St. Parkville, MO 64152 ahoambrecker@hpe.com	Install new storm, sanitary and water line. 800 LF – 60" HDPE, 830 LF – 15" HDPE, 10 Nyloplasts drains, 154 LF of 18" HDPE Water Main 200' of 2" Polypipe, Water Trap, Set Meter 1 Sanitary Manhole, 300 LF of 6" SDR 26, remove & reinstall grease interceptor			
10	2020	3	Republic Foods	Republic Foods, Lone Jack, MO	Prime	\$1,500,000	
			Cody Gallenbeck 361-772-0030 CGALLENBECK@REPUBLIC-FOOD.COM	Installation of water main line, sanitary sewer, structural concrete, lagoon and on-going plant maintenance. 1500 LF 6" C900 Water Line, 1 Fire Hydrant, 300 LF of 15" HDPE.			



No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost <sup>2</sup>	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
11	10/2021	1	The Lawrence Group	Tin Roof Bar and Grill, Kansas City, MO	Prime	\$197,382	Lawrence Group
			Bryan Kemper 314-477-5528 <a href="mailto:Bryan.kemper@thelawrencegroup.com">Bryan.kemper@thelawrencegroup.com</a> Scotty Martin <a href="mailto:Scotty.martin@thelawrencegroup.com">Scotty.martin@thelawrencegroup.com</a>	Water service and sanitary sewer installation. 100 LF of 6" SDR 26, Installed 4" domestic water line tying in outside of building to sampling manhole and tied into it. Tap main at 28'. Hooked up grease interceptor to 5' outside if building.			
12	10/2021	1	City of Raymore, MO	Silverlake Drainage Improvements	Prime	\$99,375	
			Lori Crandell Stormwater Manager 816-582-5326	Inlet rehabilitation. 264 LF of 12" HDPE storm line and cut in all service lines.			

Notes:

1 - Provide information on up to 12 projects; "EX" is provided as an example to follow.

2 - If you were a sub-contractor on the project, list the value/cost for your firm's work only

Completed By: Charlie Fuller

Title: Owner

Date: August 18, 2023

FORM 3B – Preferred Restoration & Landscaping Subcontractor Project Experience and References

Prime-Contractor Name:

Preferred Sub-Contractor Name:

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost <sup>2</sup> (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
1	6/18/18	7	<i>Little Mill Creek 7</i>		64,900.00	
			<i>Redford Construction PO Box 1065 Raymore, MO 64083</i>	<i>Installed Erosion Control, Seed/Mulch and restored Stream Crossings</i>		
2	5/2019	14	Shoal Creek Pump Station		14,630.00	
			She Digs It 600 SE Central Drive Blue Springs, MO 64014	Installed Erosion Control		
3	7/2019	20	Rodriguez Mechanical		109,475	
			Lower Conner Creek Interceptor	Installed Erosion Control, Seeding and Restoration Plantings		
4	6/2020	6	Wiedenmann Construction		66,710	
			Lees Summit Sanitary Small Main Replacement	Installed Sod		

No. <sup>1</sup>	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost <sup>2</sup> (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
5	5/2022	11	Wiedenmann Construction		41,165	
			2021 Stormwater Pipe Repair West	Installed Sod, Erosion Blanket/Seed and Planted Trees		

Notes:

1 - Provide information on up to five projects; "EX" is provided as an example to follow.

2 - List value/cost for your firm's work only

Completed By: 

Title: Managing Member

Date: 8/16/23

## FORM 4 – Prime Contractor Project Detail (Optional)

<p><b>Instructions:</b></p> <p>This form is optional, but it is intended to allow firms to provide more detailed information than could be provided on Form 3A. Firms may wish to describe the type of work, challenges (e.g. emergency work), solutions, efforts, customer satisfaction, etc. on some projects. Select up to five (5) projects reported on Form 3A, and then complete a separate Form 4 for each project.</p>	
<p><b>Firm:</b></p>	
<p><b>Project Title and Facility:</b></p>	
<p><b>Customer Name and Location:</b></p>	
<p><b>Project Notice To Proceed Date:</b></p>	
<p><b>Project Detail:</b></p>	
<p>The foregoing is a statement of facts.</p> <p>Signature _____ Telephone Number: _____</p> <p>Typed Name and Title: _____</p>	<p>Date:</p>

FORM 5 – Contractor-Owned Resources\*

Firm Name:

QTY	EQUIPMENT TYPE	SIZE	AGE (Yr)	CONDITION		
				Good	Fair	Poor
Wheeled Vehicles						
2	Dump Truck	A90 & L9500	16	X		
1	Kenworth Semi Truck	T800	28	X		
1	Kauffman low boy equipment trailer tri-axle	Tri axle	2	X		
1	Behnke Tilt deck trailer	12,000 XL	1	X		
6	Work Trucks	1-2020 F350; 2-2015 F350; 1-2015 F150; 1-2011 F250; 1-2009 F350	3 yrs to 14	X		
Track Vehicles						
1	Takeuchi TL150 Skidsteer	150	15	X		
1	Takeuchi TL 12 Skidsteer	12	10	X		
1	Komatsu PC 350 LC8	PC350	13	X		
1	Komatsu PC 88	PC88	1	X		
1	Komatsu PC 50	PC50	11	X		
1	Cat PC 315	PC315	2	X		
1	CAT 963D Loader	963D	10	X		
Construction Equipment						
1	Hyflow Power Washer/Trailer			X		
3	Rock Breakers	For a PC 315; PC88; PC50		X		
1	Plate Compactor	C4C		X		
<b>OTHER RESOURCES</b> (Briefly describe any other company-owned resources (e.g. metal fabrication shop):						

\* Contractor may use existing form if one is available





## WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: TC FULLER CONSTRUCTION LLC

Risk ID: 914913306

Rating Effective Date: 09/04/2023

Production Date: 04/20/2023

State: INTERSTATE

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
KS	.07	433	623	190	0	24,500	0	0
MO	.06	11,374	15,151	3,777	0	37,750	0	0
(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.06		11,807	15,774	3,967	0	37,227	0	0

	Primary Losses	Stabilizing Value	Ratable Excess	Totals	
Actual	(I) 0	$C * (1 - A) + G$ 48,326	(A) * (F) 0	(J) 48,326	
Expected	(E) 3,967	$C * (1 - A) + G$ 48,326	(A) * (C) 708	(K) 53,001	
	ARAP	FLARAP	SARAP	MAARAP	Exp Mod
Factors	1.00				(J) / (K) .91

THE ARAP FACTOR SHOWN IS FOR THOSE STATES CONTAINED ON THIS RATING THAT HAVE APPROVED THE ARAP PROGRAM AND IS CALCULATED BASED ON THE STATE WITH THE HIGHEST APPROVED MAXIMUM ARAP SURCHARGE. THE MAXIMUM ARAP SURCHARGE MAY VARY BY STATE. PLEASE REFER TO EACH STATE'S APPROVED RULES FOR THE APPLICABLE MAXIMUM ARAP SURCHARGE. THIS RISK WAS PREVIOUSLY RATED UNDER RISK ID# 241184315 AND WILL NOW BE RATED UNDER THE RISK ID# SHOWN ABOVE.

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# WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: TC FULLER CONSTRUCTION LLC

Risk ID: 914913306

Rating Effective Date: 09/04/2023

Production Date: 04/20/2023

State: INTERSTATE

15-KANSAS

Firm ID: Firm Name: TC FULLER CONSTRUCTION LLC

Carrier: 24759 Policy No. AVWCMO3024442021 Eff Date: 09/04/2021 Exp Date: 09/04/2022

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5213	1.70	.29	1,292	22	6					
5221	1.52	.31	27,693	421	131					
6217	1.12	.29	10,665	119	35					
6319	1.04	.29	5,865	61	18					
9812	EMPLOYERS LIABILIT			0	0					
Policy Total:			45,515	Subject Premium:	1,815	Total Act Inc Losses:		0		

24-MISSOURI

Firm ID: Firm Name: TC FULLER CONSTRUCTION LLC

Carrier: 13579 Policy No. 6JUB5N12624A20 Eff Date: 09/04/2020 Exp Date: 09/04/2021

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
6217	1.69	.24	139,841	2,363	567					
8810	.08	.38	43,800	35	13					
9807	EMPLOYERS LIABILIT			0	0					
9812	EMPLOYERS LIABILIT			0	0					
9848	MINIMUM PREMIUM FO			0	0					
Policy Total:			183,641	Subject Premium:	11,774	Total Act Inc Losses:		0		

24-MISSOURI

Firm ID: Firm Name: TC FULLER CONSTRUCTION LLC

Carrier: 24759 Policy No. AVWCMO3024442021 Eff Date: 09/04/2021 Exp Date: 09/04/2022

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5213	2.63	.24	124,117	3,264	783					
5221	2.31	.27	185,554	4,286	1,157					
6217	1.69	.24	215,669	3,645	875					
6319	1.63	.24	92,115	1,501	360					
8810	.08	.38	71,615	57	22					
9812	EMPLOYERS LIABILIT			0	0					
Policy Total:			689,070	Subject Premium:	43,032	Total Act Inc Losses:		0		

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\* Total by Policy Year of all cases \$2000 or less.

D Disease Loss

X Ex-Medical Coverage

U USL&HW

C Catastrophic Loss

E Employers Liability Loss

# Limited Loss



**STATE OF KANSAS**  
**OFFICE OF**  
**SECRETARY OF STATE**  
**SCOTT SCHWAB**

I, SCOTT SCHWAB, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 5410014

Entity Name: TC FULLER CONSTRUCTION LLC

Entity Type: FOR: LTD LIABILITY COMPANY

State of Organization: MO

was filed in this office on December 09, 2020, and is in good standing, having fully complied with all requirements of this office.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of July 09, 2023

A handwritten signature in cursive script that reads "Scott Schwab".

**SCOTT SCHWAB**  
**SECRETARY OF STATE**

Certificate ID: 1270614 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.





August 16<sup>th</sup>, 2023

To Whom It May Concern:

RE: TC Fuller Construction, LLC

Greetings:

United Casualty and Surety Insurance Company has issued bonds for TC Fuller Construction, LLC since 2021 during which time we have favorably considered projects up to \$1,500,000 with an aggregate of \$1,500,000. Our experience with TC Fuller Construction, LLC has been excellent, and we highly recommend them to you.

United Casualty and Surety Insurance Company is rated "A-" (Excellent), with a financial size category of V by AM Best, and is listed on the U.S. Treasury Department's Listing of Approved Sureties.

United Casualty and Surety Insurance Company's decision to issue any bond is conditioned upon acceptable review of contract terms, contract amount, bond forms, and financing for each project as well as other pertinent underwriting information at the time of the request.

Please understand that any arrangement for bonds is a matter between TC Fuller Construction, LLC and United Casualty and Surety Insurance Company, and we assume no liability to third parties or you if, for any reason, we do not issue a requested bond.

This letter will expire one hundred and eighty (180) days from the above date.

  
Zachary R. Bradley, Attorney-in-fact



## 2023-045 Addendum 2

### TC Fuller Construction LLC

### Supplier Response

#### Event Information

Number: 2023-045 Addendum 2  
Title: On-Call Wastewater Sewer Collection System Infrastructure Repairs  
Type: Request for Proposal  
Issue Date: 7/25/2023  
Deadline: 8/24/2023 02:00 PM (CT)  
Notes: This is a Request for Proposal for On-Call Wastewater Sewer Collection System Infrastructure Repairs. Please review all the documents under the Attachments tab and upload the correct documents under the Response Attachments tab.

**A Mandatory Pre-Proposal Conference meeting will be held at the Johnson County Administration Building located at 111 S. Cherry St. Olathe, KS 66061 on the Lower Level in Room 211, on Tuesday, August 08th, 2023, at 2:00 PM Central Time. Respondents are required to attend the meeting in order to submit a proposal.**

All bids must be submitted through Johnson County's electronic bidding system, Ionwave.

#### Contact Information

Contact: Lisa Robbins  
Address: Financial Management & Administration  
111 S. Cherry  
Suite 2400

Olathe 66061  
Phone: (913) 715-0590  
Email: [lisa.robbins@jocogov.org](mailto:lisa.robbins@jocogov.org)

## TC Fuller Construction LLC Information

Contact: Tina Fuller  
Address: 35702 E State Route B  
Garden City, MO 64747  
Phone: (816) 266-3124  
Email: tina@tcfullerconstruction.com  
Web Address: TCFULLERCONSTRUCTION.COM

By submitting your response, you certify that you are authorized to represent and bind your company.

Tina Fuller  
Signature

tina@tcfullerconstruction.com  
Email

Submitted at 8/23/2023 05:36:21 PM (CT)

## Requested Attachments

### RFP Response

RFP 2023-045 Bid Form -w  
Attachments 2023-8-23R.pdf

See Section 13 in the Request for Proposal for instructions on information to include with your submittal. Please upload a single file PDF with all requested information (100MB limit). See Attachment 2023-045 RFP Document – Form Templates for fillable Word format documents. If additional files need to be uploaded, you can do this in the "other response attachment" area.

## Bid Attributes

### 1 Proposal Terms & Conditions

Respondent has read and fully accepts all terms & conditions as presented. If you object, please upload any exceptions you take under the response attachment tab, under "other".

Acknowledged

### 2 Binding Agent

Please indicate the agent who has authority to bind your company to a contract.

Charlie Fuller Tina Fuller

### 3 Cooperative Procurement With Other Jurisdictions

If Johnson County, Kansas awarded you the proposed contract, would you sell under the prices and terms of the contract to any Municipal, County Public Utility, Hospital, Educational Institution or any other non-profit organization? All deliveries shall be FOB Destination and there shall be no obligations on the part of any member of said Council to utilize this contract). This section will not affect award.

Yes

### 4 Insurance

If awarded a contract, the successful firm is required to provide a certificate of insurance with stated amounts in the solicitation and contract agreement. Please acknowledge you understand and will meet this requirement.

Acknowledged

<b>5</b>	<b>Debarment Notice</b> Please certify your company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations. Johnson County verifies this information through the use of the GSA System for Award Management prior to award of contract. <input checked="" type="checkbox"/> Acknowledged
----------	---

<b>6</b>	<b>Litigation</b> Has your company been a party to any pending or concluded litigation that could effect the outcome of a contract with Johnson County? <input type="text" value="No"/>
----------	---

<b>7</b>	<b>Bankruptcy</b> Has your company ever declared bankruptcy? <input type="text" value="No"/>
----------	--

<b>8</b>	<b>Purchasing Card</b> Will you accept a County issued procurement credit card (VISA)? If so, please provide the associated fees and conditions if any. <input type="text" value="No"/>
----------	---

<b>9</b>	<b>Invoice Discount Terms</b> Is a discount offered for prompt payment of invoices? If a discount is offered, please provide detailed information on terms, discount and days. <input type="text" value="No"/>
----------	--

<b>10</b>	<b>Core 4 Tax Clearance</b> I acknowledge the Core 4 Tax Clearance form RD-C3 and multi-jurisdictional forms will be completed and approved prior to award of contract is to exceed \$100,000. <input checked="" type="checkbox"/> Acknowledge
-----------	--

<b>11</b>	<b>Federal Funding Requirement</b> County Departments and Agencies may be using Federal Grant Funds for procurement of goods and services. Additional reporting requirements for procurements using these funds are outlined in Appendix A. If you are selected to receive a contract, are you willing to provide the additional reporting items described in Appendix A. The answer to the question will not be a determining factor in the evaluation of the solicitation. <input type="text" value="Yes"/>
-----------	---

<b>12</b>	<b>Addendum No. 1</b> I have read and understand Addendum No. 1 <input checked="" type="checkbox"/> Acknowledged
-----------	--

<b>13</b>	<b>Addendum No. 2</b> I have read and understand Addendum No. 2 <input checked="" type="checkbox"/> Acknowledged
-----------	--

DATE: December 08, 2023

TO: Charlie & Tina Fuller  
TC Fuller Construction, LLC

FROM: Lisa Robbins  
Johnson County Purchasing

SUBJECT: Notice of Award for 2023-045C On-Call Wastewater Sewer  
Collection Infrastructure Repairs

This notice is to inform you that TC Fuller Construction, LLC has been awarded a contract for RFP 2023-045 On-Call Wastewater Sewer Collection Infrastructure Repairs Term & Supply. This contract has been awarded to multiple firms as a Term & Supply agreement with an aggregate amount not to exceed \$1,750,000 by the Johnson County Board of County Commissioners as authorized on December 07<sup>th</sup>, 2023.

The contract is currently being compiled and will be sent via AdobeSign soon. Please review and sign the agreement once received. Please provide your Certificate of Insurance and Core 4 Tax Clearances within ten (10) days of this notice to the County.

Should you have any questions and/or concerns, please contact me at (913) 715-0590.

Thank you,



Lisa Robbins, CPPB  
Senior Purchasing Administrator



# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which

graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon

timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for

CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor,

services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

## 1.02 Terminology

### A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

### B. *Day*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.



C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

---

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *CONTRACTOR’s Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

#### 2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

#### 2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for

sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

#### 3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

#### B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the

provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

### 3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

### 4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both,

as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any

such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

#### C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR

are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

#### 4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any

such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 - BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

### 5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and

CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or

required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

#### *5.05 OWNER's Liability Insurance*

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

#### *5.06 Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:



1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

#### *5.07 Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in

addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

#### *5.08 Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on

account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

#### *5.09 Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### *5.10 Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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### 6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

### 6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and

machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

### 6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *“Or-Equal” Items:* If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an “or-equal” item, in which case review and approval of the proposed item may, in ENGINEER’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an “or-equal” item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish

or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR’s achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer’s Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No “or-equal” or substitute will be ordered, installed or utilized until ENGINEER’s review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms

to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

#### 6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and 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 CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

#### 6.10 *Taxes*

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 6.11 *Use of Site and Other Areas*

##### A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER,

ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

*B. Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

*C. Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

*D. Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

#### 6.13 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the

safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 Safety Representative

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

### 6.15 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

### 6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

### 6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent

submittal will be at the sole expense and responsibility of CONTRACTOR.

### D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

### E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will,



after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

#### F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

#### 6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

#### 6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

#### 6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's

Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## ARTICLE 7 - OTHER WORK

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### 7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for

integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

#### 7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

### ARTICLE 8 - OWNER'S RESPONSIBILITIES

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#### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

#### 8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

#### 8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

#### 8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

#### 8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish

reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

#### 8.06 *Insurance*

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

#### 8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

#### 8.09 *Limitations on OWNER's Responsibilities*

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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### 9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

### 9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

### 9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

### 9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### 9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

#### 9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

#### 9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

#### 9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or

performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

### ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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#### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

#### 10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

#### 10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal

of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

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11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall

accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators,

attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

## 11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:



1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in

Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

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### 12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03 ); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will

be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

#### 12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

#### 12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

#### 12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF  
DEFECTIVE WORK

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13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the

parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

#### 13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

#### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work

removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

#### 13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

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### 14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to pro-gress payments will be as stipulated in the Agreement.

#### B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing

ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions

and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

#### C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

#### D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

#### 14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall

fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete,

CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

##### B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.



C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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15.01 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not

more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs,

losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

#### 15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for

Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

### ARTICLE 16 - DISPUTE RESOLUTION

#### 16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

### ARTICLE 17 - MISCELLANEOUS

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#### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### 17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a

day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

#### 17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

#### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

# JOHNSON COUNTY SUPPLEMENTARY CONDITIONS

## LIST OF SUBJECTS

### SCOPE

- SC-1 DEFINITIONS AND TERMINOLOGY
  - SC-1.01 Defined Terms
  - SC-1.02 Terminology
  
- SC-2 PRELIMINARY MATTERS
  - SC-2.01 Delivery of Bonds and Evidence of Insurance
  - SC-2.02 Copies of Documents
  - SC-2.03 Commencement of Contract Times; Notice to Proceed
  - SC-2.05 Before Starting Construction
  - SC-2.06 Preconstruction Conference
  - SC-2.07 Initial Acceptance of Schedules
  
- SC-3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE
  - SC-3.03 Reporting and Resolving Discrepancies
  
- SC-4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS
  - SC-4.02 Subsurface and Physical Conditions
  - SC-4.03 Differing Subsurface or Physical Conditions
  - SC-4.04 Underground Facilities
  - SC-4.06 Hazardous Environmental Condition at Site
  
- SC-5 BONDS AND INSURANCE
  - SC-5.01 Performance, Payment, and Other Bonds
  - SC-5.03 Certificates of Insurance
  
- SC-6 CONTRACTOR'S RESPONSIBILITIES
  - SC-6.02 Labor; Working Hours
  - SC-6.08 Permits
  - SC-6.10 Taxes
  - SC-6.15 Hazard Communication Programs
  - SC-6.17 Resubmittal Costs
  - SC-6.19 CONTRACTOR's General Warranty and Guarantee
  - SC-6.20 Indemnification
  
- SC-8 OWNER'S RESPONSIBILITIES
  - SC-8.02 Replacement of ENGINEER
  - SC-8.11 Evidence of Financial Arrangements

- SC-9 ENGINEER'S STATUS DURING CONSTRUCTION
  - SC-9.03 Project Representative
  - SC-9.09 Decision on Requirements of Contract Documents and Acceptability of Work
  
- SC-10 CHANGES IN THE WORK; CLAIMS
  - SC-10.01 Authorized Changes in the Work
  - SC-10.05 Claims and Disputes
  
- SC-11 COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK
  - SC-11.01 Cost of the Work
  
- SC-12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES
  - SC-12.02 Change of Contract Times
  
- SC-13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK
  - SC-13.01 Notice of Defects
  - SC-13.03 Test and Inspections
  
- SC-14 PAYMENTS TO CONTRACTOR AND COMPLETION
  - SC-14.02 Progress Payments
  
- SC-16 DISPUTE RESOLUTION
  
- SC-17 MISCELLANEOUS
  - SC-17.04 Survival of Obligations
  - SC-17.05 Controlling Law
  - SC-17.06 Kansas Nondiscrimination Law
  - SC-17.07 Right to Examine and Audit Records; Contract Change Order Procedures; Overcharges

## EXHIBITS

## SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

### SC-1. DEFINITIONS AND TERMINOLOGY.

#### SC-1.01. Defined Terms.

- A. Delete and replace the following definitions in Paragraph 1.01.A of the General Conditions:
1. Addenda - The written or graphic instruments issued by the OWNER prior to the opening of Bids which modify or interpret the Bid Documents or Contract Documents by additions, deletions, clarifications or corrections.
  5. Bid - means the offer or proposal of the Bidder duly submitted on the prescribed form(s), including any and all required bid document submittals, contained within the Bid Documents and setting forth the prices for the Work to be performed in response to the Invitation to Bid.
  6. "Bidding Documents" or "Bid Documents" - mean and include the Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, the Bid Form, Bonds and all other bidding and contract forms to be modified consistent with these Instructions to Bidders and proposed Contract Documents, including General Conditions, Supplementary Conditions, Drawings, Specifications, and all Addenda and modifications issued prior to the opening of Bids.
  7. Bidding Requirements - The Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, Bid Form, Bid Security Form, Bonds and other bidding requirements and bidding and contract forms to be modified consistent with the Instructions to Bidders and proposed Contract Documents.
  8. Bonds - Bid, performance, statutory and maintenance bonds, if required, and other instruments of security.
  12. Contract Documents – The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation

submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Johnson County Supplementary Conditions, Additional Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

15. CONTRACTOR - means the individual, partnership, corporation, association or other entity that the County has determined and declared to be the Successful Bidder and who has, following such determination and declaration, thereafter entered into the Agreement with the County to perform the Work.
  30. OWNER – The individual, entity, public body, or authority with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be performed. OWNER means the Board of County Commissioners of Johnson County, Kansas.
  34. Project - means the total construction of which the Work performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
  42. Subcontractor - means the individual, partnership, corporation, association or other entity having a direct contract with the Contractor or any other subcontractor for the performance of a part of the Work at the site.
  44. Supplementary Conditions and/or Additional Supplementary Conditions – Those parts of the Contract Documents which amend or supplement these General Conditions.
- B. Add the following definitions to Paragraph 1.01.A of the General Conditions:
52. float - The amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the progress schedule.
  53. Owner's Agent. Owner's project manager who will be involved in the review and approval of applications for payment.

SC-1.02 Terminology.

- A. In Paragraph 1.02.C.1, insert the words “manual, code,” immediately preceding the word “inspection”.
- B. In Paragraphs 1.02.D.1, 1.02.D.2, and 1.02.D.3, add the words “and free of defects” to the end of each of these paragraphs immediately preceding the period.

SC-2. PRELIMINARY MATTERS.

SC-2.01. Delivery of Bonds and Evidence of Insurance. Delete Paragraph 2.01.A. in its entirety and insert the following in its place:

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and Evidence of Insurance as CONTRACTOR may be required to furnish under the Bidding Documents if not required to be provided earlier by the Bidding Documents or the Notice of Award.

SC-2.02. Copies of Documents. Delete Paragraph 2.02 of the General Conditions in its entirety and insert the following in its place:

- A. OWNER shall furnish to CONTRACTOR up to but not more than eight (8) copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies may be furnished, upon request, at the cost of reproduction to be borne by CONTRACTOR.

SC-2.03. Commencement of Contract Times; Notice to Proceed. Delete Paragraph 2.3.A of the General Conditions in its entirety and insert the following in its place:

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

SC-2.05. Before Starting Construction. Delete Paragraph 2.05.C of the General Conditions in its entirety and insert the following in its place:

- C. Prior to execution of the Agreement by OWNER, and before any work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5, and OWNER, upon request, shall deliver to CONTRACTOR, with a copy to ENGINEER, certificates (and other evidence of insurance CONTRACTOR may reasonably request) which OWNER may have purchased in accordance with Article 5.



SC-2.06. Preconstruction Conference. Amend Paragraph 2.06.A of the General Conditions by inserting "OWNER," immediately preceding "CONTRACTOR".

SC-2.07. Initial Acceptance of Schedules. Amend Paragraph 2.07.A of the General Conditions by: (a) inserting "OWNER," immediately before "ENGINEER" in the fourth line of this paragraph; and, (b) inserting the words "OWNER and" immediately before "ENGINEER" in the fifth line of this paragraph.

Amend Paragraph 2.07.A.1 of the General Conditions by: (a) inserting the words "OWNER and" immediately preceding "ENGINEER" in the first sentence of this paragraph; and, (b) inserting the words "OWNER or" immediately preceding "ENGINEER" in the second sentence of this paragraph.

Amend Paragraph 2.07.A.3 of the General Conditions by inserting the words "OWNER and" immediately preceding "ENGINEER".

### SC-3. CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

SC-3.03. Reporting and Resolving Discrepancies. In the second sentence of Paragraph 3.03.A.1., delete the words "until an amendment or supplement" and replace them with the words "unless ENGINEER determines in writing that no conflict exists or if ENGINEER determines a conflict does exist, until an amendment or modification".

### SC-4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

#### SC-4.02. Subsurface and Physical Conditions.

- A. Amend Paragraph 4.02.A. of the General Conditions by: (a) deleting the words "Supplementary Conditions" and inserting in their place the words "Contract Documents,"; and, (b) adding a "comma" immediately after the word "identify" followed by the words "if any".
- B. Amend Paragraph 4.02.B. of the General Conditions by: (a) inserting the words ", if any," immediately before the word "contained" in the third line of this paragraph; and, (b) deleting the words "Supplementary Conditions" in the sixth line and inserting in their place the words "Contract Documents".

SC-4.03. Differing Subsurface or Physical Conditions. Amend Paragraph 4.03.C.2.a. of the General Conditions by inserting in the second line of this paragraph immediately after the word "conditions" the following: "or reasonably should have known thereof".

SC-4.04. Underground Facilities. Amend Paragraph 4.04.A. of the General Conditions by deleting the words "Supplementary Conditions" in the seventh line of this paragraph and inserting in their place the words "Contract Documents".

SC-4.06. Hazardous Environmental Condition at Site.

- A. Amend Paragraph 4.06.A. of the General Conditions by deleting the words "Supplementary Conditions" in the second line of this paragraph and inserting in their place the words "Contract Documents".
- B. Amend paragraph 4.06.B of the General Conditions by deleting the words "Supplementary Conditions" in the sixth line of this paragraph and inserting in their place the words "Contract Documents".

SC-5. BONDS AND INSURANCE.

SC-5.01. Performance, Payment, and Other Bonds.

- A. Amend the first and second sentences of Paragraph 5.01.A of the General Conditions to read as follows:

CONTRACTOR shall furnish to OWNER Performance and Statutory Bonds, each in the amount equal to One Hundred percent (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect for two (2) years after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents.

SC-5.03 Certificates of Insurance. Add the following new Paragraph B immediately after Paragraph 5.03A of the General Conditions:

- B. The CONTRACTOR shall furnish to the OWNER's Risk Management Office and to the ENGINEER a certificate of insurance verifying such coverage and identifying the Board of County Commissioners, Johnson County, Kansas and the ENGINEER, their officers, commissions, employees and agents as additional insureds as pertains to this Agreement per 5.04.B.1. The certificate holder on the certificate of insurance shall read as follows:

Board of County Commissioners  
Johnson County, Kansas  
c/o Risk Manager  
111 South Cherry, Suite 2400  
Olathe, Kansas 66061-3441

The Bid Request Number shall be referenced on the Certificate of Insurance.

## SC-6. CONTRACTOR'S RESPONSIBILITIES.

SC-6.02. Labor; Working Hours. In Paragraph 6.02.A., add the following to the end of the paragraph: "The CONTRACTOR shall be responsible for the employment and payment of competent survey personnel."

SC-6.08. Permits. Amend Paragraph 6.08 of the General Conditions by deleting the words "Supplementary Conditions" in the first and second lines, respectively, of this paragraph, and inserting in their place the words "Contract Documents".

SC-6.10. Taxes. Delete Paragraph 6.10.A. of the General Conditions in its entirety and insert the following in its place:

- A. The OWNER shall obtain a project exemption certificate for the PROJECT from the Kansas Department of Revenue and provide the same to the CONTRACTOR to be used by the CONTRACTOR for the sales of tangible personal property to or services purchased by the CONTRACTOR for the work or portions thereof that may be properly exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. Upon completion of the Work, the CONTRACTOR shall file with the OWNER on a form provided by the Kansas Department of Revenue, a sworn statement that all purchases made under the project exemption certificate were entitled to be exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. The CONTRACTOR shall assume responsibility and be liable for the proper use of the project exemption certificate and shall pay all legally assessed penalties for improper use of the certificate and any and all taxes that are not otherwise exempt under the certificate.

SC-6.15. Hazard Communication Programs. Add the following new Paragraph B immediately after Paragraph 6.15.A of the General Conditions which is to read as follows:

- B. Chemical Warranty-Compliance With Toxic Substance Control Act. Notwithstanding anything to the contrary contained in these Contract Documents or represented by either party to the other, CONTRACTOR warrants that each and every chemical substance or product offered, sold, handled or used for the proposed Work under this Agreement, or otherwise transferred by CONTRACTOR to agencies and departments of the OWNER as of the date of such sale or transfer shall comply with OSHA Hazard Communication Standard 29 C.F.R. 1910.1200.

SC-6.17. Resubmittal Costs. Add the following paragraph after Paragraph SC-6.17.F:

- "G. Resubmittal Costs. CONTRACTOR shall reimburse OWNER for ENGINEER's charges for reviewing each resubmittal in excess of one resubmission. ENGINEER will record time required by ENGINEER in

evaluating resubmitted Shop Drawings and Samples by CONTRACTOR pursuant to paragraphs 6.17.D.3 and submit a copy of the charges to CONTRACTOR and OWNER. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER. The charges shall be deducted by OWNER from the next submitted Payment Application of CONTRACTOR. CONTRACTOR shall not be entitled to any change in the Contract Price or Contract Times because of delay in the review process".

SC-6.19. CONTRACTOR's General Warranty and Guarantee. Insert the word "; or" at the end of Paragraph 6.19.B.8 of the General Conditions and add to the following Paragraph 6.19.B.9.

"9. any expiration of a correction period."

SC-6.20. Indemnification. Add the words "or furnish" to the fifth line of Paragraph 6.20.A.2 after the word "perform".

SC-6.20.C.3. Add this paragraph after Paragraph 6.20.C.2:

"Provided however, if the claim, damage, loss or expense referred to in Paragraph 6.20.A. results from failure of the ENGINEER to discover a condition or object which is underground or otherwise not reasonably observable by the ENGINEER, and if said failure to discover is apparent to the CONTRACTOR in that the said condition or object is omitted from the ENGINEER'S maps, drawings, opinions reports, surveys, change orders, designs or specifications, then the CONTRACTOR shall be liable for indemnification of ENGINEER under Paragraph 6.20 for damage resulting from said failure to discover unless CONTRACTOR shall have notified ENGINEER of the existence and location of such condition or object prior to the occurrence of such damage and in sufficient time for ENGINEER to have provision therefore. Further, in the event neither ENGINEER nor CONTRACTOR discover such condition or object, CONTRACTOR shall bear the burden of indemnification under Paragraph 6.20."

SC-8. OWNER'S RESPONSIBILITIES.

SC-8.02. Replacement of ENGINEER. Delete Paragraph 8.02.A of the General Conditions in its entirety and insert the following in its place:

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

SC-8.11. Evidence of Financial Arrangements. Delete Paragraph 8.11.A of the General Conditions in its entirety.

## SC-9. ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03. Project Representation. Add the following new paragraph immediately after Paragraph 9.03.A of the General Conditions.

- B. If a Resident Project Representative is furnished under Paragraph 9.03 of the General Conditions, the duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in an exhibit attached to these Supplementary Conditions and made a part of the Contract Documents. The name(s) of the Resident Project Representative(s) will be furnished to the CONTRACTOR.

SC-9.09. Decisions on Requirements of Contract Documents and Acceptability of Work. Add the following at the end of the first sentence of Paragraph 9.09.A of the General Conditions: "insofar as the subject matter of any pertinent claim, dispute, or other matter falls within the realm of the technical expertise of ENGINEER, ENGINEER shall not render any decision on any claims, disputes, or other matters the subject matter of which, at ENGINEER's sole discretion, requires legal, rather than technical interpretation.

SC-9.09.B. Delete this paragraph in its entirety and replace it with the following:

- B. ENGINEER will be the initial judge of the acceptability of the Work. Claims relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work or seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of Paragraph 10.05. for recommendation by ENGINEER to OWNER. OWNER shall be the final determiner of the acceptability of the Work. ENGINEER shall not be liable to either OWNER or CONTRACTOR in connection with any recommendation. A recommendation of ENGINEER pursuant to this paragraph with respect to any Claim shall be a condition precedent to any exercise by CONTRACTOR of any rights or remedies otherwise available under the Contract Documents or by Laws and Regulations in respect to any Claim.

## SC-10. CHANGES IN THE WORK; CLAIMS

SC-10.01. Authorized Changes in the Work. Add the following paragraphs after Paragraph 10.1.A:

1. The OWNER reserves the right to make modifications to the work included in this Contract to the extent that the total contract price Contract Price is not increased by more than 25 percent. Modifications which result in increases beyond this limit will be made only with the concurrence of the CONTRACTOR.

2. The CONTRACTOR shall not be entitled to an increase in the Contract Price resulting from delays to the Work due to weather conditions. Claims for an extension of the Contract Time may be made as provided in Article 12.

SC-10.05. Claims and Disputes. Delete Paragraph 10.05.B (including paragraphs 10.05.B.1 and 10.05.B.2) of the General Conditions in its entirety and insert the following in its place:

- B. ENGINEER'S Decision. ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. The rendering of a decision by ENGINEER pursuant to this paragraph 10.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

SC-11. COST OF THE WORK: CASH ALLOWANCES; UNIT PRICE WORK

SC.11.01. Cost of the Work. Insert the following after Paragraph 11.01.B.5.:

6. Sales, consumer, use and other similar taxes related to the Work that CONTRACTOR is liable.

SC-12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES.

SC-12.02. Change of Contract Times. Add the following new paragraphs after Paragraph 12.02.B of the General Conditions:

- C. A claim for an extension of the Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float for the delayed activity at the time of the event giving rise to the claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the OWNER and CONTRACTOR.
- D. CONTRACTOR shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to ENGINEER.

### SC-13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.01. Notice of Defects. Amend Paragraph 13.01.A of the General Conditions by inserting in the first line of this paragraph immediately after the word “Prompt” the following: “written”.

SC-13.03. Tests and Inspections. Amend Paragraph 13.03.A of the General Conditions by inserting in the first line of this paragraph immediately after the word “timely” the following: “written”.

Amend Paragraph 13.03.F of the General Conditions by inserting in the third line of this paragraph immediately after the word “timely” the following: “written”.

### SC-14. PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02. Progress Payment. Amend the first line of Paragraph 14.02.A.1 of the General Conditions to read as follows: “At least thirty (30) days before the date”.

Add the following new paragraphs immediately following Paragraph 14.02.A.3 of the General Conditions:

4. **Materials and Equipment.** Payments for stored materials and equipment shall be based only upon the actual cost to CONTRACTOR of the materials and equipment and shall not include any overhead or profit to CONTRACTOR. Partial payments will not be made for undelivered materials or equipment.
5. **Schedules and Data.** During the progress of the Work, each application for Payment shall be accompanied by CONTRACTOR’s updated schedule of operations or progress report, with such shop drawings schedules, procurement schedules, values of materials and equipment on hand included in application, and other data specified or reasonably required by ENGINEER.

Amend the first line of Paragraph 14.02.B.1 of the General Conditions to read as follows: “ENGINEER or OWNER’S AGENT will, within seven (7) business days after”.

Delete paragraph 14.02.C.1 of the General Conditions in its entirety and replace it with the following paragraphs:

1. Thirty days after presentation of the Application for Payment to Owner with ENGINEER’s or OWNER’S AGENT’s recommendation, the amount recommended (subject to the provision of paragraph 14.02.D) will become due and when due will be paid by OWNER to CONTRACTOR, unless extenuating circumstances exist which would preclude such payment by OWNER to CONTRACTOR. If such extenuating circumstances exist, then payment shall be made within forty-five (45) days after OWNER receives presentation of the Application for Payment.”

2. CONTRACTOR shall pay its subcontractors any amounts due within seven (7) business days of receipt of payment from OWNER, including payment of retainage, if retainage is released by OWNER, if the subcontractor has provided a timely, properly completed and undisputed request for payment to CONTRACTOR. Further, CONTRACTOR shall require its subcontractors to pay their subcontractors in the same manner.

SC-16. DISPUTE RESOLUTION. Delete Article 16 of the General Conditions in its entirety.

SC-17. MISCELLANEOUS.

SC-17.04. Survival of Obligations. Add the following new paragraph immediately after Paragraph 17.04.A of the General Conditions:

- B. CONTRACTOR shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required by the Specifications, and shall assign such warranties and guarantees to OWNER. With respect thereto, CONTRACTOR shall render reasonable assistance to OWNER when requested, in order to enable OWNER to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the correction period or any other provisions of these Contract Documents.

SC-17.05. Controlling Law. Delete Paragraph 17.05 in its entirety and replace with the following paragraphs:

- A. The Contract Documents shall be governed, enforced and construed under the laws of the State of Kansas.
- B. Any action to enforce a right, duty or remedy in the Contract Documents, or at law or equity, shall be brought in the District Court of Johnson County, Kansas.
- C. All provisions contained in the Contract Documents are severable, and if, in the event any clause shall be held to be unconstitutional, invalid, or unenforceable by a Court of competent jurisdiction, the remainder of the Contract Documents shall be interpreted as if the unconstitutional, invalid or unenforceable clause(s) were not contained in the Contract Documents.
- D. The waiver of any party of a breach of any of the provisions of the Contract Documents shall not operate as, or be construed as, a waiver of any subsequent breach by either party. Any waiver of a breach by any party shall be in writing.
- E. This Agreement is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101, et seq.*, and amendments thereto (the "Act"). By virtue of this Act, the Owner is obligated to only pay periodic payments as contemplated



herein as may be lawfully be made from funds budgeted and appropriated for that purpose during its current budget year or from funds made available from any lawfully operated revenue producing source.

SC-17.06. Kansas Nondiscrimination Law. Add the following new paragraphs immediately after paragraph 17.05 of the General Conditions:

- A. The following provisions shall apply to this and all resulting contracts and subcontracts with and between all contractors, subcontractors, vendors, and/or suppliers connected with this Project, except (i) those whose contracts with the OWNER cumulatively total five thousand dollars (\$5,000) or less during the OWNER's fiscal year or (ii) those contracts with and between all contractors, subcontractors, vendors and/or suppliers who employ fewer than four (4) employees during the term of this Agreement:
- B. The CONTRACTOR shall observe the provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and amendments thereto, and the applicable provisions of the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and amendments thereto and shall not discriminate against any person in the performance of work under the present contract or in the admission or access to, or treatment or employment in, its programs or activities because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, ancestry or political affiliation;
- C. 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 Kansas Commission on Civil Rights ("Commission");
- D. 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 K.S.A. 44-1116, and amendments thereto, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER; and
- E. If the CONTRACTOR is found guilty of a violation of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, or the ADA under a decision or order of the Commission which has become final, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER.
- F. The CONTRACTOR shall include the provisions of paragraphs 17.06.C through 17.06.F inclusively in every subcontract and purchase order so that such provisions will be binding upon such subcontractor or vendor.

SC-17.07. Right to Examine and Audit Records; Contract Change Order Procedures; Overcharges.

- A. The CONTRACTOR agrees that the OWNER, or any of its authorized representatives, shall have access to, and the right to examine and audit, any and all books, documents, papers and records (collectively the "Records") of the CONTRACTOR involving transactions related to the contract (the "Contract") between the OWNER and CONTRACTOR hereunder, or any change order or Contract modification thereto, or with compliance with any clauses thereunder. Such Records shall include hard copy as well as computer readable data. The CONTRACTOR shall require all of its payees including, but not limited to, subcontractors, insurance agents or material suppliers (collectively the "payee(s)") to comply with the provisions of this clause by including the requirements hereof in a written agreement between the CONTRACTOR and payee(s). Further, the CONTRACTOR agrees to cooperate fully and will require all of its payees to cooperate fully in furnishing or making available to the OWNER any and all such Records. The OWNER's right to examine and audit any and all Records hereunder shall survive termination of the Contract.
- B. The CONTRACTOR agrees to follow the quality control change order processing system (the "System") utilized by ENGINEER and OWNER to ensure that any and all Contract change orders or Contract modifications (collectively the "Change Order(s)") that may be necessitated and result during the course of the performance of work or services rendered (the "Work") pursuant to, and under the requirements of, the Contract are warranted and properly processed. The System shall serve as a means for OWNER and CONTRACTOR representatives to ensure the propriety, justification and timeliness of the Change Order(s), the reasonableness and accuracy of the price for the Change Order(s), and full documentation to enable the parties to examine how the price was determined, reviewed, evaluated, negotiated, and accepted or rejected.
- C. The CONTRACTOR agrees that if at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the OWNER and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the CONTRACTOR, or any of its officers, employees, subcontractors, agents or payees, then the CONTRACTOR, or any of its assigns or successors, shall, within thirty (30) days of receipt of written notice from the OWNER, refund upon demand, and be and remain liable to the OWNER for payment of, any such overcharges revealed, including interest thereupon, for the audited period, as well any and all out-of-pocket costs incurred by the OWNER with respect to conducting the audit and collecting the overcharges. Neither shall the making and acceptance of final payment under the Contract nor the

termination of the Contract constitute a waiver of any claim on the part of the OWNER to make demand upon the CONTRACTOR for any such overcharges and related costs thereto; provided, further, that any such demand of the OWNER made upon the CONTRACTOR shall not be subject to the claims and disputes procedural requirements or provisions, if any, of the Contract, but shall remain a continuing obligation of the CONTRACTOR until satisfied.

**END OF SUPPLEMENTARY CONDITIONS**





## ADDITIONAL REMARKS SCHEDULE

AGENCY <b>Mike Keith Insurance, Inc.</b>		NAMED INSURED <b>TC Fuller Construction LLC</b> 35705 E. State Route B Garden City, MO 64747	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

## Description of Operations/Locations/Vehicles:

The board of County Commissioners of Johnson County, KS, its officers, commissions, agencies and employees are primary and non contributory additional insured as respects to general liability, auto liability, and excess liability when required by a written contract. Waiver of subrogation applies where allowed by law. A 30 day prior notice of cancellation applies in favor of the certificate holder

Policy number CPA3266754- Installation floater of \$50,000 naming loss payee of Board of County Commissioners Johnson County Kansas applies

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT  
WITH YOU (COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you have performed operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY –  
OTHER INSURANCE CONDITION  
(ADDITIONAL INSURED)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph (v) is added to Paragraph (1)(a) of Paragraph b. **Excess Insurance** under Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions**, as follows:

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(v) That is available to any person or organization who has been added as an additional insured to this policy by endorsement.

However, with respect to an additional insured added by endorsement for liability caused, in whole or in part:

1. By your acts or omissions, or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations; or

(b) In connection with your premises;

2. By your maintenance, operation or use of equipment leased to you by such person or organization;  
or

3. By "your work" performed for that additional insured and included in the "products-completed operations hazard";

this insurance shall be primary to and will not seek contribution from the additional insured's own insurance if you and such additional insured have agreed prior to loss in a written contract or written agreement, in effect during this policy period, that this insurance be primary and noncontributory as respects liability described in Subparagraph (1)(a)(v)1., (1)(a)(v)2. or (1)(a)(v)3. above. However, this insurance, in all cases, is excess over any other liability insurance available to the additional insured to which such person or organization has been added as an additional insured.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGE EXTENSIONS

Provision	Name Of Coverage Extension	Included or Limit of Insurance
A.	Miscellaneous Additional Insureds	Included
B.	Expected Or Intended Injury Or Damage	Included
C.	Knowledge Of Occurrence	Included
D.	Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)	\$300,000
E.	Medical Payments	See Declarations
F.	Mobile Equipment Redefined	Included
G.	Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage	Included
H.	Who Is An Insured – Amendment	Included
I.	Non-Owned Watercraft (Increased to maximum length of less than 51 feet)	Included
J.	Supplementary Payments – Increased Limits	
	1. Bail Bonds	\$ 3,000
	2. Loss Of Earnings	\$ 1,000
K.	Unintentional Omission Or Unintentional Error In Disclosure	Included
L.	Waiver Of Transfer Of Rights Of Recovery Against Others	Included
M.	Liberalization Clause	Included
N.	Incidental Medical Malpractice	Included

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

#### A. MISCELLANEOUS ADDITIONAL INSUREDS

1. **Section II – Who Is An Insured** is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs **A.1.c.(1)** through **A.1.c.(9)** below when you and such person or organization have agreed

in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- a. The written contract or written agreement is:
  - (1) Currently in effect or becoming effective during the term of this policy; and
  - (2) Fully executed by you and the additional insured prior to the "bodily



injury", "property damage" or "personal and advertising injury".

- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

**(1) Persons or Organizations For Whom Operations Are Performed**

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy; and
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (i) Your acts or omissions; or
  - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

- (d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

- (1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- (ii) "Bodily injury" or "property damage" occurring after:

- (1.1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- (1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**(2) Managers Or Lessors Of Premises**

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to

you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(3) Mortgagee, Assignee Or Receiver**

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(4) Owners Or Other Interests From Whom Land Has Been Leased**

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(5) Lessor Of Leased Equipment**

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written

contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises**

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

(a) This insurance applies only with respect to:

(i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

(1.1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

(1.2) The construction, erection or removal of elevators; or

(1.3) The ownership, maintenance or use of any elevators covered by this insurance.

(ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

- (b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

**(7) Controlling Interest**

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

**(8) Co-Owner Of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

**(9) Vendors**

- (a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;

- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or

- (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

in the usual course of business, in connection with the distribution or sale of the products.

- (b) This insurance does not apply to any insured person or organization, from whom you have acquired products, or any ingredient, part or container, entering into, accompanying or containing such products.

2. With respect to coverage provided by this Provision **A. Miscellaneous Additional Insureds**, the following additional provisions apply:

- a. Any insurance provided to an additional insured designated under Paragraphs **A.1.c.(1)** through **A.1.c.(8)** above does not apply:

- (1) To "bodily injury" or "property damage" included within the "products-completed operations hazard"; or
- (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

- b. The insurance afforded to such additional insured only applies to the extent permitted by law.

- c. The insurance afforded to such additional insured will not be broader than that which you are required to provide by the written contract or written agreement.

3. With respect to the insurance afforded to the additional insureds within this Provision **A. Miscellaneous Additional Insureds**, the following is added to **Section III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement; or
- b. Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

## **B. EXPECTED OR INTENDED INJURY OR DAMAGE**

Exclusion **2.a. Expected Or Intended Injury of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

### **a. Expected Or Intended Injury Or Damage**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

## **C. KNOWLEDGE OF OCCURRENCE**

Paragraph **2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A manager, if you are a limited liability company; or
- (4) An "executive officer" or the "employee" designated by you to give such notice, if you are an organization other than a partnership or a limited liability company.

To the extent possible, notice should include:

- (i) How, when and where the "occurrence" or offense took place;
- (ii) The names and addresses of any injured persons and witnesses; and
- (iii) The nature and location of any injury or damage arising out of the "occurrence" or offense.

## **D. LEGAL LIABILITY – DAMAGE TO PREMISES RENTED TO YOU (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)**

If damage to premises rented to you is not otherwise excluded from this policy or coverage part, then the following provisions apply:

- 1. Under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, the last paragraph (after the exclusions) is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance.**

2. The paragraph immediately after Subparagraph **j.(6)** of Paragraph **2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

3. Paragraph **6.** of **Section III – Limits Of Insurance** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, the greater of:

- a. \$300,000; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations,

is the most we will pay under **Coverage A** for damages because of "property damage" to premises while rented to you, or in the case of damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with permission of the owner.

This limit will apply to all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, "smoke", leakage from automatic fire protective systems, or other covered causes of loss or any combination thereof.

4. Subparagraph **b.(1)(a)(ii)** of Paragraph **4. Other Insurance of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- (ii) That is fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems insurance for premises rented to

you or temporarily occupied by you with permission of the owner;

5. Subparagraph **a.** of Definition **9.** "Insured contract" of **Section V – Definitions** is deleted and replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

6. As used in this Provision **D. Legal Liability – Damage To Premises Rented To You:**

"Smoke" does not include smoke from agricultural smudging, industrial operations or "hostile fire".

#### **E. MEDICAL PAYMENTS**

The Medical Expense Limit is changed, subject to the terms of **Section III – Limits Of Insurance,** to the Medical Expense Limit shown in the Declarations.

#### **F. MOBILE EQUIPMENT REDEFINED**

Subparagraph **f.(1)** of Definition **12.** "Mobile equipment" of **Section V – Definitions** is deleted and replaced by the following:

- (1) Equipment with a gross vehicle weight of 1,000 pounds or more and designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;

#### **G. NEWLY FORMED OR ACQUIRED ORGANIZATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND EXTENDED PERIOD OF COVERAGE**

Paragraph **3.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

3. Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or:
  - a. Majority interest of more than 50% if you are a corporation;
  - b. Majority interest of more than 50% as a general partner of a newly acquired or formed partnership; and/or

- c. Majority interest of more than 50% as an owner of a newly acquired or formed limited liability company;

will qualify as a Named Insured if there is no other similar insurance available to that organization. However, for these organizations:

- (i) Coverage under this provision is afforded only until the next anniversary date of this policy's effective date after you acquire or form the organization, partnership or limited liability company, or the end of the policy period, whichever is earlier;
- (ii) **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization, partnership or limited liability company;
- (iii) **Section I – Coverage B – Personal And Advertising Injury Liability** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization, partnership or limited liability company;
- (iv) Coverage applies only when operations of the newly acquired organization, partnership or limited liability company are the same or similar to the operations of insureds already covered under this insurance;
- (v) Coverage only applies for those limited liability companies who have established a date of formation as recorded within the filed state articles of organization, certificates of formation or certificates of organization; and
- (vi) Coverage only applies for those partnerships who have established a date of formation as recorded within a written partnership agreement or partnership certificate.

#### H. WHO IS AN INSURED – AMENDMENT

The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any:

- a. Current partnership or limited liability company, unless otherwise provided for under Paragraph 3. of **Section II – Who Is An Insured**;
- b. Current joint venture; or

- c. Past partnership, joint venture or limited liability company;

that is not shown as a Named Insured in the Declarations.

#### I. NON-OWNED WATERCRAFT

Subparagraph (2) of **Exclusion 2.g. Aircraft, Auto Or Watercraft of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge.

#### J. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

**Section I – Supplementary Payments – Coverages A And B** is changed as follows:

1. The limit shown in Paragraph 1.b. for the cost of bail bonds is changed from \$250 to \$3,000; and
2. The limit shown in Paragraph 1.d. for loss of earnings because of time off from work is changed from \$250 a day to \$1,000 a day.

#### K. UNINTENTIONAL OMISSION OR UNINTENTIONAL ERROR IN DISCLOSURE

The following provision is added to Paragraph 6. **Representations of Section IV – Commercial General Liability Conditions**:

However, the unintentional omission of, or unintentional error in, any information given or provided by you shall not prejudice your rights under this insurance.

This provision does not affect our right to collect additional premium or to exercise our right of cancellation or non-renewal.

#### L. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Commercial General Liability Conditions**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" and included in the "products-completed operations hazard" when you have agreed in a written contract or written agreement that any right of recovery is waived for such person or organization. This waiver applies only to the

person(s) or organization(s) agreed to in the written contract or written agreement and is subject to those provisions.

This waiver does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".

However, if any person or organization is separately scheduled on a separate waiver of transfer of rights of recovery which is attached to this policy, then this waiver does not apply.

#### **M. LIBERALIZATION CLAUSE**

The following is added to **Section IV – Commercial General Liability Conditions**:

If we adopt a mandatory attachment form change which broadens coverage under this edition of the Commercial General Liability CG0001 for no additional charge, and those changes are intended to apply to all insureds under this edition of CG0001, that change will automatically apply to your insurance as of the date we implement the change in your state. This liberalization clause does not apply to changes implemented through introduction of a subsequent edition of the Commercial General Liability form CG0001.

#### **N. INCIDENTAL MEDICAL MALPRACTICE**

1. Paragraph **2.a.(1)(d)** of **Section II – Who Is An Insured** does not apply to a physician, nurse practitioner, physician assistant, nurse, emergency medical technician or paramedic employed by you if you are not in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
2. This provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow Paragraph **4.b.** of **Section IV – Commercial General Liability Conditions**.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO ENHANCEMENT**

This endorsement modifies insurance provided under the following:  
BUSINESS AUTO COVERAGE FORM

Paragraph No.	Summary of Coverage Extensions	Limit or Included
A.	Additional Insured by Contract Or Agreement Including Primary and Noncontributory Other Insurance Condition	Included
B.	Airbags - Extended Coverage	Included
C.	Audio, Visual & Data Electronic Equipment Coverage (Including Telematics Tracking Equipment)	\$1,000
D.	Auto Loan/Lease Gap Coverage	\$2,500
E.	Autos Rented by Employees	Included
F.	Bail Bonds - Extended Coverage	\$5,000
G.	Broad Form Named Insured Including Newly Acquired or Formed Organizations	Included
H.	Custom Signs & Decorations	Included
I.	Employees as Insureds	Included
J.	Fellow Employee Coverage	Included
K.	Glass Repair – No Deductible	Included
L.	Hired Auto Physical Damage and Increased Loss of Use Expenses Loss of use (Per Day / Maximum)	\$100,000 \$500/ \$3,500
M.	Knowledge Of An Accident, Claim, Suit Or Loss	Included
N.	Loss Of Earnings - Extended Coverage	\$1,000
O.	Rental Reimbursement Coverage	
	Maximum Rental Expenses Per Day	\$75
	Maximum Rental Expenses Because Of Loss To Any One Covered "Auto"	\$3,375
	Maximum Rental Expenses Because Of Loss To All Covered "Autos" In Any One Policy Period	\$15,000
P.	Resultant Mental Anguish	Included
Q.	Towing And Labor Coverage Extension	\$100
R.	Transportation Expenses - Coverage Extension ( Per Day / Maximum)	\$75 / \$2,500
S.	Unintentional Failure To Disclose Hazards	Included
T.	Waiver Of Subrogation By Contract Or Agreement	Included

**The above is a summary only. If there is a conflict between this summary and the endorsement provisions that follow, the endorsement provisions shall prevail.**



**A. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT INCLUDING PRIMARY AND NONCONTRIBUTORY OTHER INSURANCE CONDITION**

The following is added to Paragraph **A.1. Who Is An Insured** of Section **II – Covered Autos Liability Coverage**:

When you have agreed in a written contract or agreement to include a person or organization as an additional insured, such person or organization is included as an "insured" subject to the following:

1. Such person or organization is an additional insured only to the extent such person or organization is liable for "bodily injury" or "property damage" because of the conduct of an "insured" under Paragraphs **a.** or **b.** under Paragraph **A.1. Who Is An Insured** of Section **II – Covered Autos Liability Coverage**, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".
2. The written contract or agreement described above must have been executed prior to the "accident" that caused the "bodily injury" or "property damage" and be in effect at the time of such "accident".
3. The insurance afforded to any such additional insured does not apply to any "accident" beyond the period of time required by the written contract or agreement described above.
4. The most we will pay on behalf of such additional insured(s) is the lesser of:
  - a. The Limits of Insurance specified in the written contract or agreement described above; or
  - b. The Limits of Insurance shown in the Declarations.

This provision shall not increase the Limit of Insurance shown in the Declarations in this policy or coverage part.
5. The following changes are made to Paragraph **5. Other Insurance** of **B. General Conditions** under Section **IV – Business Auto Conditions**:
  - a. The following is added to Paragraph **5.a.**:

If required by the written contract or agreement described above, the insurance afforded to the additional insured under this provision will be primary to, and will not seek

contribution from, the additional insured's own insurance.

**b.** Paragraph **5.c.** is deleted in its entirety.

6. Paragraph **A.1.c.** under Section **II - Covered Autos Liability Coverage** is deleted in its entirety.

7. The definition of "insured contract" under Section **V – Definitions** is amended to add the following:

An "insured contract" does not include that part of any contract or agreement: That pertains to the ownership, maintenance or use of an "auto" and which indemnifies a person or organization for other than the vicarious liability of such person or organization for "bodily injury" or "property damage" caused by your operation or use of a covered "auto".

However, a person or organization is an additional "insured" under this provision only to the extent such person or organization is not named as an "insured" by separate endorsement to this policy.

**B. AIRBAGS- EXTENDED COVERAGE**

Section **III – Physical Damage Coverage**, Paragraph **B.3.a.** does not apply to the unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide coverage.

**C. AUDIO, VISUAL & DATA ELECTRONIC EQUIPMENT COVERAGE (Including Telematics Tracking Equipment)**

**Physical Damage Coverage** is amended as follows:

1. In Section **III – Physical Damage Coverage**, Paragraphs **B.4.c.** and **B.4.d.** do not apply to:

- a. Global positioning systems; or
- b. "Telematics devices";

which are not:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs **a.** and **b.** above; or;

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.
2. In the event of a "loss" to a covered "auto", the most we will pay for "loss" to global positioning systems and "telematics devices" in any one covered "auto" is the lesser of:
- The actual cash value of the damaged or stolen property at the time of loss;
  - The cost of repairing or replacing damaged or stolen property with other property of like kind and quality; or
  - \$1,000
3. For each covered "loss", a deductible of \$100 shall apply.

"Telematics Devices" include devices that are not installed by the vehicle manufacturer and that are designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes global positioning systems and wireless safety communication devices.

Cellular, mobile and smart phones are not considered global positioning systems or "telematics devices" for purposes of this coverage provision.

**D. AUTO LOAN/LEASE GAP COVERAGE**

The following is added to **Section III – Physical Damage Coverage**, Paragraph C.:

In the event of a total "loss" to a covered "auto", we will pay up to \$2,500 on the unpaid amount due on the lease or loan for a covered "auto", less:

The amount paid under the Physical Damage Coverage section of the policy; and any:

- Overdue or any deferred lease/loan payments at the time of the "loss";
- Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- Security deposits not returned by the lessor;
- Costs for extended warranties, Credit

Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

- Carry-over balances from previous loans or leases.

Coverage provided under this extension will be excess over any other collectible insurance including, but not limited to, any coverage provided by or purchased from the lessor or any financial institution.

However, this provision does not apply to the extent loan/lease gap coverage has been provided by separate endorsement to this policy.

**E. AUTOS RENTED BY EMPLOYEES**

The following is added to **Section II – Covered Autos Liability Coverage**, Paragraph A.1.:

The following is added to the **Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business

**F. BAIL BONDS - EXTENDED COVERAGE**

**Section II – Covered Autos Liability Coverage**, Paragraph A.2.a.(2) is deleted and replaced by the following:

- Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

**G. BROAD FORM NAMED INSURED INCLUDING NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following is added to sub paragraph A1. **Who Is An Insured** of **Section II – Covered Autos Liability Coverage**:

For any covered "auto";

Any organization, other than a partnership, joint venture or limited liability company, over which you maintain ownership or majority interest of more than 50 percent on the effective date of this endorsement and for which you are obligated prior to the loss to provide insurance, unless that organization is an "insured" under any other automobile policy or would be an "insured" under such a policy but for the exhaustion of its Limit of

Insurance.

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company or any organization excluded either by this Coverage Part or by endorsement, and over which you maintain ownership or majority interest of more than 50 percent will qualify as a Named Insured. However:

1. This insurance does not apply to any newly acquired or formed organization that is an "insured" under any other automobile policy or would be an "insured" under such policy but for its termination or the exhaustion of its Limit of Insurance.
2. Coverage under this provision does not apply to "bodily injury", "property damage", expense or "loss" that occurred before you acquired or formed the organization.
3. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### H. CUSTOM SIGNS & DECORATIONS

Physical Damage coverage on a covered "auto" extends to "loss" to custom signs and decorations including custom murals, paintings or other decals or graphics.

Our limit of liability for each "loss" to custom signs and decorations shall be the least of:

- (1) Actual cash value of the stolen or damaged property;
- (2) Amount necessary to repair or replace the property; or

This coverage does not apply to Hired Auto Physical Damage Coverage.

#### I. EMPLOYEES AS INSUREDS

**Section II - Covered Autos Liability Coverage**, Paragraph **A.1.b.(2)** is deleted and replaced by the following:

- (2) Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

However, the insurance provided by this provision, **I. EMPLOYEES AS INSUREDS**, does not apply if separate Employee as Insured coverage (or any similar or equivalent coverage) has been provided by a separate endorsement issued by us and made a part of this

policy or coverage part.

#### J. FELLOW EMPLOYEE COVERAGE

Exclusion **B. 5. of Section II - Covered Autos Liability Coverage** is deleted and replaced with the following:

##### 5. Fellow Employee

- a. "Bodily injury" to any fellow "employee" of an "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

However, this exclusion does not apply to liability incurred by your "employees" that are "executive officers".

No "employee" is an "insured" for "bodily injury" to a co-employee if such co-employee's exclusive remedy is provided under a workers' compensation law or any similar law.

For the purpose of Fellow Employee Coverage only, paragraph **B.5. of Business Auto Conditions** is changed as follows:

This **Fellow Employee Coverage** is excess over any other collectible insurance.

As used in this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

#### K. GLASS REPAIR – NO DEDUCTIBLE

The following is added to **Section III – Physical Damage Coverage**, Paragraph **D.:**

- 3 Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" when you elect to patch or repair glass rather than replace.

#### L. HIRED AUTO PHYSICAL DAMAGE AND INCREASED LOSS OF USE EXPENSES

**Section III – Physical Damage Coverage, A. 4 Coverage Extensions** is amended to include the following:

If hired "autos" are covered "autos" for Liability Coverage under this policy and if Physical Damage Comprehensive Coverage, Physical Damage Specified Causes Of Loss

Coverage, or Physical Damage Collision Coverage is provided under this policy for any "auto" you own, then such Physical Damage Coverages are extended to apply to "autos" you lease, hire, rent or borrow without a driver, subject to the following provisions:

1. This extension is only available for "autos" you lease, hire, rent or borrow for less than 30 consecutive days.
2. The most we will pay in any one "loss" is the least of \$100,000, the actual cash value of the "auto" or the cost to repair or replace the "auto", except that such amount will be reduced by a deductible to be determined as follows:

The deductible shall be equal to the amount of the highest deductible shown for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" of the same classification, the highest deductible for any owned "auto" will apply for that coverage.

3. Coverage provided under this extension will be excess over any other collectible insurance you have.

Paragraphs 1 through 3 above do not apply if separate Hired Auto Physical Damage is indicated in the declarations.

For "autos" you lease, hire, rent or borrow covered under this Hired Auto Physical Damage Coverage extension or under separate coverage provided in the declarations, the limits in subparagraph **b. Loss Of Use Expenses** under paragraph **4. Coverage Extensions** as found in paragraph **A. Coverage of SECTION III – PHYSICAL DAMAGE COVERAGE**, are increased to \$500 per day, to a maximum of \$3,500.

**M. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS**

The following is added to **Section IV – Business Auto Conditions**, Paragraph **A.2.:**

Notice of an "accident" or "loss" will be considered knowledge of yours only if reported to you, if you are an individual, a partner, an executive officer or an employee designated by you to give us such notice.

Notice of an "accident" or "loss" to your Workers' Compensation insurer, for an

event which later develops into a claim for which there is coverage under this policy, shall be considered notice to us, but only if we are notified as soon as you know that the claim should be addressed by this policy, rather than your Workers' Compensation policy.

**N. LOSS OF EARNINGS - EXTENDED COVERAGE**

**Section II – Covered Autos Liability Coverage**, Paragraph **A.2.a.(4)** is deleted and replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$1,000 a day because of time off from work.

**O. RENTAL REIMBURSEMENT COVERAGE**

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage. This coverage is only available to those covered "autos" involved in a "loss" and Physical Damage is provided to the covered "auto".
2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the expiration date of the policy, with the lesser of the following;
  - a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
  - b. 45 days.
3. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred.
  - b. The maximum rental expenses indicated below:
    - (1) Not more than \$75 per day;
    - (2) The maximum rental expenses

shown below:

- (a) \$3,375 because of "loss" to any one covered "auto";
- (b) \$15,000 because of all "loss" to all covered "autos" in any one policy period.

- 4. We will pay up to an additional \$300 for the reasonable and necessary expenses you incur to remove your materials and equipment from the covered "auto" and replace such materials and equipment on the rental "auto".
- 5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
- 6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

**P. RESULTANT MENTAL ANGUISH**

**Section V - Definitions**, Paragraph C. is deleted and replaced by the following:

- C. "Bodily injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

**Q. TOWING AND LABOR COVERAGE EXTENSION**

The following is added to **Section III – Physical Damage Coverage**, paragraph A.2.:

- 1. We will pay up to \$100 for a covered "auto" for towing and labor costs incurred each time the covered "auto" is disabled. However, the labor must be performed at the place of disablement.
- 2. This coverage applies only for an "auto" covered on this policy for Comprehensive or Specified Causes of Loss Coverage and Collision Coverages.
- 3. Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto".

**R. TRANSPORTATION EXPENSES - COVERAGE EXTENSION**

Paragraph **A.4.a. Transportation Expenses of Section III – Physical Damage Coverage** is amended as follows:

- 1. The Limits of Insurance are increased to \$75 per day to a maximum of \$2,500.
- 2. We will also pay reasonable and necessary expenses to facilitate the return of the stolen "auto" to you.

**S. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

The following is added to **Section IV - Business Auto Conditions**, Paragraph B.2.:

If you unintentionally fail to disclose any hazards existing at the inception of this policy, such failure will not prejudice the coverage provided to you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

**T. WAIVER OF SUBROGATION BY CONTRACT OR AGREEMENT**

The following is added to **Section IV - Business Auto Conditions**, Paragraph A.5.:

The Transfer Of Rights Of Recovery Against Others To Us Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived:

- 1. Under a written contract or agreement with such person(s) or organization(s); and
- 2. Prior to the "accident" or the "loss".

**WAIVER OF SUBROGATION  
IMPORTANT NOTICE REGARDING CONSTRUCTION RISKS**

Missouri Statute 287.150 6. reads:

Any provision in any contract or subcontract, where one party is an employer in the construction group of code classifications, which purports to waive subrogation rights provided under this section in anticipation of a future injury or death is hereby declared against public policy and void. Each contract of insurance for workers' compensation shall require the insurer to diligently pursue all subrogation rights of the employer and shall require the employer to fully cooperate with the insurer in pursuing such recoveries, except that the employer may enter into compromise agreements with an insurer in lieu of the insurer pursuing subrogation against another party. The amount of any subrogation recovery by an insurer shall be credited against the amount of the actual paid losses in the determination of such employer's experience modification factor within forty-five days of the collection of such amount.

**Based on this statute, an insurance company writing business on a MO business with construction classifications can not provide a waiver of subrogation and any such provision purporting to do so in advance of an injury would be enforceable.**





August 16<sup>th</sup>, 2023

To Whom It May Concern:

RE: TC Fuller Construction, LLC

Greetings:

United Casualty and Surety Insurance Company has issued bonds for TC Fuller Construction, LLC since 2021 during which time we have favorably considered projects up to \$1,500,000 with an aggregate of \$1,500,000. Our experience with TC Fuller Construction, LLC has been excellent, and we highly recommend them to you.

United Casualty and Surety Insurance Company is rated "A-" (Excellent), with a financial size category of V by AM Best, and is listed on the U.S. Treasury Department's Listing of Approved Sureties.

United Casualty and Surety Insurance Company's decision to issue any bond is conditioned upon acceptable review of contract terms, contract amount, bond forms, and financing for each project as well as other pertinent underwriting information at the time of the request.

Please understand that any arrangement for bonds is a matter between TC Fuller Construction, LLC and United Casualty and Surety Insurance Company, and we assume no liability to third parties or you if, for any reason, we do not issue a requested bond.

This letter will expire one hundred and eighty (180) days from the above date.

  
Zachary R. Bradley, Attorney-in-fact