

**REQUEST FOR QUALIFICATIONS
FOR DESIGN-BUILD SERVICES CONTRACT
FOR PROJECT NO. 8100710 – CONTRACT NUMBER 1718
WESTSIDE SLUDGE SCREENING
WATER SERVICES DEPARTMENT
CITY OF KANSAS CITY, MISSOURI**

INSTRUCTIONS FOR PROPOSERS

1. **Purpose.** This is a Request for Qualifications (“RFQ”) issued by the City of Kansas City, Missouri (“City” or “Owner”) acting through its Water Services Department (WSD) for Design-Build Services including design, construction, startup and commissioning for the Westside Sludge Screening Project (Project).

This RFQ represents the first step of the procurement process and establishes the process for soliciting and evaluating Statements of Qualifications (SOQs) from those entities (Proposers) interested in serving as the Design-Builder. The SOQs will be reviewed and evaluated in accordance with the provisions of this RFQ to develop a shortlist of qualified Design-Builders (Shortlisted Proposers or Shortlist). Shortlist will be determined solely on SOQs submitted. Only those Proposers selected as Shortlisted Proposers will be issued a Request for Proposals (RFP) and invited to submit a proposal in response to the RFP.

The RFP will represent the second step of the procurement process and will solicit detailed technical and cost proposals from the Shortlisted Proposers. The award of the Contract for Design-Build Services will be subject to the terms and conditions of the RFP. Shortlisted Proposers not selected and contracted with will be offered a stipend of \$75,000.00 upon their submittal of a responsive Proposal and City Council approval to contract with the selected Proposer.

Proposers must be thoroughly familiar with the scope of work and performance requirements discussed in this RFQ. The City may disqualify any Proposer that fails to demonstrate such familiarity in its SOQ.

It is anticipated that the RFP will include a process by which Shortlisted Proposers will be able to have proprietary confidential discussions with the City to discuss the Project, design development, and comments on the draft Contract for Design-Build Services. Shortlisted Proposers will be encouraged to review the City’s draft Contract for Design-Build Services provided as Attachment D (Draft Contract for Design-Build Services) and re-issued in the RFP phase and submit their recommendations to the City’s Project Manager.

2. **Definition of Request for Qualifications.** This RFQ is an invitation by the City to interested Proposers to submit an SOQ and all other required submissions as specified in this RFQ. Determination of the Shortlisted Proposers will be based upon the judgment of the City in eventually selecting a Design-Builder that will be in the best interest of the City. This RFQ is not a request for a competitive bid. The Proposer’s submittal of an SOQ in response to this RFQ does not create any right in or expectation to a contract with the City.

3. **Due Date.** Sealed SOQs are due by **November 20, 2024, at 2:00 pm (local time)**. SOQs shall be sent to Delois Moore, Procurement Manager, Procurement Services Division, KC Water, 4800 E 63rd Street, Kansas City, MO 64130. Proposers should submit three (3) spiral bound copies of their SOQs, and one (1) electronic version of the SOQ on a USB flash drive (in indexed and searchable PDF format). All SOQs must be submitted in a sealed envelope or box and shall not be opened until after the due date. The SOQ document package shall be plainly labeled with the words “STATEMENT OF QUALIFICATIONS FOR WESTSIDE SLUDGE SCREENING – PROJECT NO. 81000710 – CONTRACT NUMBER 1718.” The City reserves the right at any time to change or extend the due date and time for any reason.

Each Proposer assumes full responsibility for the timely delivery of its SOQ at the required location. Any SOQ received after the Submittal Date will be deemed nonresponsive and returned unopened to the Proposer, and that Proposer will be eliminated from consideration. A delivery acknowledgement will be issued upon receipt of the SOQ package and will be provided to the Proposer via e-mail by the City’s Project Manager.

If the SOQ submission is delivered by hand, it must be delivered to the KC Water Administration Building, 4800 E. 63rd St. KCMO **Mail Room** entrance east side of the building,

Deliveries made to the Security Desk will **not** be accepted.

4. **RFQ Package.** The RFQ package for this Project contains the following:

Instructions for Proposers

Section 1: Project Overview

Section 2: Fixed-Price Design-Build Services

Section 3: Procurement Process

Section 4: SOQ Submission Requirements

Section 5: SOQ Evaluation and Selection

Section 6: Conditions for Proposers

Attachments

Attachment A: Definition of Terms

Attachment B: Forms for Affirmation of Compliance (including Civil Rights and Equal Opportunity [CREO] Department Documents)

- CREO Form 06: Instructions for Qualifications (informational only)

- CREO Form 8A: Contractor Utilization Plan/Request for Waiver (informational only)
- CREO Form 10: Timetable for MBE/WBE Utilization (informational only)
- CREO Form 11: Request for Modification or Substitution (informational only)
- CREO Form 13: Affidavit of Intended Utilization (informational only)
- 00450.01 Letter of Intent to Subcontract (informational only)
- CREO Contract Assurances (informational only)

Attachment C: Forms to be Submitted with SOQ

- DB 00210.01 Design-Build Background Information Form
- Form 00410.01 Experience Reference Form
- Form 00515.01 Employee Eligibility Verification Affidavit
- Business Entity Certification, Enrollment Documentation and Affidavit of Work Authorization Form

Attachment D: Draft Contract for Design-Build Services (informational only)

5. Pre-SOQ Conference. A **mandatory Pre-SOQ Conference will be held on October 23, 2024, at 9:00 a.m.**, by the Water Services Department via Microsoft Teams. Attendance by at least one member of the Design-Build team (general contractor or each member of a joint venture) at the Pre-SOQ Conference is mandatory. The meeting attendance information will be issued as an addendum.

6. Questions. Forward all questions by email to both the following Project Manager and Procurement Manager. Questions received less than ten (10) days prior to the Submittal Date may not be answered. Interpretations or clarifications considered necessary by the Project Manager and/or Procurement Manager in response to such questions will be issued by Addenda to all Proposers. Oral or other interpretations or clarifications shall be without legal effect, even if made during formal meetings.

Raed Asfan, Project Manager
KC Water Department
4800 East 63rd Street,
Kansas City, MO 64130
(505) 550-3964 Phone
E-mail: raed.asfan@kcmo.org

Delois Moore, Procurement Manager
General Services Department
Procurement Services, Division/KC Water
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For persons with disabilities needing reasonable accommodations please contact the City's ADA Specialist at 816-513-1818.

SECTION 1: PROJECT OVERVIEW

1.1. Project Background

The Westside WWTP, located near the confluence of the Kansas and Missouri Rivers in the Central Industrial District, is a conventional activated sludge facility with primary clarification. The original primary plant was built in 1963, followed by the addition of the activated sludge facilities in 1978. Chlorine contact basins were added in 2012 for seasonal disinfection. As part of the City's Overflow Control Program (in response to a Consent Decree issued by the U.S. Environmental Protection Agency), a chemically-enhanced primary treatment (CEPT) system, third secondary clarifier, return activated sludge pump station, and third disinfection basin were added to the treatment facilities to increase the peak hydraulic capacity of the WWTP by 30 million gallons per day (mgd). The Westside WWTP currently has a permitted capacity of 22.5 mgd average daily flow and rated peak capacity of 70 mgd.

Flow to the Westside WWTP is pumped from multiple sanitary and combined sewer lift stations within a 15 square mile service area, including downtown Kansas City, Missouri, and a portion of areas north of the Missouri River. The primary treatment facilities include grit basins, two primary clarifiers, primary sludge and scum pumping, and the CEPT system to allow for the addition of polyaluminum chloride and/or polymer at the grit basins or primary clarifiers to improve sludge settleability upstream of the activated sludge process. The secondary treatment facilities consist of two aeration basins, three secondary clarifiers, and associated sludge and scum pumping. The disinfection facilities include three contact basins, and two chemical buildings for the addition of sodium hypochlorite and sodium bisulfite for chlorination and de-chlorination during seasonal disinfection from April 1 through October 31. An effluent pump station was constructed with the original primary plant for use when the river levels are at flood stage. The submersible-axial flow pumps were recently replaced as part of the WWTP Facility Plan project in 2021.

Currently, primary and secondary sludge pumps convey settled sludge from the primary and final clarifier basins, respectively, through a 6.6-mile, 12-inch diameter pipeline to the Blue River WWTP for processing.

The existing sludge forcemain to the Blue River WWTP was constructed in 1963. Over the past 15 years, this forcemain has experienced multiple pipe bursts; six to eight bursts over a seven to eight-year period were reported back in 2016. Previous inspections of the line have also indicated thinning of the pipe wall along a good portion of its length; however, physical inspections of the pipe to assess the current condition of the pipe have not been conducted in several years, but rehabilitation of the forcemain is being planned under a separate project. Due to the criticality of protecting the rehabilitated forcemain and downstream biosolids processing equipment at the Blue River WWTP, this Project is to install sludge screening equipment for the Westside WWTP sludge prior to conveyance to the Blue River WWTP. This new equipment will be housed within a new building located on the south side of Woodswether Road and to the north of new Final Clarifier No. 3.

Due to the size of the Project, the desire to allocate risk to one entity, and expedited nature of the Project, the City decided there is benefit in utilizing a Design-Build method for the Project and a

Fixed-Price Design-Build (FPDB) method was selected. The FPDB method outlined in this RFQ was chosen to allow WSD staff involvement in the design process for the Project while leveraging the schedule, design and construction innovation, team collaboration, and other advantages that result from use of a design-build process.

The Design Professional Owner's Advisor (OA) for the Project is Carollo Engineers, Inc. The OA will provide assistance during the FPDB process on behalf of the City throughout the Project. Ongoing coordination services and meetings with WSD will be required.

1.2. Project Scope

This RFQ is to provide Design-Build Services for design, construction, and commissioning of the following scope of work, including but not limited to:

- In-line sludge screening equipment.
- Sludge mixing system for the screened sludge wet well.
- Pumps for conveying screened sludge to the Blue River WWTP.
- Two-story building with dedicated mechanical, electrical, control, and dumpster rooms.
- Odor control.
- Improvements to existing electrical and instrumentation systems required to serve the new facility.
- Sitework improvements to allow vehicle access to the new facility.

Figure 1 is a process flow diagram for the proposed sludge screening system. Existing infrastructure is screened back in the schematic. Figure 2 is an overview of the project area.

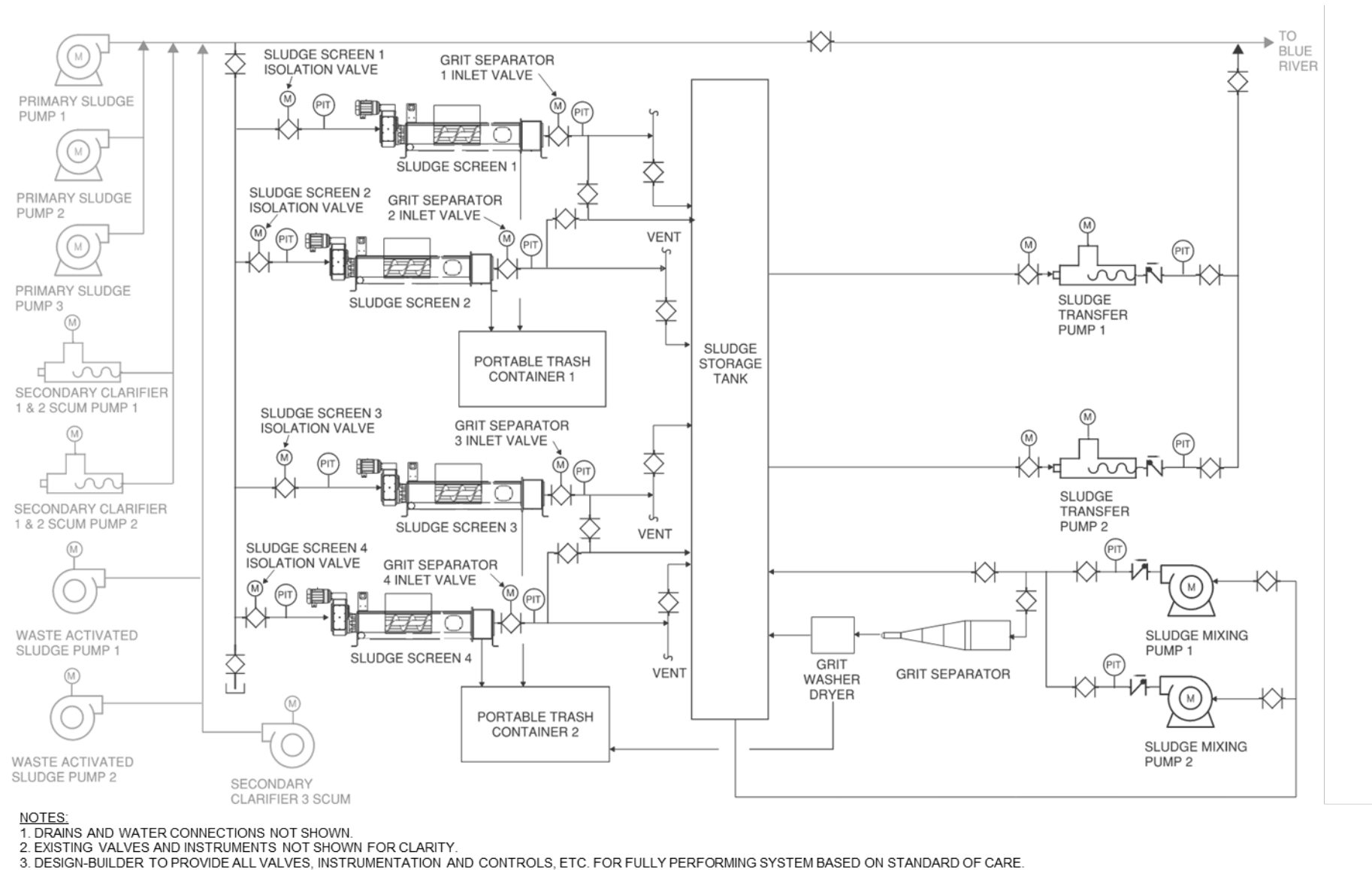


Figure 1. Process Flow Diagram (existing infrastructure is screened back)

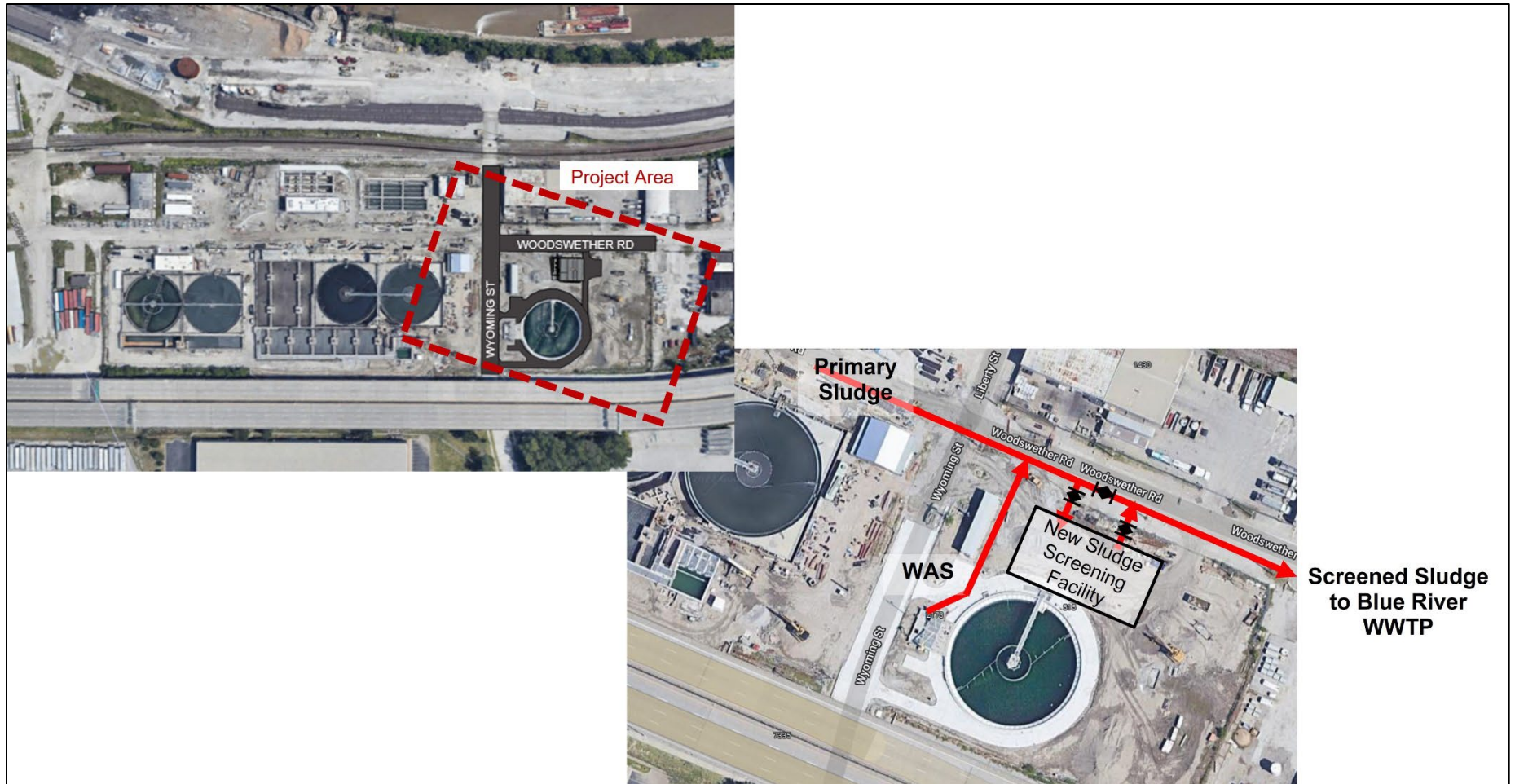


Figure 2. General Project Vicinity

Under the FPDB method, the Design-Builder's scope of work for the Project will be performed in two phases under a single Contract for Design-Build Services as provided in Attachment D (Draft Contract for Design-Build Services) between the City and Design-Builder. These phases may run concurrently. The Project phases are generally described as follows:

- **Design Phase** services performed under the Contract for Design-Build Services include completing the entirety of the Project's final design and pre-construction activities.
- **Construction Phase** services performed under the Contract for Design-Build Services include engineering services during construction, performing construction; performing post-construction tasks, such as commissioning and startup, and turnover activities; and performing warranty and other work required.

1.3. City's Objectives

The City's objectives for delivery of the Project are as follows:

- **Quality:** Provide treatment facilities and equipment that will be sustainable and will reliably screen sludge in full compliance with contractual standards for the full range of the sludge conditions set forth in the forthcoming RFP.
- **Cost:** Minimize capital cost with consideration of optimizing life-cycle cost. Shortlisted Proposers will be encouraged to develop creative solutions to reduce City's sludge hauling costs.
- **Schedule:** Achieve the scheduled completion dates for design, construction and startup of the Project.
- **Risk:** Achieve an optimal balance of risk allocation between the City and the Design-Builder.
- **Safety:** Implement an effective safety program incorporating best industry practices.
- **Operations and Maintenance (O&M):** Optimize operating and maintenance requirements so that the facility is capable of reliably and continuously operating in a cost-effective manner over the long-term. Ensure sufficient training for WSD staff to transition to full-time operation of new facilities.
- **Accountability:** Provide for Design-Builder to assume single point of accountability for performance of all services under the Contract for Design-Builder Services.
- **Smooth Transition:** Smooth transition of design deliverables (i.e., as-builts, O&M manuals, submittals, building information models (BIM)) from the Design-Builder to the City for use in the City's O&M systems, such as maintenance management and asset management. Smooth transition of facility operations following commissioning activities between the Design-Builder and the City.

- **Collaboration:** Provide for coordinated design development with City input in a manner that preserves Design-Builder’s sole responsibility for the achievement of Project performance objectives while meeting City objectives associated with cost, quality, aesthetics, and long-term operability.

By selecting the FPDB delivery method for the Project, the City is committed to working in close collaboration with the Design-Builder. The project technical requirements and standards for the Project’s design will be provided to the Shortlisted Proposers with the RFP.

1.4. Project Funding

The cost for design and construction of the Project is currently estimated at \$15 million. This budget does not include the City’s other Project costs, such as professional advisory services, site investigations, environmental studies, certain governmental approvals, taxes, and other related costs.

The Project will be financed through a combination of City municipal revenue bonds and cash reserves.

1.5. Project Schedule

The Project schedule is anticipated as follows:

- | | |
|------------------------------------|----------------|
| • Design-Builder Notice-to-Proceed | May 2025 |
| • Facility Commissioning | July 2026 |
| • Acceptance | September 2026 |
| • Final Completion | October 2026 |

1.6. Sustainability

The City has adopted an overall policy supporting a greater use of “green solutions” or enhanced sustainability measures that consider environmental quality, social equity and economic vitality. In order to minimize waste, enhance efficiencies, and achieve multiple benefits and project synergies, all City projects must identify opportunities for sustainability improvements and implement those improvements when financially reasonable and operationally practical. Shortlisted Proposers will be asked to address the following items in their Proposal:

- Describe how your Proposal will address the established City policies referenced in the RFP specific to the project or service on which you are proposing.
- Incorporate sustainability and efficiency into the planning, design, construction, operation and maintenance of the project. Highlight each component of the project

that you feel deserves consideration in this context and demonstrate how sustainability and efficiency are integrated into the project.

- If it is not possible to comprehensively integrate significant sustainability measures, then highlight elements you feel deserve consideration in this context.

The EnvisionTM rating system is used by WSD to promote sustainability in a variety of infrastructure projects and to encourage sustainable approaches as an important part of project design. EnvisionTM will also be used to evaluate and grade the sustainability of Project components as they are developed.

City also desires for all City of Kansas City, MO services to be carbon neutral by the 2030.

SECTION 2: FIXED-PRICE DESIGN-BUILD SERVICES

2.1. General

The Design-Builder shall perform all design and construction services, and provide all materials, equipment, tools, supervision, labor, and all other items and services necessary to complete the Work described in, and reasonably inferred from the Contract Documents as defined in the Contract General Conditions. This Work will include, but not be limited to, the following services:

Design Phase:

- Develop the Project execution plan, including Project schedule.
- Monitor and report on Project progress at the direction of the City and using tools acceptable to the City.
- Develop the final engineering design (including preparing and submitting intermediate design review packages) in conjunction with City. Design exhibits will include, but are not limited to, drawings, lists, and specifications.
- Perform additional engineering studies and site investigations (such as subsurface investigations, raw water/ wastewater analysis, etc.) to support the design.
- Complete final design documents for the purposes of obtaining necessary permits and to use for construction and obtain City and other Authorities Having Jurisdiction (AHJ) that may require approvals of the design.
- Sequence work to reduce road closures and hauling costs.
- Value-engineering activities to further confirm the Project budget through evaluation of any additional cost savings opportunities not identified in the Proposer's Proposal.

Construction Phase:

- Attend regular meetings with the City on a mutually agreed-upon schedule to communicate objectives, report on schedule and progress, discuss and resolve issues, obtain clarifications, etc.
- Monitor and report on Project progress at the direction of the City and using tools acceptable to the City.
- Secure identified permits.
- Procure materials, equipment, and subcontractors.
- Supervise subcontractors and Design-Builder personnel.

- Construct the Project.
- Coordinate with the City for supply of power, telecommunications, and potable water to the site for purposes of construction facilities and for commissioning.
- Maintain site security.
- Implement Project health and safety practices.
- Implement quality-management procedures.
- Conduct startup and commissioning.
- Provide operator training and prepare an operations transition plan.
- Provide closeout documentation (as-built drawings, BIM, O&M manuals, itemized asset management information, etc.).
- Provide warranty coverage.

2.2. Roles and Responsibilities

City: The City will cooperate with the Design-Builder and will fulfill its responsibilities in a timely manner to facilitate the Design-Builder's timely and efficient performance of services. The City's responsibilities include:

- Review submissions and provide comments to Design-Builder in a timely manner.
- Furnish existing studies and provide complete, accurate, and reliable data and information regarding the Project, including record drawings, preliminary studies, environmental impact assessments, BIM models, site plans etc.
- Provide information and provide (or engage Design-Builder to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide access to the Project site and any necessary easements.
- Obtain the governmental approvals and permits the City is responsible for and assist Design-Builder in obtaining governmental approvals and permits Design-Builder is responsible for.

- Provide necessary data and inputs, characteristics and ranges (e.g., wastewater influent, or biosolids) for Project start-up and performance commissioning.

Design-Builder: The Design-Builder will cooperate with the City and will provide in a timely manner the services, as described in Section 2.1, necessary to complete the general Project scope specified in this RFQ.

Owner's Advisor: The City will utilize an OA to: 1) assist the City with its responsibilities to the Design-Builder (as delineated above under City); 2) assist the City with Design Phase and Construction Phase oversight to monitor contract compliance of the Design-Builder; and 3) to augment City staff as directed.

The roles and responsibilities of the City, OA, and the Design-Builder will be more fully described and clarified in the RFP.

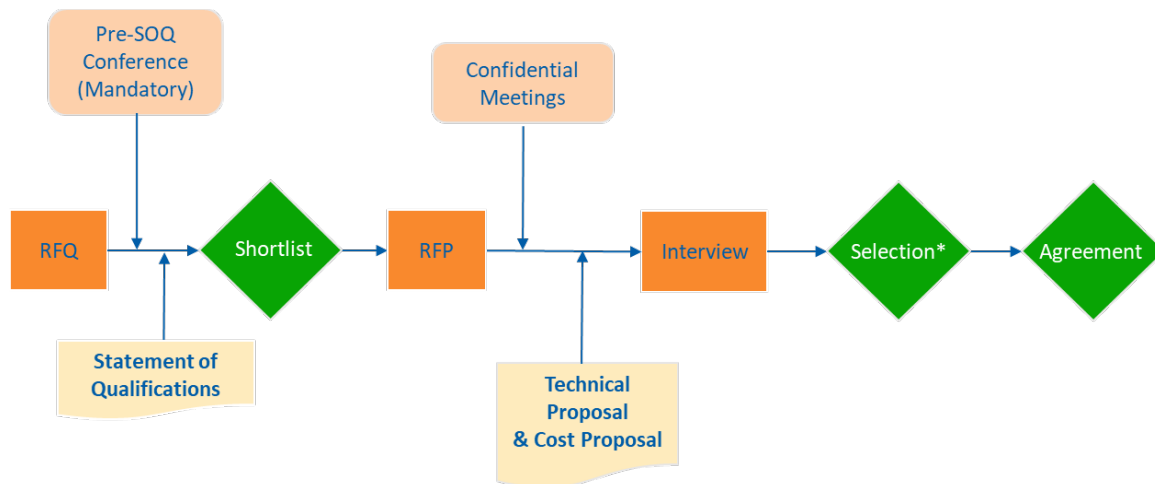
SOQ will be reviewed and evaluated in accordance with Section 5 of this RFQ. It is currently the intent of WSD to shortlist the three (3) highest ranked Proposers (Shortlisted Proposers) and invite those Shortlisted Proposers to submit proposals for the FPDB services in response to the RFP.

All communications shall be submitted in writing by email and shall specifically reference this RFQ as identified above. All communications and questions regarding the Project shall only be made through the City Contacts except for of City-certified Minority Business Enterprises, and Women Business Enterprises (MBE/WBE) and of Proposers contacting the Civil Rights and Equal Opportunities (CREO) Department to assist in meeting MBE/WBE goals. MBE/WBE firms may contact WSD, General Services, and CREO staff directly regarding the Project.

3.2. Procurement Schedule

• Advertise RFQ (provisional)	October 16, 2024
• Mandatory Pre-SOQ Conference (provisional)	October 22, 2024
• Deadline for Receipt of Written Questions (provisional)	November 5, 2024
• SOQ Submission Date (time)	November 20, 2024, at 2:00 pm (local time)
• Shortlist Selection Date (provisional)	November 29, 2024
• Issuance of RFP (provisional)	December 2, 2024
• Proposal Submission (provisional)	January 17, 2025
• Notice of Intent to Contract (provisional)	March 2025

Contract Central



* Sealed Cost Proposals are opened publicly. Final Design-Builder selection based on combined scoring of Technical Proposal and Cost Proposal.

Figure 3 Westside Sludge Screening Procurement Process

SECTION 4: SOQ SUBMISSION REQUIREMENTS

4.1. Submission Format

The SOQ must not exceed **twenty (20)** total narrative pages in 11-point font (most or all 8½ x 11-inch with 1-inch or greater margins). Each page will count as one page if printed only on one side, and two pages if printed on front and back. Page count excludes the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of **five (5)** of the total pages may be 11 x 17-inch z-fold format. The SOQ shall be typed or printed double-sided to the extent possible and shall have continuously numbered pages. Each SOQ Part shall be labeled with title headers.

Any supplemental information or documents (i.e., not required by this RFQ) that are included in the proposal should be marked as an attachment and clearly identified in the Table of Contents.

4.2. Submission Content

The content requirements set forth in this RFQ represent the minimum content requirements for the SOQ. It is the Proposer's responsibility to include information in its SOQ to present all relevant qualifications and other materials. The SOQ, however, should not contain standard marketing or other general materials. It is the Proposer's responsibility to modify such materials so that only directly relevant information is included in the SOQ. The City is interested in only receiving information regarding the Design-Builder (Prime), Lead Designer, major sub-contractors, systems integrators, and proposed MBE/WBE teaming partners as part of the Proposer's SOQ.

The SOQ must include the following information in the order listed:

- Transmittal Letter (does not count towards page limit)
- Part 1 – Design-Builder Profile
- Part 2 – Key Personnel
- Part 3 – Experience
- Part 4 – Safety Record
- Appendix A – Forms for Affirmation and Compliance
 - Copies of Missouri Construction and Engineering Licenses for Lead Contractor, Design Manager, and Engineer of Record (and/or letter of commitment to retain licenses by Issuance of RFP)
 - Joint Venture Agreement (if applicable)
 - Bonding Capacity (notarized letter confirming Proposer can meet minimum bonding requirements)

- Declaration of Insurance (notarized letter confirming Proposer can meet required limits)
- DB 00210.01 Design-Build Background Information Form
- Additional Information Related to Termination for Default, Criminal Convictions, and Debarment
- Form 00515.01 Employee Eligibility Verification Affidavit
- Appendix B – Resumes
- Appendix C – Safety Record Documentation

4.2.1 Transmittal Letter

Proposer will submit a transmittal letter on the Proposer's letterhead. The letter must be signed by the Proposer-Principal, the authorized representative of the Proposer listed on Form 00515.01, who is empowered to sign such material and to commit the Proposer to the obligations contained in the SOQ. If Proposer is a corporation or a limited liability company (LLC), an authorized officer shall sign his/her name and indicate his/her title beneath the full corporate name. If Proposer is a joint venture, an authorized representative for each member of the joint venture shall sign the letter, and specifically state that, if the joint venture is selected as the Design-Builder, each member will be jointly and severally liable to the City for the obligations arising out of the contracts between the joint venture and the City.

The transmittal letter must include:

- The name of Proposer's authorized representative(s), address(es), phone number(s), and e-mail address(es).
- The name of the proposed Design-Builder, Lead Contractor and Lead Designer.
- The identity of the individual(s) who will be the signatory(ies) to the contract(s) with the City, if awarded to Proposer, including title(s), address(es), phone number(s), and e-mail address(es).
- Acknowledge the receipt of any addenda.

The transmittal letter shall be limited to two (2) 8½ x 11-inch pages. The transmittal letter may include other information deemed relevant by the Proposer. **An SOQ that does not include a transmittal letter will be considered nonresponsive and the Proposer will not be considered for the Shortlist.**

4.2.2 *Part 1 – Design-Builder Profile*

At a minimum, the following information must be submitted, otherwise the SOQ will be deemed nonresponsive and the Proposer will not be considered for the Shortlist:

- **Executive Summary.** The executive summary (maximum three pages) must include a concise overview of the key elements of the SOQ and must summarize and refer to information in the SOQ concerning satisfaction of the Mandatory Requirements. The executive summary shall not be used to convey additional information not found elsewhere in the SOQ.
- **General.** Provide general information about the Proposer, Lead Designer and Lead Contractor organization(s), such as lines of business and service offerings; locations of home and other offices; number of employees in Kansas City, Missouri; total number of employees (professional and non-professional); years in business; and evidence of required licenses.

Identify which members of the Project Team will function as the Lead Contractor and Lead Designer, as defined in Attachment A (Definition of Terms). Identify Key subcontractors such as systems integrators and City-certified MBE and WBE firms. Identify the scope of work of each MBE/WBE firm and available bonding capacity of MBE/WBE firms for this project if practical. Provide copies of the construction licenses for Lead Contractor and copies of engineering license of the Design Manager and the individual that will act as the engineer of record in Appendix A (Forms for Affirmation and Compliance). The Proposer and Lead Contractor must each possess and maintain current, valid, and appropriate State of Missouri construction licenses for performance of the construction work. The Design Manager and the individual that will act as the engineer of record must possess and maintain a current, valid, and appropriate State of Missouri engineering license for performance of design services. If Proposer, Lead Contractor, Design Manager, or individual that will act as engineer of record does not currently maintain a State of Missouri license, please provide a letter of commitment to retain such required license by the time of the Issuance of the RFP.

The Proposer's and Lead Contractor's construction licenses may not have been suspended or revoked in the last five (5) years; and the engineering licenses for the Design Manager and the individual that will act as the engineer of record may not have been suspended or revoked in the last seven (7) years.

- **Legal Structure.** Identify whether the Proposer is organized as a corporation, LLC, or joint venture and which entity will obtain the performance and payment bonds that will be used; and provide a copy of joint venture agreement that was filed with the State of Missouri in Appendix A (Forms for Affirmation and Compliance). **If Proposer is a joint venture, all information required of a single entity must be submitted by each member of the joint venture.**

- **Project Team Organization.** Provide an organizational chart showing Proposer's proposed organizational and management structure that clearly identifies which Proposer's Project Team members are responsible for the major functions to be performed. Include significant design consultants and construction subcontractors including MBE/WBE firms and systems integrator(s). The organizational chart may be 8½ x 11-inch or 11 x 17-inch paper, folded to 8½ x 11-inch size. Describe the roles, responsibilities, functional arrangements, and reporting relationships showing clear lines of authority and communication between and among the members of Proposer's Project Team, including Key Personnel (defined in Attachment A Definition of Terms) that will be used to manage, design, and construct the Project. The organizational chart should also indicate the firms for the respective Team Members via text and color coding.
- **Bonding Capacity.** A potential "step-up and step-down" bonding approach may be used for the Project. Such an approach could allow different bonding limits between Project phases (e.g., Construction and Commissioning). In Appendix A (Forms and Affirmation of Compliance), Proposer shall provide a notarized letter(s) from its surety (or sureties) verifying the Proposer has a minimum bonding capacity of \$15 million available for this Project for performance and payment bonds. The Proposer's surety (or sureties) must have a rating of A- or better in the latest revision of the A.M. Best Company's Insurance Report, must be authorized by law to do business in the State of Missouri, and must be listed in the U.S. Department of Treasury Circular 570.
- **Quality Services Assurance Act.** Comply with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances. Provide certifications that indicate all employees working on this Contract in city limits of Kansas City, Missouri are paid a minimum of \$12.50 per hour in compliance with City's Quality Services Assurance act, Section 3-66, Code of Ordinances.

If certification cannot be provided, submit the following items for City to evaluate potential quality of personnel.

- Turnover rate for the last three (3) calendar years for non-exempt employees and exempt employees.
- Employee benefits provided to exempt and non-exempt employees.
- Training provided to exempt and non-exempt employees including those providing services to City.
- Promotional opportunities for non-exempt and exempt.
- Average tenure of exempt and non-exempt employees during the immediately preceding three (3) calendar years.
- Employee incentive rewards and employee recognition policies.

- How your firm provides and receives employee feedback and communication.
- Mentorship programs provided to employees.
- Education benefits provided for exempt and nonexempt employees.
- **Sustainability.** Include a concise (maximum of two pages) summary of your company's policies, strategies, and actions that demonstrate your philosophy and commitment to sustainability in accordance with Section 1.6.
- **Insurance.** The selected Proposer will be required to maintain for the duration of the Contract for Design-Build Services and provide certifications of insurance coverage(s). In Appendix A (Forms and Affirmations of Compliance), Proposers are required to provide a notarized declaration from their insurance carrier(s) that their firm is able to obtain insurance coverage in the following limits:
 - General Liability \$2,000,000 (Aggregate)
\$2,000,000 (per occurrence)
 - Builder's Risk or Property Insurance \$15,000,000
(Full Replacement Cost)
 - Workers' Compensation Employer's Liability Insurance \$1,000,000
 - Automobile Liability \$2,000,000
 - Professional Liability \$2,000,000

The Lead Designer may provide the professional liability insurance if Lead Designer will be a subcontractor to the Design-Builder. The required insurance must be obtained and maintained from insurance companies that have an A.M. Best Rating of no less than A:VII, unless otherwise acceptable to the City, and are duly licensed or authorized. The City shall be named as an additional insured as appropriate and shall be entitled to the fullest coverage permitted by law.

The SOQ must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Proposer's ability to perform its contractual commitments.

- **Termination for Default, Criminal Convictions, and Debarment.** Proposer shall submit the following information with respect to the Proposer, Lead Contractor, and Lead Designer:
 - Identification of any contract that has been terminated for default within the last five (5) years.

- Identification of any criminal conviction, and any violation of any federal, state, or local statute or regulation, or of any court order addressing or governing antitrust, public contracting, employment discrimination, false claims, or prevailing wages within the last five (5) years.
- Identification of any debarment, or any consideration for debarment, on public contracts by the federal, state, or local government, or by any agency of such government within the last five (5) years.

Present the Proposer's position on all matters. The City will evaluate the facts and may, at its sole discretion, reject the Proposer's SOQ if the facts discovered indicate that completion of a contract resulting from the RFP may be jeopardized by selection of such Proposer.

If any of the above questions is answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Proposer's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Design-Builder's ability to perform its contractual commitments. **Include these responses, as well as the completed DB 00210.01 Design-Build Background Information Form (provided in Attachment C, Forms to be Submitted with SOQ) in Appendix A (Forms and Affirmation of Compliance) of the SOQ.**

The Proposer must notify the City of any changes subsequent to submission of the SOQ and before the selection process is completed related to the Design-Builder Profile (and, in the case of the selected Proposer, before execution of the Contract for Design-Build Services).

4.2.3 Part 2 – Key Personnel

Identify the proposed Key Personnel (and their firm affiliations), as defined in Attachment A (Definition of Terms). Provide the names, e-mails addresses, intended utilization rate on this project, primary office location, and percent of working time in the Kansas City Metropolitan Area during this project of all such Key Personnel. The City expects Key Personnel named in this SOQ to remain on the Project Team for the duration of the Project and may not be removed or substituted without the City's prior written consent. The City also expects the Key Personnel to be engaged on the Project at utilization rates indicated at the specified locations. The Proposer's Proposal score may be impacted if the Shortlisted Proposer changes Key Personnel from those indicated in the SOQ and/or Key Personnel location/utilization. Proposer may provide information regarding up to five (5) project team personnel other than those team members defined as Key Personnel in Attachment A (Definition of Terms).

Provide resumes for all Key Personnel in SOQ Appendix B (Resumes). Resumes must be limited to two (2), single-sided 8½ x 11-inch pages per Key Personnel and half a page for other team members. Provide the following background information for each Key Personnel:

- Total years of experience in the industry with emphasis on the design and/or construction of water/wastewater public works projects.
- Years of employment with current employer.
- City and State of residence.
- Percent of working time anticipated to be in the Kansas City Metropolitan area during this project.
- Intended utilization during this project. Proposer may break utilization down by phases.
- Known projects that Key Personnel is committed during the planned execution of this project.
- Academic and professional qualifications.
- Professional registration(s) (as applicable) and certifications such as Design-Build Institute of America's "Designated Design-Build Professional" that are applicable to the Project. (At least one credentialed Envision™ Sustainability Professional [ENV SP] must be on the project team in a leadership role to submit a proposal for this project.)
- Experience as it relates to the Project (including reference projects and the individual's role in referenced project) and to the individual's specified role on the Project.
- Experience working with the City of Kansas City, Missouri, as well as within the greater Kansas City area.
- Identify any other projects Key Personnel will be involved with concurrently with the Project and indicate the estimated time commitment for the Project and other projects listed.
- Provide three (3) project references for each of the Proposer's Key Personnel.

Recovery Plan. Provide a recovery plan that addresses how Project Team would handle the loss of three (3) Key Personnel.

4.2.4 Part 3 – Past Experience

The City is interested in reviewing the past performance and experience of the team members of the Lead Contractor and Lead Designer, including their individual and collective past performance and experience. The Proposer shall provide descriptions for a minimum of two (2) reference projects each for the Lead Designer and Lead Contractor to demonstrate experience relevant to the Project. Representative projects shall be projects of similar size, complexity, challenges, and functionality

as the Project described in this RFQ. A maximum of a total of four (4) representative projects may be provided.

Each project description shall contain at least the following information:

- Name of Owner.
- Owner reference and contact information.
- Role of Project Team Member.
- Original construction cost, at selection for construction manager at risk and progressive design-build or bid for fixed fee design build and traditional delivery, negotiated Guaranteed Maximum Price if relevant, and final construction cost (and reason for difference between original and final costs).
- Original completion date of project and actual completion date.
- Description of the project showing relevance to this Project.
- Firms and Key Personnel who participated in the project and are included in this SOQ, along with a clear description of the project roles and responsibilities of each. Indicate if the Firms and Key Personnel will have the same role and responsibility on this project.

Proposers shall submit completed DB 00210.01 Design-Builder Background Information Form, Form 00515.01 Employee Eligibility Verification Affidavit (forms provided in Attachment C, Forms to be Submitted with SOQ) in Appendix A (Forms for Affirmation and Compliance).

Include a concise written narrative of the qualifications and experience of the Lead Designer and Lead Contractor that is relevant to the design-build services for the Project. SOQ may include projects of subcontractors containing Key Personnel that have a written agreement to provide the scope of work indicated in the narrative to the Proposer on this project at the time of submission of the SOQ. Clearly and specifically identify the in-house capabilities of the Design- Builder and those disciplines for which the entity normally subcontracts.

In addition, provide a summary table to cross-reference the Lead Designer and/or Lead Contractor (firms and Key Personnel) with participation in the reference projects. **Proposer should emphasize reference projects in which Key Personnel participated in completion of the project.** The Proposer is requested to only submit information within its SOQ regarding the Design-Builder, Lead Designer, subcontractors with Key Personnel, and Lead Contractor team members.

Proposers shall identify the reference projects that demonstrate experience with BIM or 3D-based design and construction models, EnvisionTM certification. Additionally, reference projects, if

possible, should demonstrate Proposer experience with the following Project-specific desired experience:

- Coordination with the US Army Corps of Engineers for construction within a critical zone of a levee;
- Installation of auger cast piles in critical levee zones;
- Installation of site dewatering systems; and/or
- Experience with construction and handover in an operational treatment plant.

Similar Project Experience. Using Form 00410.01 Experience and Reference Form provided in Attachment C (Forms to be Submitted with SOQ), list the three (3) most relevant or comparable contracts completed by Proposer during the past three (3) years. Additionally, provide a list of all public contracts for similar scope of services as specified in this RFQ entered into for the last three (3) years. Include the dollar amounts, summary of scope of services, contract terms, Public Owner's contact person, e-mail address, cell phone number and telephone number.

City staff or advisors reserve the right to contact references listed or implied and obtain information on representative/reference projects to confirm the information provided by Proposer. The evaluation of Proposer for this section may be negatively impacted by the inability to contact and verify references.

International project reference and contact information will be considered only to the extent the Proposer is able to provide information in its SOQ that adequately describes how the project reference is relevant to projects completed in the United States (e.g., similar project delivery method; similar technologies employed; similar regulatory requirements; similar materials and equipment procurement requirements; etc.).

4.2.5 Part 4 – Safety Record

The SOQ must provide information concerning the Proposer's safety record, including safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five (5) years. Include any major incidents and any OSHA or equivalent citations issued. Proposer may add commentary. The following safety records must be provided for the Lead Contractor for the current and past five (5) years:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau (the EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod). The EMR is calculated by comparing a company's actual workers compensation loss data against average loss data for other employers in the same state who share the same industry classification code. The Proposer must submit written evidence from an insurance underwriter having a financial rating from A.M. Best & Co. rating of at least A:VII confirming the Proposer's current EMR.

- The completed Occupational Safety and Health Administration (OSHA) Form 300A, Summary of Work-Related Injuries and Illnesses, or equivalent.

Provide written evidence documentation in Appendix C (Safety Record Documentation).

SECTION 5: SOQ EVALUATION AND SELECTION

5.1. General Evaluation Procedure

The submission of a SOQ by the Proposer shall constitute acknowledgement of acceptance of all terms and conditions set forth in this RFQ unless otherwise expressly stated herein. All SOQs must be submitted in writing and must include all required documents including forms, appendices, and other information requested in this RFQ.

In general, the procedure for evaluation of SOQs and determining a Shortlist will consist of the following:

- City staff will open the SOQs.
- City staff will review the SOQs (with assistance provided by outside advisors if desired by City) to determine if Responsiveness Requirements and Mandatory (Pass/Fail) Requirements are met.
- City staff and/or advisors will attempt to contact references and verify information relating to representative projects.
- For those SOQs that meet the Responsiveness Requirements and Mandatory (Pass/Fail) Requirements, the SOQ will be evaluated by a committee composed of City staff and elected Officials. A Shortlist will be determined which will include no more than three (3) Proposers.
- Proposers who submitted a SOQ will be formally notified of the Shortlist via a letter or email. SOQs received from Proposers will not be returned.
- Shortlisted Proposers will be issued the RFP and will be invited to prepare Proposals in response to the RFP.
- During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Proposers regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for the elimination of the Proposer from further consideration. Proposer is responsible for the accuracy of its SOQ. Discrepancies between words and figures will be resolved in favor of the words.

5.2. Responsiveness Requirements

Each SOQ will be reviewed to determine whether it is responsive to the RFQ. Proposer must comply with all terms and conditions of this RFQ, including, without limitation, the requirement to provide all documentation requested in this SOQ. Failure to comply with the requirements of this RFQ may result in a SOQ being rejected as nonresponsive.

5.3. Mandatory (Pass/Fail) Requirements

Each responsive SOQ will be reviewed to determine whether it meets the Mandatory (Pass/Fail) Requirements outlined in this subsection and as provided in Part 1 of the Proposer's SOQ. At its sole discretion, the City may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any SOQ that does not satisfy all the following Mandatory (Pass/Fail) Requirements may be rejected:

- **Bonding Capacity.** Proposer must provide notarized letter(s) from its surety (or sureties) verifying the Proposer has a minimum bonding capacity of \$15 million available for this project as required in Section 4.3.2 of this RFQ.
- **Insurance.** The Proposer must demonstrate that it has the ability to obtain insurance meeting the minimum requirements presented in Section 4.3.2 of this RFQ.
- **Licensing and Registration.** The Proposer must demonstrate that it and the Lead Contractor possess, or will possess by time of contract award, the necessary Missouri construction licenses and are properly registered, and that the Design Manager and the individual who will act as the engineer of record possesses the necessary engineering license for the type of work to be performed.
- The Proposer's and Lead Contractor's construction licenses may not have been suspended or revoked in the last five (5) years; and the engineering licenses for the Design Manager and the individual that will act as the engineer of record may not have been suspended or revoked in the last seven (7) years.

5.4. Evaluation Criteria

The City's evaluation of SOQs will assess the Proposer's experience, technical competence, and capability to perform the services as described and required in Section 2 of the SOQ.

- **Key Personnel** – Demonstrated qualifications and experience that Proposer's Key Personnel have the ability to fulfill their roles and responsibilities and will enable Design-Builder to successfully complete the design, construction, startup, commissioning, and testing of the Project. See Attachment A.

Proposers will be evaluated based on the qualifications, experience, and past performance of Key Personnel, with the evaluation considering, among other things, his/her experience working in similar roles to those proposed on this Project. This evaluation will include their experience based on projects of similar complexity, challenges, and functionality as this Project. Proposers may be evaluated based on proposed MBE/WBE subcontractors and their proposed scopes of work.

- **Past Experience** – Demonstrated experience that the Proposer's Project Team (Lead Contractor and Lead Designer) has the ability to successfully complete the design, construction, and commissioning of the Project.

Specifically, the experience of Proposer's Project Team will also include their individual (Key Personnel) and collective (Lead Contractor, Lead Designer) performance history and experience on previous and current projects of similar complexity, challenges, and functionality.

- The design, construction, startup, and commissioning experience of Proposer's Project Team members with a focus on sludge screening facilities.
 - Experience in training O&M staff and transferring new process(es) in an operational facility.
 - Experience in executing projects utilizing BIM or other 3D design software.
 - The Proposer project team members' experience completing design-build and/or other collaborative delivery projects.
 - The design, construction, startup, and commissioning experience of Proposer's Project Team members when the proposed team members have worked together.
 - The Proposer's experience with EnvisionTM certification.
 - The Proposer's Project Team members' experience working at the Westside WWTP facility, with the City of Kansas City, Missouri, and/or locally within the greater Kansas City area.
- **Safety Record** – Demonstrated capability to deliver the Project safely. Proposers will be evaluated based on the past safety performance of the Lead Contractor.

SECTION 6: CONDITIONS FOR PROPOSER AND DESIGN-BUILDER

6.1. City Policies and Ordinances

The City will administer the RFP process under competitive proposal policies. The following is a summary of some of the policies and ordinance packages to be followed and completed as part of the RFP process. The City encourages and expects Proposers to pursue subcontracting, mentoring, joint venturing, teaming and partnering opportunities with the types of firms described in this Section in the ordinary course of its teaming/business strategies for all aspects of the Project. Additional policies and ordinances otherwise not specifically listed below may also apply at time of the Proposal.

- Code of Ordinances, Sections 3-501 through 3-525, also known as the “Workforce Program.”

6.2. Prohibited Activities by Former City Employees and Officials

Section 2-2044 of the City’s Code prohibits former elected City officials and former executive or administrative employees of the City from trying to influence a decision of the City on behalf of an employer or client for one year after that former employee or official leaves the City’s employ. By submitting a SOQ, the Proposer affirms that Proposer and its team members and employees are in compliance with the requirements of Section 2-2044. Failure to comply with the requirements of Section 2-1018 may cause the SOQ and future Proposal to be rejected.

6.3. Change in RFQ, Contract and Additional Work

The City reserves the right to add to, delete, modify or enlarge this RFQ, including any specifications and/or statement of work, the proposed contract, the terms and conditions, and any subsequently executed contract. The City reserves the right to award additional contracts for related work or subsequent Project phases to the selected Proposer.

6.4. Late SOQs

Statement of Qualifications and modifications of SOQs received after the hour and date specified for receipt will not be considered unless: (1) they are sent via the U.S. Postal Service, common carrier or contract carrier, by a delivery method that guarantees the proposal will be delivered to the City prior to the submission deadline; or (2) if submitted by mail, common carrier or contract carrier it is determined by the City that the late receipt was due solely to an error by the U.S Postal Service, common carrier or contract carrier; or (3) the SOQ is timely delivered to the City, but is at a different City location than that specified in this RFQ; or (4) the City extends the time after the deadline for a force majeure event that could potentially affect any or all Proposers meeting the deadline.

6.5. Interviews, Discussions and Negotiations with Proposers

The Proposer's SOQ, including any proposed personnel and any other required proposal documents may be subject to negotiation by the City at any time. The City may interview none, one, some or all of the Proposers that submit SOQs. SOQs may be evaluated and award made with or without discussions and/or negotiations with the Proposer. The City reserves the right to request additional information from any or all Proposers. Negotiations by the City will not be deemed a counteroffer or a rejection of any original SOQ or Proposal.

6.6. Rejection of SOQs

The City reserves the right to reject any and all SOQs.

6.7. Waivers

The City Manager or his delegate at any time may waive any requirements imposed in this RFQ or by any City regulation when the requirement waived would be waived for all Proposers for this RFQ and it is in the best interest of the City to grant the waiver. The City Council at any time may waive any requirements imposed in this RFQ by the City's code of ordinances when the waived requirement would be waived for all Proposers for this RFQ and it is in the best interest of the City to grant the waiver. The City reserves the right to waive any irregularities and/or formalities as deemed appropriate. The City Council may waive any and all D/M/WBE requirements imposed by any SOQ or Proposal document or the MBE/WBE Ordinance and award the Contract to the most qualified Proposer if the City Council determines a waiver is in the best interests of the City.

6.8. Closed Records

All SOQs, Proposals and documents and meetings relating thereto may remain closed records or meetings under the Missouri Sunshine Act until a contract is executed or until all Proposals are rejected.

6.9. Disclosure of Proprietary Information

A Proposer may restrict the disclosure of scientific and technological innovations in which it has a proprietary interest, or other information that is protected from public disclosure by law, which is contained in the Proposal by:

- Marking each page of each such document prominently in at least 16-point font with the words "Proprietary Information"; and
- Printing each page of each such document on a different color paper than the paper on which the remainder of the proposal is printed; and
- Segregating each page of each such document in a sealed envelope, which shall prominently display, on the outside, the words "Proprietary Information" in at least 16-point font, along with the name and address of the Proposer; and

- After either a contract is executed pursuant to the RFQ/P, or all submittals are rejected, if access to documents marked “Proprietary Information”, as provided above, is requested under the Missouri Sunshine Law, the City will notify the Proposer of the request, and it shall be the burden of the Proposer to establish that such documents are exempt from disclosure under the law.
- Notwithstanding the foregoing, in response to a formal request for information, the City reserves the right to release any documents if the City determines that such information is a public record pursuant to the Missouri Sunshine Law. The City shall have no liability to any Proposer or anyone else for releasing any Proprietary Information of a Proposer even if the City is negligent in releasing or disclosing any Proprietary Information of any Proposer.

6.10. Contract Information Management System

The selected Proposer shall be required to use City’s Internet web-based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. The selected Design- Builder shall submit user applications to City’s provided Contract Information Management System for all personnel, subcontractors or suppliers as applicable.

6.11. Affirmative Action

It is the policy of the City that any person or entity entering into a contract with the City, will employ applicants and treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. The City’s Affirmative Action ordinance requires that any person or entity who employs fifty (50) or more persons and is awarded a contract from the City totaling more than \$300,000.00 must:

- Execute and submit an affidavit, in a form prescribed by the City, warranting that the contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
- Submit, in print or electronic format, a copy of the contractor’s current certificate of compliance to the City’s CREO prior to receiving the first payment under the contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years. If, and only if, contractor does not possess a current certification of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years.
- Require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

- Obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, subcontractor does not possess a current certificate of compliance, contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.
- If you have any questions regarding the City's Affirmative Action requirements, please contact CREO at (816) 513-1836 or visit the City's website at www.kcmo.org.

6.12. Minority/Women Business Enterprise Program

The City of Kansas City, Missouri desires that MBE and WBE have a maximum opportunity to participate in the performance of City contracts. The goals for this specific project are **14 % MBE** participation and **14% WBE** participation. If requested, the CREO Specialist will provide a D/M/WBE Directory and assistance. Please call the CREO Specialist at 816-513-1818.

6.13. Americans with Disabilities Act (ADA) Standards

It is the policy of the City and required by law that any new or renovated facility meet the scoping and technical requirements of the 2010 ADA Standards for newly designed and constructed or altered local government facilities, public accommodations, and facilities. The selected Proposer shall design the Project so it conforms to the 2010 ADA Standards, as applicable and as amended from time to time, and is readily accessible to and usable by individuals with disabilities. The City will make available to the selected Proposer the City's ADA Compliance Manager, who can facilitate interaction with advocates in the disability community.

6.14. Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the City for this Project and are therefore not eligible to assist or participate with any Proposer that submits a SOQ for the Project:

- Carollo Engineers, Inc.

6.15. Design-Builder Conflict of Interest

A conflict of interest situation may disqualify an organization. If the Proposer believes there may be a conflict of interest, it must list the organizations and the names of entities or persons associated with the Proposer who may have a conflict of interest, or appearance of a conflict of interest, with the City.

Details of the potential conflict of interest must also be included. Names of entities associated with the Proposer who may have a conflict of interest with any activity of this Project should be included

in the SOQ. Provide details and reasons. Proposers are subject to disqualification on the basis of conflict of interest as determined by the City.

6.16. Minimum Self-Performance and Subcontracting Requirements

The selected Proposer shall perform with its own organization not less than thirty-five percent (35%) of the total contract price. The dollar value included in this percentage performed by the Design-Builder shall include the value of labor, materials and equipment directly performed or procured by the Design-Builder and shall not include the value of work performed or provided by subcontractors.

ATTACHMENT A: Definition of Terms

The definitions of some of the capitalized terms used in this RFQ are presented below:

- **City** – The City of Kansas City, Missouri. Also “Owner.”
- **Contract for Design-Build Services** – The entire agreement between the City and the Design-Builder, including all amendments, which will establish the terms and conditions for the performance of the design-build services for the Project. A draft version of this agreement is provided in Attachment D (Draft Contract for Design-Build Services).
- **Design-Builder** – The entity that will serve as the Project developer and enter into a contractual relationship with the City, and that will be the single point of accountability to the City for delivery of the services and the Project. The entity is required to be a licensed contractor in Missouri.
- **Design Manager** – Engineer employed by the Leader Designer or Lead Contractor who will manage all the design work on this project.
- **Discipline Design Lead(s)/Manager(s)** – Engineers leading the effort to design specific disciplines.
- **Key Personnel** – The individuals, employed by Design-Builder or other firm included on the Project Team, who would fill certain key roles in delivery of the Project and related services if Design-Builder is chosen and may not be removed or substituted without City’s written consent, including the following positions:
 - Design-Build Principal-in-Charge
 - Design-Build Project Manager
 - General Contractor’s Project Manager or Construction Manager (if different than Design-Build Project Manager)
 - Design Manager (if different than Design-Build Project Manager)
 - Discipline Design Leads/Managers
 - Shoring Engineer
 - On-Site Field Superintendent(s)
 - Quality Control/Quality Assessment Manager
 - Safety Officer
 - EnvisionTM Sustainability Professional (ENV SP) (if different from other roles identified)

- **Lead Contractor** – The member of the Project Team that is licensed as a Missouri general contractor and that has primary responsibility for construction services for the Project.
- **Lead Designer** – The member of the Project Team that employs professional engineers licensed in Missouri and that has primary responsibility for design services for the Project.
- **Mandatory (Pass/Fail) Requirements** – The requirements set forth in Section 5.3 of this RFQ that, at a minimum, must be satisfied (or waived by the City) in order for the SOQ to be evaluated and ranked according to the comparative evaluation criteria.
- **On-Site Field Superintendent(s)** – Contractor or Sub-Contractor staff that will be leading the construction effort in specific disciplines.
- **Owner's Advisor** – The firm retained by the City to provide assistance with design review and Construction Phase oversight. The Owner's Advisor may fill the role of Resident Project Representative during Construction and will be further defined in the RFP. The Owner's Advisor will not serve as Designer of Record.
- **Project** – Westside Sludge Screening.
- **Project Team** – The Design-Builder; the Lead Contractor, the Lead Designer; and Key Personnel.
- **Proposer** – Those entities, or proposed Design-Builder, who submit a SOQ in response to the RFQ.
- **Responsiveness Requirements** – The requirements set forth in Subsection 5.2 of this Solicitation that, at a minimum, must be satisfied (or waived by the City) in order for the SOQ to be evaluated and ranked according to the comparative evaluation criteria.
- **Shortlist** – A limited list of Proposers selected by the City to compete in the RFP process.
- **Shortlisted Proposer(s)** – Those entities who submit a SOQ in response to the RFQ and are invited to submit proposals in response to a City RFP. The RFP is the second step in the City's two-step procurement process employed to procure a Design- Builder for the Project.

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

2. **Design Professional's Agents** means Design Professional's officers, employees, subcontractors, subconsultants, successors, assigns, invitees, and other agents.

3. **City** means City, its Program Manager/Construction Advisor and any of their agents, officials, officers and employees.

B. Design Professional's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Design Professional is required to procure and maintain under this Agreement. Design Professional affirms that it has had the opportunity to recover the costs of the liability insurance required in this Agreement in its contract price.

C. Design Professional shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this Agreement caused in whole or in part by Design Professional or Design Professional's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Design Professional is not obligated under this Section to indemnify City for the sole negligence of City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

E. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Indemnification for Professional Negligence.

Design Professional shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Design Professional, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this Agreement. Design Professional is not obligated under this Section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec 3. Insurance.

A. Design Professional shall procure and maintain in effect throughout the duration of this Agreement, and for a period of two (2) years thereafter, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this Agreement, Design Professional shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Design Professional Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests Coverage applying to Additional Insureds

b. Contractual Liability

c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000

d. No Contractual Liability Limitation Endorsement

e. Additional Insured Endorsement, ISO form CG20 10, current edition or its equivalent

2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers Compensation Statutory
Employers Liability

\$1,000,000 accident with limits of:
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If the Design Professional owns vehicles, coverage shall be provided on an "any auto" basis. If the Design Professional does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Design Professional.

4. Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.

5. If applicable, Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Design Professional in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

6. If applicable, Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Design Professional in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the

care, custody, or control of the Design Professional. If not covered under the Design Professional's liability policy, such "property" coverage of the Agency may be endorsed onto the Design Professional's Cyber Liability Policy as covered property.

If the Design Professional maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Design Professional. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement. Design Professional shall provide to City at execution of this Agreement a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. The Commercial General Liability and Commercial Automobile Liability insurance specified above shall contain a cross-liability or severability of interest clause or endorsement and shall contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys' fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance. With respect to Commercial Automobile Liability, Commercial General Liability, and any Umbrella Liability

Insurance, Design Professional shall require its insurance carrier(s) to waive all rights of subrogation against City and its agencies, officials, officers, and employees.

D. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

E. Design Professional's failure to maintain the required insurance coverage will not relieve Design Professional of its contractual obligation to indemnify the City pursuant to Sections 1 and 2. If the coverage afforded is cancelled or changed or its renewal is refused, Design Professional shall give at least 30 days prior written notice to City. In the event of Design Professional's failure to maintain the required insurance in effect, City may order Design Professional to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

F. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 4. Design Standards and Endorsement.

A. Except as otherwise directed in writing by City, in the performance of services under this Agreement, Design Professional shall comply with all design standards required by federal, state, local laws or codes including but not limited to all applicable provisions of:

1. Title II of the 2010 ADA Standards for Accessible Design as amended from time to time;
2. the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Clean Water Act (33 U.S.C. 1251 *et seq.*)

3. the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits; and
4. Kansas City Code Sec. 3-71. LEED gold standard.

Design Professional shall notify and explain to City any applicable exceptions under these acts.

B. Design Professional shall use all design standards recognized and used in the industry in the performance of services under this agreement. Design Professional shall endorse all plans and specifications, or estimates, and engineering data furnished under this Agreement if prepared by Design Professional. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the Plan or Project.

C. Design Professional shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Design Professional or any subcontractor to Design Professional.

Sec. 5. Copyright and Ownership of Documents.

A. Design Professional shall on its behalf and on behalf of its employees and agents, promptly communicate and disclose to City all computer programs, documentation, software and other copyrightable works and all discoveries, improvements and inventions conceived, reduced to practice or made by Design Professionals or its agents, whether solely or jointly with others, during the term of this Agreement resulting from or related to any work Design Professional or its agents may do on behalf of City or at its request. All inventions and copyrightable works that Design Professional is obligated to disclose

shall be and remain entirely the property of City. It is agreed that all inventions and copyrightable works are works made for hire and shall be the exclusive property of City. Design Professional hereby assigns to City any rights it may have in such copyrightable works. Design Professional shall cooperate with City in obtaining any copyrights or patents.

B. Original documents, including plans, specifications, reports, maps, models and renderings, including electronic media, prepared or obtained under the terms of this Agreement shall be delivered to and become the property of City and basic survey notes, diaries, sketches, charts, computations and other data shall be made available upon request by City without restriction or limitation of their use. There shall be no legal limitations upon City in the subsequent use of the documents or ideas developed in the documents. In the event that any of the documents are reused by City, the nameplates or other identification to the Design Professional will be removed and the Design Professional will be released of subsequent liabilities. In the event that any of the design drawings are reused or modified by City, the name plates or other identification to the Design Professional will be removed.

Sec. 6. Governing Law.

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Design Professional: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 7. Compliance with Laws.

Design Professional shall comply with all federal, state and local laws, ordinances and

regulations applicable to the work and this Agreement. Design Professional shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

Sec. 8. Termination for Convenience.

A. City may, at any time upon ten (10) days notice to Design Professional specifying the effective date of termination, terminate this Agreement, in whole or in part. If this Agreement is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Design Professional shall prepare an accounting of the services performed and money spent by Design Professional up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Agreement is terminated prior to Design Professional's completion of services, all work or materials prepared or obtained by Design Professional pursuant to this Agreement shall become City's property.

C. If this Agreement is terminated prior to Design Professional's completion of the services to be performed hereunder, Design Professional shall return to City and sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Agreement. Design Professional shall prepare an accounting of the services performed and money spent by Design Professional up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 9. Default and Remedies.

If Design Professional shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance, withhold payment or

invoke any other legal or equitable remedy after giving Design Professional notice and opportunity to correct such default or breach.

Sec. 10. Waiver.

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Design Professional to which the same may apply and, until complete performance by Design Professional of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

Sec. 11. Acceptance.

No payment made under this Agreement shall be proof of satisfactory performance of the Agreement, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 12. Modification.

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by City.

Sec. 13. Headings; Construction of Agreement.

The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the

same as if such words had been fully and properly written in that number or gender.

Sec. 14. Severability of Provisions.

Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 15. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Design Professional shall maintain and retain all Record for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Design Professional shall provide access to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Design Professional in connection with this Agreement shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department and the City department administering this Agreement within ten (10) days after the written request is made.

Sec. 16. Tax Compliance.

Design Professional shall provide proof of compliance with the City's tax ordinances administered by the City's commissioner of revenue as a precondition to the City making the first payment under this Agreement or any Agreement renewal when the total Agreement amount exceeds \$160,000.00. If Design Professional performs work on an Agreement that is for a term longer than one year, the Design Professional also shall submit to the city proof of compliance with the City's tax ordinances administered by the City's commissioner of revenue as a condition precedent to the city making final payment under the Agreement.

Sec. 17. Assignability and Subcontracting.

(a) Assignability. Design Professional shall not assign or transfer any part or all of Design Professional's obligation or interest in this Contract without prior written approval of City. If Design Professional shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit Design Professional from subcontracting as otherwise provided for herein.

(b) Subcontracting. Design Professional shall not subcontract any part or all of Design Professional's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If

Design Professional shall subcontract any part of Design Professional's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Design Professional of any of its responsibilities under the Contract, and Design Professional shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Design Professional, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Design Professional shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Design Professional's services hereunder.

Sec. 18. Conflicts of Interest.

Design Professional certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Design Professional in this Agreement.

Sec. 19. Conflict of Interest - Certification.

Design Professional certifies that Design Professional is not an expert witness for any party in litigation against the City at the time of the issuance of this Contract.

Sec. 20. Buy American Preference.

It is the policy of the city that any manufactured goods or commodities used or supplied in the performance of any city Agreement or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 21. Independent Contractor.

Design Professional is an independent contractor and is not City's agent. Design Professional has no authority to take any action or execute any documents on behalf of City.

Section 22. Employee Eligibility Verification.

If this Contract exceeds five thousand dollars(\$5,000.00), Design Professional shall execute and submit an affidavit, in a form prescribed by City, affirming that Design Professional does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Design Professional shall attach to the affidavit documentation sufficient to establish Design Professional's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Design Professional may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/program/gc_1185221678150.shtm . For those Design Professionals enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Design Professional will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Design Professional shall submit affidavit and attachments to City prior

to execution of the contract, or at any point during the term of the Contract if requested by City.

Sec. 23. Quality Services Assurance Act.

If this Contract exceeds \$160,000.00, Design Professional certifies Design Professional will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Design Professional an exemption.

Sec. 24. Anti-Discrimination Against Israel.

If this Contract exceeds \$100,000.00 and Design Professional employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Design Professional certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Sec. 25. Title VI of the Civil Rights Act of 1964.

Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source. Design Professional shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Sec. 26. Non-Discrimination in

Employment. Design Professional shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Design Professional shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Sec. 27. Ban the Box in Hiring and Promotion.

Pursuant to Section 38-104, City Code Ordinances, Design Professional shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

Notwithstanding, Design Professional may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Sec. 28. Affirmative Action.

If this Contract exceeds \$300,000.00 and Design Professional employs fifty (50) or more people, Design Professional shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Design Professional warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Design Professional shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. CONTRACTOR shall:

a. Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Design Professional has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.

b. Submit, in print or electronic format, a copy of Design Professional's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Design Professional does not possess a current certification of compliance, Design Professional shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.

c. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

d. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Design Professional shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. This is a material term of this Contract.

The City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Design Professional fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Design Professional may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of the Contract.

Sec. 29. Prevailing Wage. If the Agreement exceeds \$75,000.00 and any of the Services performed by Design Professional includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, that is subject to the Missouri Prevailing Wage Law

(Section 290.210, RSMo – 290.340, RSMo), Design Professional shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates, the appropriate Wage Order. Design Professional shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Design Professional fails to notify the City.

ATTACHMENT B: Forms for Affirmation of Compliance (including CREO Documents)

**CREO KC INSTRUCTIONS
FOR REQUESTS FOR QUALIFICATIONS/PROPOSALS**

PART A. ECONOMIC EQUITY & INCLUSION GOALS--MBE/WBE PROGRAM

I. City's Economic Equity & Inclusion Goals--MBE/WBE Program.

- A. The City has adopted an Economic Equity & Inclusion Goals--Minority/Women Business Enterprise ("MBE/WBE") Program (Sections 4-421 through 3-469, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible participation in City contracts and change orders of firms owned and controlled by minorities and women. Each construction project may have an MBE and/or WBE goal for participation. An MBE or WBE goal is a numerical objective the City has set for the contract. Goals are stated as a percentage of contract dollars. For example, if an MBE goal for a contract is 10% and a Proposer submits a proposal of \$100,000, the goal for MBE participation would equal \$10,000. The specific MBE/WBE goals on this project are set forth elsewhere in the proposal specifications.
- B. By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the Economic Equity & Inclusion Goals--MBE/WBE Program by making good faith efforts to include certified MBE/WBEs in the project work to the extent of the goals listed for the project and to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed both the MBE and WBE Goals, it is a requirement for approval of the proposal that a Proposer objectively demonstrate to the City that good faith efforts have been made to meet the Goals.
- C. The following CREO KC Forms are attached and must be used for MBE/WBE submittals:
 - 1. Affidavit of Intended Utilization (CREO KC Form 13); and
 - 2. Contractor Utilization Plan/Request for Waiver (CREO KC Form 8A); and
 - 3. Letter of Intent to Subcontract (CREO KC Form 00450.01); and
 - 4. Timetable for MBE/WBE Utilization (CREO KC Form 10); and
 - 5. Request for Modification or Substitution (CREO KC Form 11); and
 - 6. Contractor Affidavit for Final Payment (Form 01290.14); and
 - 7. Subcontractor Affidavit for Final Payment (Form 01290.15).

Warning: The City only gives MBE/WBE credit for a Proposer's use of City certified MBE/WBEs. A certified MBE/WBE firm is a firm that has been certified by the City's Civil Rights & Equal Opportunity Department as such. An MBE/WBE firm must be certified before the date on which the contractor utilization plan is due. Certified MBEs and WBEs are listed in the M/W/DBE Kansas City Mo. Online Directory, which is available on the City's website at www.kcmo.gov. Before a Proposer submits a proposal, Proposer should contact CREO KC and consult the directory to make sure any firm



proposed for use for MBE/WBE participation has been certified.

II. Required Submissions with Proposal.

A. Proposer must submit the following document with its proposal:

1. **Affidavit of Intended Utilization (CREO KC Form 13).** This form states a Proposer's intent to use certified MBE/WBEs in the performance of the contract.

III. Required Submissions Prior to Contract Award.

A. Proposer must submit the following documents prior to contract award.

1. **Contractor Utilization Plan/Request for Waiver (CREO KC Form 8).** This form states a Proposer's plan to use specific certified MBE/WBEs in the performance of the contract and includes the following:
 - a. The work to be performed by each MBE/WBE and the amounts each is to be paid for the work; and
 - b. The name, address, race or ethnic origin, gender and employer identification number or social security number of each MBE/WBE that will perform the work.
 - c. An automatic request for waiver in the event Proposer has not met or exceeded the MBE and/or WBE goals for the contract but believes that it has made good faith efforts to meet or exceed the goals and desires a waiver of the goals. If a waiver is requested, CREO KC will examine the Proposer's documentation of good faith efforts and make a recommendation to grant or deny the waiver. CREO KC will recommend a waiver be granted only if the Proposer has made good faith efforts to obtain MBE/WBE participation.
2. **Letter(s) of Intent to Subcontract (CREO KC Form 00450.01).** A letter must be provided from each MBE/WBE listed on the Contractor Utilization Plan. These letters verify that the MBE/WBE has agreed to execute a formal agreement for the work and indicate the scope of work to be performed and the price agreed upon for the work.

IV. Additional Required Submissions when Requested by City.

A. Proposer must submit the following documents when requested by City:

1. **Timetable for MBE/WBE Utilization (CREO KC Form 10).**
2. **Documentation of good faith efforts.**

V. Required Monthly Submissions during term of Contract.

A. Proposers must submit the following document on a monthly basis if awarded the contract:

1. **M/WBE Monthly Utilization Report.** This report must be submitted to the Director by the 15th of each month using the B2GNow Diversity Management System. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

VI. Required Submittals for Final Contract Payment.

- A. Proposer must submit the following documents with its request for final payment under the contract:
 - 1. **Contractor Affidavit for Final Payment (Form 01290.14)**
 - 2. **Subcontractor Affidavit(s) for Final Payment (Form 01290.15)**

VII. Additional Submittals.

- A. Proposer may be required to make additional submittals during the term of the Contract, including **Request for Modification or Substitution (CREO KC Form 11)**. Refer to Section X, Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE, for additional instructions on when this form must be submitted.

VIII. MBE/WBE Participation Credit.

- A. The following shall be credited towards achieving the goals:
 - 1. The total contract dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor that is a certified MBE or WBE, except as otherwise expressly provided for herein.
 - 2. The total contract dollar amount that a prime contractor that is a certified MBE or WBE performed itself.
 - 3. Sixty percent (60%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supplier who is a certified MBE or WBE.
 - 4. Ten percent (10%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supply broker who is a certified MBE or WBE.
 - 5. One hundred percent (100%) of the total dollar amount paid or to be paid by a prime contractor to a manufacturer of construction supplies who is a certified MBE or WBE.
 - 6. Subcontractor participation with a lower tier MBE/WBE subcontractor using one of the above methods of participation.
- B. **NO CREDIT**, however, will be given for the following:
 - 1. Participation in a contract by a MBE or WBE that does not perform a commercially useful function as defined by the Program; and
 - 2. Any portion of the value of the contract that an MBE or WBE subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified MBE/WBE; and
 - 3. Materials and supplies used on the contract unless the MBE/WBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
 - 4. Work performed by an MBE or WBE in a scope of work other than that in which the MBE or WBE is currently certified.

IX. Methods for Securing Participation of MBE/WBEs and Good Faith Efforts.

- A. A Proposer is required to make good faith efforts to achieve the MBE/WBE goals. Good faith efforts are efforts that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goals can reasonably be expected to make. Good faith efforts must be made before the Proposer submits a Contractor Utilization Plan/Request for Waiver (CREO KC Form 8). However, efforts made to increase participation of MBEs and WBEs following submission of the CUP can be considered as evidence of good faith efforts to meet the goals.
- B. In evaluating good faith efforts, the Director of CREO KC will consider whether the Proposer has performed the following, along with any other relevant factors:
1. 1. Advertised for at least 15 calendar days prior to the bid or proposal due date opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women's business organizations which are included in a list along with their current contact information identified on the directory as the list of publications available to publish such advertisements, which list shall be updated by CREO KC no less than every three (3) months.
 2. Sent written notices at least fifteen (15) calendar days prior to the bid or proposal due date containing the information required in section (9) below, by certified mail, e-mail, or facsimile, to at least 80% of MBEs and WBEs which are included in a list along with their contact information identified on the directory as the list of organizations available to receive such notices, which list shall be updated by CREO KC no less than every three (3) months.
 3. Sent written notices, containing the information required by section (9) below, by certified mail, e-mail or facsimile, to at least 80% of MBEs and WBEs listed on the directory certified in the applicable scopes of work for the particular bid soliciting their participation in the contract at least 15 calendar days prior to the bid or proposal due date.
 4. Attempted to identify portions of the work for qualified MBE and/or WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units that take into consideration the capacity of available MBEs/WBEs appearing on the CREO KC directory.
 5. At any time prior to submission of the CUP or submittal of a request for modification of a CUP, requested assistance in achieving the goals from the Director and acted on the Director's recommendations.
 6. Conferred with certified MBEs and WBEs which inquired about or responded to the bid solicitation and explained to such MBEs and WBEs the scope and requirements of the work for which their bids or proposals were solicited, and if not all certified MBEs and WBEs in the particular scopes listed on the directory have inquired about or responded to the bid solicitation for each scope of work, then contact by certified mail, e-mail or telephone the greater of ten (10) or 80% of additional certified MBEs and WBEs in the particular scopes of work listed on the directory and offer to confer with such MBEs and WBEs for such particular scope of work and request such MBEs

and WBEs to submit a proposal.

7. Attempted to negotiate in good faith with certified MBEs and WBEs which responded to the bid solicitation or those certified MBEs and WBEs that were conferred with as contemplated in section (6) above, and other qualified MBEs and WBEs, at the option of the bidder, proposer, or contractor, as applicable, to perform specific subcontracts; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities by the bidder, proposer, or contractor; in the event an MBE or WBE is the low bid, but rejected as unqualified, the bidder, proposer, or contractor and the director or board, as applicable, shall provide sound reasons for rejecting such MBE or WBE.
 8. Attended pre-bid meeting when such meetings were indicated in the solicitation of bids or otherwise by the bidder, proposer, or contractor, as applicable or by the director provided the director provides written direction to the bidder, proposer, or contractor at the time the goals are recommended.
 9. Written notices and advertisements to be provided pursuant to sections (1), (2) and (3) above shall include the following information:
 - a. The bid due date;
 - b. The name of the project;
 - c. The address or general location of the project;
 - d. The location of plans and specifications for viewing;
 - e. Contact information of the prime contractor;
 - f. A general description of the scopes of work that are the subject of the solicitation;
 - g. The goals established for the applicable contract, and if the goals are still subject to board approval, then a statement that the goals as stated are preliminary and are subject to board approval;
 - h. If the project or any portion of the project is subject to prevailing wage then a statement that all or a portion of the project will be subject to the prevailing wage, as applicable; and if only a portion of the scopes are subject to prevailing wage, then identification of such scopes provided that such scopes are known as of the time of bid solicitation;
 - i. The date and time of any pre-bid meeting(s), if any, which have been scheduled by the bidder, proposer, or contractor as of the bid solicitation; and
 - j. Any other information deemed relevant by the bidder, proposer, or contractor, as applicable, or the director to the extent the director provides written direction to the bidder, proposer, or contractor of such additional information at the time the goals are recommended by the director.
- C. A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about

when this documentation must be submitted.

X. Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE.

- A. A Proposer may need to substitute an MBE and/or WBE or request that the amount of MBE/WBE participation listed in its Contractor Utilization Plan be modified. Proposer must file a **Request for Modification or Substitution (CREO KC Form 11)** prior to **actual substitution and within a reasonable time after learning that a modification or substitution is necessary**. The Director may approve substitutions or modifications and upon approval, the modifications and substitutions will become an amendment to the Contractor Utilization Plan. Modifications or substitutions may be approved when:
1. The Director finds that the Proposer made and provided evidence of good faith efforts to substitute the MBE/WBE listed on the Contractor Utilization Plan with other certified MBE/WBEs for the scope of work or any other scope of work in the contract; and
 2. The Proposer or Contractor has not attempted intentionally to evade the requirements of the program and it is in the best interests of the City to allow a modification or substitution; and
 3. The Director also finds one of the following:
 - a. The listed MBE/WBE is non-responsive or cannot perform; or
 - b. The listed MBE/WBE has increased its previously quoted price to the bidder, proposer or contractor without a corresponding change in the scope of the work; or
 - c. The listed MBE/WBE has committed a material default or breach of its contract with the contractor; or
 - d. Requirements of the scope of work of the contract have changed and render subcontracting not feasible or not feasible at the levels required by the goals established for the contract; or
 - e. The listed MBE/WBE is unacceptable to the contracting department; or
 - f. The listed MBE/WBE thereafter had its certification revoked; or
- B. A modification shall not be made unless the modification or substitution has first been requested and approved by the Director.

XI. Appeals.

- A. In conformance with the Act, appeals may be made to the City Fairness in Construction Board or Fairness in Professional Services and Goods Board on the following:
1. The grant or denial of a Request for Waiver;
 2. Substitution for an MBE/WBE listed on a Contractor Utilization Plan;
 3. Modification of the percentage of MBE/WBE participation on a Contractor Utilization Plan;
 4. Liquidated Damages;

5. The amount of MBE/WBE credit the Contractor may receive for MBE/WBE participation identified in the contractor utilization plan.
- B. Any appeal must be filed in writing with the Director within fifteen (15) calendar days of notice of the determination. Mailing, faxing, personal delivery or posting at CREO KC of determinations shall constitute notice. The appeal shall state with specificity why the Proposer or Contractor believes the determination is incorrect
- C. Failure to file a timely appeal shall constitute a waiver of a Proposer's or Contractor's right to appeal such determination and such person shall be estopped to deny the validity of any determination which could have been timely appealed.

XII. Access to Documents and Records.

- A. By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Act, within ten (10) calendar days of the date of the written request.
- B. All Proposers agree to cooperate with the contracting department and CREO KC in studies and surveys regarding the MBE/WBE program.

XIII. Miscellaneous.

- A. A Proposer or Contractor shall bear the burden of proof with regard to all issues on appeal.
- B. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.
- C. Oral representations are not binding on the City.
- D. The City Council may waive the requirements of this document and the Program and award the contract to the best proposer if the City Council determines a waiver is in the best interests of the City.

XIV. Liquidated Damages – Economic Equity & Inclusion Goals--MBE/WBE Program.

- A. If Contractor fails to achieve the economic equity & inclusion goals stated in its Contractor Utilization Plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the monetary difference between either (1) the amount of the MBE/WBE goals set forth in the Contractor Utilization Plan, as amended, or (2) the goals established (whichever is lower) and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Contractor's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director, unless the Director determines that the Contractor acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met.

*[Specifier: The remainder of this document is applicable ONLY IF the RFQ/P is for a construction project that the City estimates will require more than 800 construction labor hours and cost in excess of \$300,000.00 to construct. If this is not applicable to your RFQ/P, delete the remainder of this document. **Be sure to delete this note before printing**]*

PART B. CONSTRUCTION EMPLOYMENT PROGRAM REQUIREMENTS

(THIS PART IS APPLICABLE TO CITY CONSTRUCTION CONTRACTS ESTIMATED BY THE CITY PRIOR TO SOLICITATION AS REQUIRING MORE THAN 800 CONSTRUCTION LABOR HOURS AND COSTING IN EXCESS OF \$300,000.00.)

I. City's Construction Employment Program.

- A. The City has adopted a Construction Employment Program (Sections 3-501 through 3-525, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible utilization of minority and women workers in the construction industry. A person or firm who is awarded a contract to construct, reconstruct, improve, enlarge or alter any fixed work that is estimated by the City prior to solicitation as requiring more than 800 construction labor hours, has an estimated costs that exceeds \$300,000.00, and involves the expenditure of public funds, is subject to company-wide construction employment goals. The minimum goals are currently set at 10% for minorities and 2% for women, but public recognition may be provided if the Proposer achieves at least twice the minimum participation. The successful Proposer may meet these company-wide goals by counting the Proposer's utilization of minorities and women throughout the Kansas City metropolitan statistical area.
- B. By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the City's Construction Employment Program by making good faith efforts to utilize minority and women workers on the Proposer's job sites to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed the construction employment goals to receive approval from CREO KC, a Proposer not doing so is required to objectively demonstrate to CREO KC that good faith efforts have been made.
- C. The following CREO KC Forms are to be used for Construction Employment Program submittals using the B2GNow Diversity Management System:
 1. Project Workforce Monthly Report
 2. Company-Wide Workforce Monthly Report

II. Required Monthly Submissions during Term of Contract.

- A. Proposer must submit the following documents on a monthly basis if awarded the contract:
 1. **Project Workforce Monthly Report.** This report is contract specific. Two copies of this report must be submitted to the Director by the 15th of each month using the B2GNow Diversity Management System. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to the City's construction contract. The

second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained on the City's construction contract. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

2. **Company-Wide Workforce Monthly Report.** This report is not contract specific; it is used to report on the utilization of females and minorities, by trade, company-wide. Two copies of this report must be submitted to the Director by the 15th of each month using the B2GNow Diversity Management System. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to every contract (both privately and publicly funded) Proposer has in progress throughout the Kansas City metropolitan statistical area. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by Proposer on every contract Proposer has in progress throughout the Kansas City metropolitan statistical area. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

III. Submittal Required for Final Contract Payment.

- A. The last Project Workforce Monthly Report(s) and Company-Wide Workforce Monthly Report(s) shall serve as the final reports and must be submitted before final payment will be made and/or retainage released. Proposer shall note the submittal of the final reports by notation in the box entitled "Final Cumulative Report"

IV. Methods for Securing Workforce Participation and Good Faith Efforts.

- A. A Proposer is required to make good faith efforts to achieve the construction employment goals. If a Proposer will be unable to secure enough minority and female participation to meet or exceed the construction employment goals, a Proposer must, within a reasonable time after so learning, request a waiver or modification of the goals by the Director of CREO KC. The Director will examine the Proposer's request and the Proposer's documentation of good faith efforts and grant or deny a waiver or modification. The Director will grant a waiver or modification only if the Proposer has made good faith efforts to secure minority and female participation.
- B. In evaluating good faith efforts, the Director will consider whether the Proposer has performed the following:
 1. For those Proposers that are not signatories to a collective bargaining agreement with organized labor:
 - a. Requested in writing the assistance of the Director with respect to efforts to promote the utilization of minorities and women in the workforce and acted upon the Director's recommendations; and
 - b. Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services on the city construction contract and used terminology that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised; and

- c. Maintained copies of each advertisement and a log identifying the publication and date of publication; and
 - d. Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organization, schools with a significant minority student population, and training organizations serving the recruitment area; and
 - e. Established and maintained a current list of resident, minority and women recruitment sources, providing written notification to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
 - f. Maintained a current file for the time period of the city construction contract with the name, address, and telephone number of each resident, minority and woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore; and
 - g. Promoted the retention of minorities and women in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits; and
 - h. Required by written contract that all subcontractors comply with the above efforts.
2. For those Proposers that are signatories to collective bargaining agreements with organized labor:
- a. Supported the efforts of the Joint Apprenticeship Training Committee (JATC), a joint effort of Labor Unions and contractors, or some other apprenticeship program, whose purpose is to recruit, train and employ new workers for a full-time career in the construction industry; and
 - b. Requested in writing from each labor union representing crafts to be employed that:
 - i. the labor union make efforts to promote the utilization of residents of the City, minorities and women in the workforce; and
 - ii. the labor union identify any residents of the City, minorities and women in its membership eligible for employment; and
 - iii. the JATC take substantial and real steps to increase the participation of minorities in the union apprenticeship programs in the aggregate to 30% by 2011 and encourage other labor unions to do the same; and
 - iv. the JATC take substantial and real steps to increase the participation of women in the union apprenticeship programs in the aggregate to 5% by 2011 and encourage other labor unions to do the same; and
 - v. the JATC partner with workforce preparedness programs, community-based organizations, employment referral programs and school-sponsored programs to accomplish these goals.

- c. Collaborated with labor unions in promoting mentoring programs intended to assist minorities and women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits; and
 - d. Maintained a current file with the name, address, and telephone number of each resident, minority and women worker identified by the labor union, whether or not the person was hired, and in the event the person was not hired, the reason therefore.
 - e. To the extent the good faith efforts applicable to Proposers that are signatories to collective bargaining agreements with organized labor conflict with the procedures implemented by the Proposer in order to comply with the relevant bargaining agreement, the Proposer shall substitute other procedures as may be approved by the Director in writing.
- C. A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about when this documentation must be submitted.

V. Appeals.

- A. In conformance with the Program, appeals may be made to the Construction Workforce Board on the following:
 - 1. Determinations by the Director that a contractor did not meet the construction employment goals and did not make a good faith effort to meet the goals;
 - 2. Recommendations by the Director to assess liquidated damages;
 - 3. Recommendation by the Director that a contractor be declared ineligible to receive any city construction contract for a period of time up to one year.
- B. Any appeal must be filed in writing with the Director within ten (10) working days of notice of the recommendation or determination. The appeal shall state with specificity why the Proposer believes the recommendation or determination is incorrect.
- C. Failure to file a timely appeal shall constitute a waiver of a Proposer's right to appeal such determination or recommendation and such person shall be estopped to deny the validity of any order, determination, recommendation or action of CREO KC which could have been timely appealed.

VI. Access to Documents and Records.

- A. By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Program, within ten (10) days of the date of the written request. Each Proposer further agrees to require, if awarded the contract, that every subcontractor permit the City the same access to documents and records.
- B. All Proposers agree to cooperate with the contracting department and CREO KC in studies and surveys regarding the construction employment program.

VII. Miscellaneous.

- A. A Proposer shall bear the burden of proof with regard to all issues on appeal.
- B. The successful Proposer may be required to meet with the Director of CREO KC or the Director's designee for the purpose of discussing the construction employment program, the Proposer's efforts to realize the goals, and any other problems and/or issues affecting the realization of the goals or the program in general.
- C. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.
- D. Oral representations are not binding on the City.

VIII. Liquidated Damages; Suspension – Workforce Program.

- A. If a Proposer fails to achieve the construction employment goals without having previously obtained a waiver or modification of those goals, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. These damages are magnified if the failure to abide by the requirements of the Workforce Program is recurring. Therefore, in order to liquidate those damages, City shall be entitled to deduct and withhold the following amounts:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four month period immediately preceding the completion of the work under the Contract, the sum of three thousand dollars (\$3,000.00).

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more prior occasions within the twenty-four month period immediately preceding the completion of the work under the Contract, the sum of seven thousand dollars (\$7,000.00).

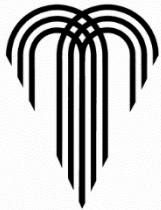
- B. In addition, Proposer shall be required to attend mandatory compliance training or be declared ineligible to contract with the City for a term provided herein, and as authorized by City's Code of Ordinances:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has not previously failed to meet or exceed the goals within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be required to attend a mandatory training class on Workforce Program compliance.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of thirty (30) days. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any

suspension arising hereunder.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more prior occasions within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of six (6) months. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any suspension arising hereunder.



CONTRACTOR UTILIZATION PLAN/REQUEST FOR WAIVER

Project Number _____

Project Title _____

(Department Project)

Department

(Bidder/Proposer)

STATE OF _____)

) ss

COUNTY OF _____)

I, _____, of lawful age and upon my oath state as follows:

1. This Affidavit is made for the purpose of complying with the provisions of the MBE/WBE submittal requirements on the above project and the MBE/WBE Program and is given on behalf of the Bidder/Proposer listed below. It sets out the Bidder/Proposer's plan to utilize MBE and/or WBE contractors on the project.
2. The project target goals are _____% MBE and _____% WBE.
3. Bidder/Proposer assures that it will utilize a minimum of the following percentages of MBE/WBE participation in the above project:

| **BIDDER/PROPOSER PARTICIPATION:** _____% MBE _____% WBE

| **POST-BID/POST-RFP ESTIMATED BUDGET:** \$ _____

4. The following are the M/WBE subcontractors whose utilization Bidder/Proposer warrants will meet or exceed the above-listed Bidder/Proposer Participation. Bidder/Proposer warrants that it will utilize the M/WBE subcontractors to provide the goods/services described in the applicable Letter(s) of Intent to Subcontract, copies of which shall collectively be deemed incorporated herein). (*All firms must currently be certified by Kansas City, Missouri*)

| Name of M/WBE Firm _____

Address _____

Telephone No. _____

I.R.S. No. _____



Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

(List additional M/WBEs, if any, on additional page and attach to this form)

4. The following is a breakdown of the percentage of the total contract amount that Bidder/Proposer agrees to pay to each listed M/WBE:

MBE/WBE BREAKDOWN SHEET

MBE FIRMS:

Name of MBE Firm	Supplier/Broker/Contractor	Subcontract Amount*	Weighted Value**	% of Total Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTAL MBE \$ / TOTAL MBE %: \$ _____ %

WBE FIRMS:

Name of WBE Firm	Supplier/Broker/Contractor	Subcontract Amount*	Weighted Value**	% of Total Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTAL WBE \$ / TOTAL WBE %:		\$ _____		_____ %

*“Subcontract Amount” refers to the dollar amount that Bidder/Proposer has agreed to pay each M/WBE subcontractor as of the date of contracting and is indicated here solely for the purpose of calculating the percentage that this sum represents in proportion to the total contract amount. Any contract amendments and/or change orders changing the total contract amount may alter the amount due an M/WBE under their subcontract for purposes of meeting or exceeding the Bidder/Proposer participation.

**“Weighted Value” means the portion of the subcontract amount that will be credited towards meeting the Bidder/Proposer participation. See CREO KC Forms and Instructions for allowable credit and special instructions for suppliers.

- Bidder/Proposer acknowledges that the monetary amount to be paid each listed M/WBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed M/WBE as calculated in the MBE/WBE Breakdown Sheet. Bidder/Proposer further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total contract amount may correspondingly increase the amount of compensation due an M/WBE for purposes of meeting or exceeding the Bidder/Proposer participation



6. Bidder/Proposer acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer participation. Bidder/Proposer further acknowledges that it is responsible for submitting a Request for Modification or Substitution if it will be unable to meet or exceed the Bidder/Proposer participation set forth herein.
7. If Bidder/Proposer has not achieved both the M/WBE goal(s) set for this Project, Bidder/Proposer hereby requests a waiver of the MBE and/or WBE goal(s) that Bidder/Proposer has failed to achieve
8. Bidder/Proposer will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by the City.
9. I hereby certify that I am authorized to make this Affidavit on behalf of the Bidder/Proposer named below and who shall abide by the terms set forth herein:

Bidder/Proposer primary contact: _____

Address: _____

Phone Number: _____

Facsimile number: _____

E-mail Address: _____

By: _____

Title: _____

Date: _____

(Attach corporate seal if applicable)

Subscribed and sworn to before me this _____ day of _____, 20____.

My Commission Expires: _____

Notary Public



TIMETABLE FOR MBE/WBE UTILIZATION

(This form should be submitted to the City after contract award.)

I, _____, acting in my capacity as _____
(Name) (Position with Firm)
of _____, with the submittal of this Timetable, certify that
(Name of Firm)
the following timetable for MBE/WBE utilization in the fulfillment of this contract is correct and true to the best of my knowledge.

ALLOTTED TIME FOR THE COMPLETION OF THIS CONTRACT

(Check one only)

15 days	_____	75 days	_____	135 days	_____
30 days	_____	90 days	_____	150 days	_____
45 days	_____	105 days	_____	165 days	_____
60 days	_____	120 days	_____	180 days	_____
Other	_____ (Specify)				

Throughout _____ Beginning 1/3 _____
Middle 1/3 _____ Final 1/3 _____
Beginning 1/3 _____% Middle 1/3 _____% Final 1/3 _____%

PLEASE NOTE: Any changes in this timetable require approval of the Civil Rights & Equal Opportunity Department in advance of the change.

If you have any questions regarding the completion of this form, please contact the Civil Rights & Equal Opportunity Department at: (816) 513-1836.

(Signature)

(Position with Firm)

(Date)





REQUEST FOR MODIFICATION OR SUBSTITUTION

(This Form **must** be submitted to HRD to request substitutions for an MBE/WBE listed in the Contractor Utilization Plan or for modification of the amount of MBE/WBE participation listed in the Contractor Utilization Plan. This Form shall be an amendment to the Contractor Utilization Plan.)

BIDDER/PROPOSER/CONTRACTOR: _____

ADDRESS: _____

PROJECT NUMBER OR TITLE: _____

AMENDMENT/CHANGE ORDER NO: (if applicable) _____

Project Goals:	_____ % MBE	_____ % WBE
Contractor Utilization Plan:	_____ % MBE	_____ % WBE

1. I am the duly authorized representative of the above Bidder/Contractor/Proposer and am authorized to request this substitution or modification on behalf of the Bidder/Contractor/Proposer.

2. I hereby request that the Director of HRD recommend or approve: (check appropriate space(s))

a. _____ A substitution of the certified MBE/WBE firm _____,
(Name of new firm)
to perform _____,
(Scope of work to be performed by new firm)

for the MBE/WBE firm _____ which is currently
(Name of old firm)
listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan to
perform the following scope of work: _____.
(Scope of work of old firm)

b. _____ A modification of the amount of MBE/WBE participation currently listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan from

_____ % MBE _____ % WBE (Fill in % of MBE/WBE Participation currently listed on Contractor Utilization Plan)

TO

_____ % MBE _____ % WBE (Fill in New % of MBE/WBE Participation requested for Contractor Utilization Plan)

- c. Attach 00450.01 Letter of Intent to Subcontract letter for each new MBE/WBE to be added.
- d. Attach a copy of the most recent 00485.01 or on-line M/WBE Monthly Utilization Report

3. Bidder/Contractor/Proposer states that a substitution or modification is necessary because: (check applicable reason(s))

___ The MBE/WBE listed on the Contractor Utilization Plan is non-responsive or cannot perform.

___ The MBE/WBE listed on the Contractor Utilization Plan has increased its previously quoted price without a corresponding change in the scope of work.

___ The MBE/WBE listed on the Contractor Utilization Plan has committed a material default or breach of its contract.

___ Requirements of the scope of work of the contract have changed and make subcontracting not feasible or not feasible at the levels required by the goals established for the contract.

___ The MBE/WBE listed on the Contractor Utilization Plan is unacceptable to the City contracting department.

___ Bidder/Contractor/Proposer has not attempted intentionally to evade the requirements of the Act and it is in the best interests of the City to allow a modification or substitution.

4. The following is a narrative summary of the Bidder's/Contractor's/Proposer's good faith efforts exhausted in attempts to substitute the MBE/WBE firm named above which is currently listed on the Contractor Utilization Plan with other qualified, certified MBE/WBE firms for the listed scope of work or any other scope of work in the project:

5. Bidder/Proposer/Contractor will present documentation when requested by the City to evidence its good faith efforts.

Dated: _____

(Bidder/Proposer/Contractor)

By: _____
(Authorized Representative)

AFFIDAVIT OF INTENDED UTILIZATION

(This Form must be submitted with your Bid/Proposal)

(Department Project)

(Bidder/Proposer)

STATE OF _____)
) ss
COUNTY OF _____)

I, _____, of lawful age and upon my oath state as follows:

1. This Affidavit is made for the purpose of complying with the provisions of the Civil Rights & Equal Opportunity Department's submittal requirements in the bid/proposal specifications on the above project and is given on behalf of the Bidder/Proposer listed below.

2. Bidder/Proposer assures that it presently intends to utilize the following MBE/WBE participation in the above project if awarded the Contract:

PROJECT GOALS: _____% MBE _____% WBE

BIDDER/PROPOSER PARTICIPATION: _____% MBE _____% WBE

3. To the best of Bidder's/Proposer's knowledge, the following are the names of certified MBEs or WBEs with whom Bidder/Proposer, or Bidder's/Proposer's subcontractors, presently intend to contract if awarded the Contract on the above project: *(All firms must currently be certified by Kansas City, Missouri Dept. Of Civil Rights & Equal Opportunity)*

a. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____
Area/Scope of work _____
Subcontract amount _____

b. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____
Area/Scope of work _____
Subcontract amount _____

c. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____
Area/Scope of work _____
Subcontract amount _____



(List additional MBE/WBEs, if any, on additional pages and attach to this form)

4. Bidder/Proposer will identify before contract award, those MBE/WBE subcontractors with dollar amounts and scopes of work which apply to or exceed the MBE/WBE goals for the Project on the ***Contractor Utilization Plan/Request for Waiver (CREO KC 08)***.
5. Bidder/Proposer agrees that failure to meet or exceed the MBE/WBE Goals for the above project will automatically render this bid/proposal non-responsive if Bidder/Proposer fails to establish good faith efforts towards meeting the goals as set forth in the CREO KC Forms and Instructions.
6. If applicable, Bidder/Proposer assures that it will meet or exceed the minimum employment goals of 10% minority and 2% women during the term of its contract with City, or request a waiver of the goals. **NOTE: This paragraph is applicable ONLY if you are submitting a bid/proposal on a construction contract that was estimated by the City, prior to solicitation, as requiring more than 800 construction labor hours and costing in excess of \$300,000.00.**
7. I am authorized to make this Affidavit on behalf of the Bidder/Proposer named below as:

_____ of _____
(Title) (Name of Bidder/Proposer)

Dated: _____ By: _____
(Affiant)

Subscribed and sworn to before me this _____ day of _____, 20____.

My Commission Expires: _____
Notary Public





LETTER OF INTENT TO SUBCONTRACT

Check one:

Original LOI: ☐

Updated LOI: ☐

Project Name/Title _____

Project Location/Number _____

PART I: Prime Contractor _____ agrees to enter into a contractual agreement with M/W/DBE Subcontractor _____ who will provide the following goods/services in connection with the above-reference contract: [Insert a brief narrative describing goods/services to be provided. Broad Categorizations (e.g., "electrical," "plumbing," etc.) or the listing of NAICS Codes in which M/W/DBE Subcontractor is certified are insufficient and may result in denial of this Letter of Intent to Subcontract.]

for an estimated amount of \$ _____ (or _____ % of the total estimated contract value.)

M/WBE Vendor type: ☐ Subcontractor/manufacture (counts as 100% of contract value towards goals)
☐ Supplier (counts as 60% of the total dollar amount paid or to be paid by a prime contractor for supplies or goods towards goals)
☐ Broker (counts as 10% of the total dollar amount paid or to be paid by a prime contractor for supplies or goods towards goals)

M/W/DBE Subcontractor is, to the best of Prime Contractor's knowledge, currently certified with the City of Kansas City's Civil Rights & Equal Opportunity Department to perform in the capacities indicated herein. Prime Contractor agrees to utilize M/W/DBE Subcontractor in the capacities indicated herein, and M/W/DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

PART 2: This section is to be completed by the M/W/DBE subcontractor listed above. Please attach additional sheets as needed for more than one intended sub-tier contract. **IMPORTANT: Falsification of this document will result in denial and other remedies available under City Code.**

Select one: ☐ The M/W/DBE Subcontractor listed above **IS NOT** subcontracting any portions of the above-stated scope of work(s). (Continue to Part 3.)
☐ The M/W/DBE Subcontractor listed above **IS** subcontracting certain portions of the above stated scope of work(s) to:

(1) Company name: _____

Full address: _____

Street number and name

City, State and Zip Code

Primary contact: _____

Name

Phone

a) This subcontractor is (select one): MBE WBE DBE N/A

i: If this subcontractor is an M/W/DBE certified with the City of Kansas City, Missouri, a separate Letter of Intent must be attached to this document.

ii. If this subcontractor is NOT a certified M/W/DBE certified with the City of Kansas City, Missouri, the firm must still be listed for reporting purposes but a Letter of Intent is not required.

b) Scope of work to be performed: _____

c) The dollar value of this agreement is: _____



PART 3:

**NOTE: SIGNATURES AND NOTARIZATIONS REQUIRED FOR NEW LETTERS OF INTENT (LOI);
SIGNATURES ONLY FOR UPDATED LOI (ADDING VALUE TO EXISTING CONTRACT).**

PRIME CONTRACTOR BUSINESS NAME: _____

Signature: Prime Contractor

Print Name

Title

Date

State of _____)

County of _____)

I, _____, state that the above and foregoing is based on my best knowledge and belief.

Subscribed and sworn to before me, a notary public, on this
day of _____, 20____

My Commission Expires: _____

Notary Public

STAMP:

MWDBE SUBCONTRACTOR BUSINESS NAME: _____

Signature: Subcontractor

Print Name

Title

Date

State of _____)

County of _____)

I, _____, state that the above and foregoing is based on my best knowledge and belief.

Subscribed and sworn to before me, a notary public, on this
day of _____, 20____

My Commission Expires: _____

Notary Public

STAMP:

Civil Rights and Equal Opportunity Department

Civil Rights and Wage Assurances

Non-discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Ban the Box in Hiring and Promotion.

(a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

(b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

(c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source.

Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act,

Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances

Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.
- (b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or



Civil Rights and Equal Opportunity Department

Civil Rights and Wage Assurances

electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Contractor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

Prevailing Wage. If the Agreement exceeds \$75,000.00 and any of the Services performed by Contractor includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, that is subject to the Missouri Prevailing Wage Law (Section 290.210, RSMo – 290.340, RSMo), Contractor shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates, the appropriate Wage Order. Contractor shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Contractor fails to notify the City.

ATTACHMENT C: Forms to be Submitted with SOQ



DESIGN-BUILD BACKGROUND INFORMATION FORM

Project Number 81000710/1718

Project Title WESTSIDE SLUDGE SCREENING

(Proposer shall complete this form and return it as part of the **TECHNICAL APPROACH PART I – EXPERIENCE AND QUALIFICATIONS** submittal)

Each question below shall be answered on behalf of each of the Bidder, the DOR, and the GC by circling the appropriate response. Unless specifically stated otherwise in a question, the terms "you" or "your" refer to each of the Bidder, the DOR, and the GC. If any response is "Yes," provide a detailed explanation (attach additional sheets as necessary) that includes identification of the entity in question (i.e., Bidder, DOR, and/or GC) and all relevant information, including appropriate contact information.

Have any of your licenses and/or certificates of authority, or any of those of the DOR and any other design professional you anticipate involving in the Project, been subject to disciplinary action, in Missouri or in any other State, resulting in suspension, revocation, censure, probation, reprimand, or other discipline; or has such license number or certificate of authority number changed within the past five (5) years?

CIRCLE ONE: Yes No

Are you currently for sale or involved in any transaction to become acquired by another business entity?

CIRCLE ONE: Yes No

Are you currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, please specify date(s), details, circumstances, and prospects for resolution.

CIRCLE ONE: Yes No

Have you, your predecessor, successors, or Affiliates ever been found guilty in a criminal action or liable in a civil suit for fraud, any act of dishonesty, making any false claim or material misrepresentation, or violating any federal, state or local statute, law, Code regulation, or order related to design or construction?

CIRCLE ONE: Yes No

Are you a subsidiary, parent, holding company, or Affiliate of another company? If so, identify the other company and describe the relationship.

CIRCLE ONE: Yes No

Have you ever filed a claim against the City?

CIRCLE ONE: Yes No

Answer the following questions No. 7 through 20 with respect to the five (5) years immediately preceding the issue date of this RFQ.

Have you been a debtor in any bankruptcy proceeding?

CIRCLE ONE: Yes No

Have you, your predecessors, successors, or Affiliates been debarred, disqualified, declared ineligible, removed from, or otherwise prevented from bidding on, being awarded, or being allowed to perform on a government contract?

CIRCLE ONE: Yes No

Have you changed names?

CIRCLE ONE: Yes No

Has the U.S. Department of Labor's Occupational Safety and Health Administration or any State's workers' safety and health enforcement department cited and assessed penalties against you?

CIRCLE ONE: Yes No

Has there ever been a period when you were required by Missouri law or the law of any other State to maintain workers' compensation insurance but you were without workers' compensation insurance and were not a State-approved self-insurer?

CIRCLE ONE: Yes No

Have you (Bidder or GC) been required to pay back wages and/or penalties for your failure (not the failure of a subcontractor) to comply with the federal Davis-Bacon prevailing wage requirements or any State's prevailing wage requirements?

CIRCLE ONE: Yes No

Have you, your predecessors, successors, or Affiliates been found in violation of any U.S. or State regulations relating to taxes, employment matters (including wage scales, discrimination claims, collective bargaining matters, etc.), permit or licensing requirements, etc.?

CIRCLE ONE: Yes No

Has a citation or notice of violation been issued pursuant to any state or local environmental laws, the U.S. Clean Air Act, Clean Water Act, CERCLA, RCRA, TSCA, or similar environmental protection statute against you on a project, or against the owner of a project on which you were involved?

CIRCLE ONE: Yes No

Have you, your predecessors, successors, or Affiliates defaulted on a design or construction contract?

CIRCLE ONE: Yes No

Have you been required to pay liquidated damages on a construction project, public or private?

CIRCLE ONE: Yes No

Has any surety company made any payments on your behalf, or on behalf of any of your predecessors, successors, or Affiliates, as the result of a default or to satisfy any other claims made against a performance or payment bond, in connection with a public or private construction project?

CIRCLE ONE: Yes No

Has any insurance carrier cancelled or refused to renew any of your insurance policies, for any type of insurance?

CIRCLE ONE: Yes No

Have you, your predecessors, successors, or Affiliates filed a claim, for payment or otherwise, in a court or arbitration tribunal against the owner of any public or private construction project, or has any owner of any construction project filed a claim against you or any of your predecessors, successors, or Affiliates? Information need not be provided about disputes with another contractor, a subcontractor, or a supplier; about “pass-through” disputes in which the actual dispute was between a subcontractor and the project owner; or about disputes involving amounts less than \$50,000.

CIRCLE ONE: Yes No

Provide the following information:

ENTITY	YEARS IN BUSINESS	NUMBER OF EMPLOYEES	2020 GROSS RECEIPTS	2021 GROSS RECEIPTS	2022 GROSS RECEIPTS
Bidder					
DOR					
GC					

21. Provide the following information for all surety companies that have written bonds for Proposer and GC during the past five (5) years:

BIDDER		
Surety Company	Address & Telephone No.	Dates during which bonds were written

GC		
Surety Company	Address & Telephone No.	Dates during which bonds were written



EXPERIENCE AND REFERENCE SUMMARY

Project Number: _____

Project Title: _____

Firm's Legal Name	
Mailing Address	
Contact – Name & Email	
Contact – Phone & Fax	

NO.	PROJECT & LOCATION	OWNER NAME & ADDRESS CONTACT & PHONE NUMBER	PROJECT DURATION & DATE COMPLETED	\$ VALUE
1.				
2.				
3.				
4				
5				
6				
7				
9				
10				

EMPLOYEE ELIGIBILITY VERIFICATION AFFIDAVIT

(Required for any contract with the City of Kansas City, Missouri in excess of \$5,000.00)

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows:

I am of sound mind, capable of making this affidavit, and personally swear or affirm that the statements made herein are truthful to the best of my knowledge. I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired by the business entity to perform any work in connection with the contracted services. I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program.

I am aware and recognize that unless certain contractual requirements are satisfied and affidavits obtained as provided in Section 285.530, RSMo, the business entity may face liability for violations committed by its subcontractors, notwithstanding the fact that the business entity may itself be compliant.

I acknowledge that I am signing this affidavit as the free act and deed of the business entity and that I am not doing so under duress.

Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires:

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION**

BUSINESS ENTITY CERTIFICATION:

The bidder/contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- BOX A:** To be completed by a non-business entity as defined below.
- BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at <https://www.e-verify.gov/>.
- BOX C:** To be completed by a business entity who has already submitted documentation with a notarized date on or after **September 1, 2009**, to a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Owner/Contractor Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- ☐ I am a self-employed individual with no employees; **OR**
- ☐ The company that I represent utilizes the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Owner/Contractor Name) is awarded a contract for the services requested herein under _____ (Bid/SFS/Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, _____ (Owner/Contractor Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Natural Resources with all documentation required in Box B of this exhibit.

Authorized Representative's Name
(Please Print)

Authorized Representative's Signature

Company Name (if applicable)

Date

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Owner/Contractor Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the owner/contractor must perform/provide each of the following. The owner/contractor should check each to verify completion/submission of all of the following:

- ☐ Enroll and participate in the E-Verify federal work authorization program (Website: <https://www.e-verify.gov/>; Phone:464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- ☐ Provide documentation affirming said owner/contractor's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, at minimum, by the bidder/contractor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the bidder's/contractor's name and company ID, then no additional pages of the MOU must be submitted.; AND
- ☐ Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

AFFIDAVIT OF WORK AUTHORIZATION:

The grantee, subgrantee, contractor or subcontractor who meets the section 285.525, RSMo definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided to the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

Authorized Representative's Signature

Printed Name

Title

Date

E-Mail Address

E-Verify Company ID Number

Subscribed and sworn to before me this _____ of _____. I am
(DAY) (MONTH, YEAR)
commissioned as a notary public within the County of _____, State of
(NAME OF COUNTY)
_____, and my commission expires on _____.
(NAME OF STATE) (DATE)

Signature of Notary

Date

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Owner/Contractor Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ A page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, , by the bidder/contractor and the Department of Homeland Security – Verification Division.
- ✓ A completed, notarized Affidavit of Work Authorization signed and dated on or after **September 1, 2009**.

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

E-Verify MOU Company ID
Number

E-Mail Address

Business Entity Name

Date

Missouri State Agency or Public University* Name

Date of Submission

Bid/Contract Number

(If known)

* Public University includes the following five schools:

- Harris-Stowe State University - St. Louis
- Missouri Southern State University - Joplin
- Missouri Western State University - St. Joseph
- Northwest Missouri State University – Maryville
- Southeast Missouri State University - Cape Girardeau
- Division of Purchasing & Materials Management

ATTACHMENT D: Draft Contract for Design-Build Services

CONTRACT FOR DESIGN-BUILD SERVICES

This **CONTRACT FOR DESIGN-BUILD SERVICES** ("Agreement") is entered into this _____ day of _____, 20__ ("Agreement Date") by and between the City of Kansas City, Missouri ("Owner") and _____ ("Design-Builder"). In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder hereby agree as follows:

WITNESSETH:

WHEREAS, on or about _____, Owner issued a Request for Qualifications ("RFQ") soliciting interested parties to submit a Statement of Qualifications ("SOQ") to serve as the design-builder for the Project; and

WHEREAS, on or about _____, Design-Builder submitted its SOQ to Owner; and

WHEREAS, on or about _____, Owner notified Design-Builder that it was one of the shortlisted proposers invited to respond to a Request for Proposals ("RFP"); and

WHEREAS, on or about _____ ("Proposal Submittal Date"), Design-Builder submitted its proposal ("Proposal") in response to the RFP; and

WHEREAS, on or about _____, Owner notified Design-Builder that it was the successful proposer; and

WHEREAS, on or about _____, Owner awarded Design-Builder this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder hereby agree as follows:

Article 1 **The Project**

1.1 The Project is generally referred as _____ (Project No. _____), and is specifically defined in the Contract Documents.

Article 2 **The Work**

2.1 Design-Builder shall complete all Work as specified or indicated in the Contract Documents.

Article 3 **Contract Times**

3.1 Commencement Date. Design-Builder shall commence the Work upon receipt of the Notice to Proceed ("Commencement Date"). The Commencement Date shall be no later than fifteen (15) days after the Agreement Date, unless the Parties mutually agree otherwise in writing.

3.2 Contract Times

3.2.1 Scheduled Acceptance Date. Acceptance shall be achieved as expeditiously as reasonably practicable, but in no event later than _____ ("Scheduled Acceptance Date").

3.2.2 Scheduled Final Completion Date. Final Completion of the Work shall be achieved as expeditiously as reasonably practicable, but in no event later than sixty (60) days after the Acceptance Date (the last day of such 60-day period being referred to as the "Scheduled Final Completion Date").

3.3 Schedule Adjustments. All of the scheduled completion dates set forth in Section 3.2 above (collectively referred to as "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

3.4 Time of the Essence. Owner and Design-Builder mutually agree that the Scheduled Acceptance Date and Scheduled Final Completion Date, individually and collectively, are of the essence of this Agreement.

3.5 Delay Liquidated Damages. Design-Builder understands that if any of the Contract Times is not attained, Owner will suffer damages which are difficult to determine and accurately specify. To compensate Owner for such damages, Design-Builder hereby agrees to pay Owner Delay Liquidated Damages as follows:

3.5.1 Acceptance. If the Acceptance Date has not been achieved by the Scheduled Acceptance Date, then Design-Builder shall pay to Owner Delay Liquidated Damages of _____ Dollars (\$_____) per day for each day between the Scheduled Acceptance Date and the Acceptance Date.

3.5.2. Final Completion. If the Final Completion Date has not been achieved by the Scheduled Final Completion Date, Designer-Builder shall pay to Owner Delay Liquidated Damages of _____ Dollars (\$_____) per day for each day between the Scheduled Final Completion Date and the Final Completion Date.

3.6 Delay Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

(a) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);

(b) that any sums which would be payable under this Agreement as Delay Liquidated Damages are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure;

(c) that any sums which would be payable under this Agreement as Delay Liquidated Damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature

incurred by Owner which are occasioned by any delay in achieving the applicable Contract Time(s); and

(d) that, in recognition of the acknowledgments above, Design-Builder is expressly estopped from arguing, and waives any rights it may have to argue, that Delay Liquidated Damages are a penalty and that they are not enforceable.

For the avoidance of doubt, and notwithstanding anything to the contrary in Paragraph (c) above, Delay Liquidated Damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents.

Article 4

Contract Price

4.1 Contract Price. The Contract Price is the sum of _____ (\$_____), as set forth in Design-Builder's Cost Proposal (attached hereto as Exhibit 4.1). The Contract Price is subject to adjustments made in accordance with Article 9 of the General Conditions of Contract. Except as specifically provided in this Agreement or the General Conditions of Contract, the Contract Price is deemed to include all sales, consumer, use and other taxes mandated by applicable Legal Requirements in effect as of the Agreement Date, as well as royalties and license fees in connection with the Work.

4.2 Allowance Payment Items and Allowance Payment Values

4.2.1 General. The Contract Price includes all Allowance Payment Items set forth in Exhibit 4.2. The corresponding Allowance Payment Values for the Allowance Payment Items are set forth in Design-Builder's Cost Proposal.

4.2.2 Performance of Work on Allowance Payment Items. No work shall be performed on any Allowance Payment Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

4.2.3 Reconciliation of Allowance Payment Values. If the actual costs for an Allowance Payment Item differ from the stated Allowance Payment Value, the Contract Price shall ultimately be adjusted accordingly by Change Order. If, at the time the Final Application for Payment, the actual costs for any Allowance Payment Value are less than the corresponding Allowance Payment Value, such difference shall be reflected in a Change Order that reduces the Contract Price by such difference.

Article 5

Payment Procedures

5.1 Progress Payments.

5.1.1 Submission. Design-Builder shall submit to Owner on the _____ (__) day of each month, beginning with the first month after the Commencement Date, Applications for Payment in accordance with Article 6 of the General Conditions of Contract.

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

and less amounts properly withheld under Section 6.3 of the General Conditions of Contract or otherwise.

5.2 Retainage on Progress Payments.

5.2.1 Retainage. Owner will withhold retainage in the amount of five percent (5%) on progress payments due Design-Builder. After fifty percent (50%) of the total Contract Price has been completed and requisitioned through Applications for Payment, and two and one-half (2.5%) of the Contract Price has been retained, Owner shall cease withholding any retainage from future progress payments owing to Design-Builder hereunder, *provided, however*, that Design-Builder's performance is deemed satisfactory by Owner, in its sole discretion. If Design-Builder is forecasting Acceptance to be forty-five (45) calendar days beyond the Scheduled Acceptance Date, the progress will be considered unsatisfactory and Owner shall resume withholding five percent (5%) of each invoiced amount from future payments until Owner and Design-Builder have agreed upon a plan for mitigating such delay.

5.2.2 Reduction of Retainage. Within thirty (30) days after the Acceptance Date, Owner shall release to Design-Builder all retainage, less an amount equal to: (a) two hundred percent (200%) of the reasonable value of all remaining Punch List items as of the Acceptance Date; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

5.2.3 Letter of Credit. Design-Builder shall have the right to substitute an irrevocable letter of credit in lieu of cash for all or any portion of the retainage, provided that the letter of credit shall: (a) be a direct pay letter of credit payable immediately upon presentation by Owner, issued by a financial institution, and on a form, approved by Owner in its sole discretion; (b) permit partial draws and be in the amount of one hundred percent (100%) of the required retainage amount, or such lesser amount as Owner agrees in writing from time-to-time to reflect reductions in required retainage; and (c) name Owner as sole payee and beneficiary. Owner shall be entitled to draw upon the letter of credit to provide the requisite cash to satisfy any of Design-Builder's obligations under the Contract Documents. Owner shall further be entitled to draw upon the letter of credit, and hold the proceeds as retainage, if the letter of credit is not renewed or extended at least thirty (30) days prior to its expiration.

5.3 Final Payment. Owner shall pay the outstanding retention at Final Payment, in accordance with Section 6.6 of the General Conditions of Contract.

5.4 Interest. All amounts not paid when due as provided in Article 6 of the General Conditions of Contract shall bear interest in accordance with Mo. Rev. Stat. §34.057, at the rate of one and one-half percent (1.5%) per month.

5.5 Owner's Rights to Offset. Owner shall have the right to withhold Delay Liquidated Damages from any monies unpaid, otherwise due, or to become due, to Design-Builder, to demand and receive payment from Design-Builder of such Delay Liquidated Damages, and to initiate applicable dispute resolution procedures under Article 10 of the General Conditions of Contract to recover such Delay Liquidated Damages. The withholding of such damages from any monies unpaid, otherwise due, or to become due shall be in addition to retainage under the Contract Documents. Owner has the discretion to allow Delay Liquidated Damages to accrue without withholding and by doing so does not waive any rights to withhold them at a later time.

Article 6
Design-Builder's Representations

6.1 Representations. Design-Builder makes the following representations as of the Agreement Date:

(a) Design-Builder examined, carefully studied, and thoroughly understood the RFP Documents, including the Addenda.

(b) Design-Builder has visited the Site and has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

(c) Design-Builder is familiar with and is satisfied as to all Legal Requirements that may affect cost, progress, or performance of the Work.

(d) Design-Builder has examined, carefully studied, and thoroughly understands: (1) the reports and drawings (if any) of explorations and tests of subsurface conditions at or contiguous to the Site; (2) all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified or made available by Owner; (3) environmental reports; and (4) conditions and restrictions of site access and egress.

(e) Design-Builder is aware of the nature of other work that will be undertaken by Owner's Separate Contractors, and of the relationship of such other work to the Work as indicated in the Project Requirements.

(f) Design-Builder has correlated the Project Requirements with the information known to Design-Builder, information obtained from the geotechnical and environmental reports, observations made during visits to the Site, reports and drawings identified in the RFP Documents, and all additional examinations, investigations, explorations, tests, studies and data made known to Design-Builder.

(g) Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the RFP Documents as of the Agreement Date and the written resolution thereof by Owner is acceptable to Design-Builder.

(h) The RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

(i) Design-Builder shall be bound by and shall perform its obligations in full compliance with the Contract Documents.

Article 7
Insurance and Bonds

7.1 Insurance.

7.1.1 Insurance Requirements. Design-Builder shall procure and maintain the insurance required by Exhibit 7.1.

7.1.2 Evidence of Insurance. No later than seven (7) days after the Agreement Date,

Design-Builder shall deliver to Owner the certificates, endorsements, and other evidence of insurance required to be provided by Design-Builder in accordance with Section 5.1.3(a) of the General Conditions.

7.2 Performance and Payment Bonds.

7.2.1 Provision of the Bonds. No later than seven (7) days after the Agreement Date, Design-Builder shall deliver to Owner:

(a) a Performance Bond in the penal amount equal to one hundred percent (100%) of the Contract Price, which bond shall cover the faithful performance of all Design-Builder's obligations under the Contract Documents (the "Performance Bond"); and

(b) a Payment Bond in the penal amount equal to one hundred percent (100%) of the Contract Price (the "Payment Bond").

7.2.2 Surety Rating. The surety for the Performance and Payment Bonds shall: (a) have a rating of A- or better in the latest revision of the A.M. Best Owner's Insurance Report; (b) be authorized by law to do business in Missouri; and (c) be listed in the most recent U.S. Department of Treasury Circular 570.

7.2.3 Form of Bonds. The Performance Bond shall be in the form set forth in Exhibit 7.2.3(a) and the Payment Bond shall be in the form set forth in Exhibit 7.2.3(b).

7.2.4 Duration of Performance Bond. The Performance Bond shall remain valid for a period of two (2) years after Final Completion.

Article 8 **Contract Documents**

8.1 Contract Documents. The Contract Documents consist of the documents listed below:

1. This Agreement and all of the Exhibits;
2. General Conditions of Contract;
3. Attachment A (Project Requirements);
4. Addenda numbers ___ through ___ inclusive, to the extent such Addenda modify the other Contract Documents; and
5. Elements of Design-Builder's Technical Proposal (*to be identified and agreed upon*).
6. The following, which shall be designated, completed, delivered, prepared, or issued after the Agreement Date and are not attached hereto:
 - (a) The Released for Construction Documents.

(b) Any and all written amendments, Change Orders, Work Change Directives, and Minor Changes amending, modifying, or supplementing the Contract Documents.

8.2 Amending the Contract Documents. The Contract Documents may only be amended, modified, or supplemented through a written amendment executed by the Parties or a Change Order, Work Change Directive, or Minor Change issued in accordance with Article 9 of the General Conditions of Contract.

8.3 Order of Precedence of the Contract Documents. The Contract Documents comprise the entire agreement between Owner and Design-Builder governing the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Missouri. The following order of precedence shall apply in the case of direct, irresolvable conflicts between or among Contract Documents:

1. Written amendments and Change Orders
2. Work Change Directives
3. Minor Changes
4. This Agreement, and all of the Exhibits except for Exhibit 8.3 (Elements of Design-Builder's Technical Proposal).
5. The General Conditions of Contract
6. Released for Construction Documents
7. Attachment A (Project Requirements)
8. Exhibit 8.3 (Elements of Design-Builder's Technical Proposal)

8.4 Exceptions to the Order of Precedence. Notwithstanding the order of precedence set forth in Section 8.3 above, the betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings contained in Exhibit 8.3 (Elements of Design-Builder's Technical Proposal) shall supersede the applicable requirements of the Project Requirements and shall apply to the performance of the Work.

Article 9

Miscellaneous

9.1 Defined Terms. Terms used in this Agreement will have the meanings indicated in the General Conditions of Contract.

9.2 Notice. Whenever the Contract Documents require that notice be provided to the other Party, notice will be deemed to have been validly given: (a) if delivered in person to the individual intended to receive such notice; or (b) four (4) days after being sent by registered or certified mail, postage pre-paid, with return receipt requested, to the address indicated in the Agreement, or (c) one (1) business day after being sent by overnight delivery via a nationally recognized courier

service (e.g., FedEx or UPS), postage, transmittal or shipping charges prepaid, to the addresses set forth below:

If to Design-Builder:

If to Owner:

9.3 Consequential Damages.

9.3.1 Waiver. To the fullest extent permitted by law, and notwithstanding any other provision of the Contract Documents other than those set forth in Section 9.3.2, in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, indemnity, contribution, or any other cause of or form of action whatsoever, shall either Party be liable to the other for any consequential, incidental, indirect, special, exemplary, or punitive damages (including damages for loss of use, loss of profits or anticipated profits, loss of revenue or anticipated revenue, loss of goodwill, claims from Owner's customers, borrowing or financing, productivity or shop space, increased cost of capital, punitive damages, and loss of business opportunity) arising out of or in connection with the performance or non-performance of its obligations under the Contract Documents.

9.3.2 Exceptions to Waiver. The waiver of consequential damages set forth in Section 9.3.1 above shall not be deemed to affect or waive:

(a) Design-Builder's obligation to pay Delay Liquidated Damages in accordance with Section 3.5 above;

(b) Design-Builder's liability for fraud, fraudulent misrepresentation, intentional misconduct, Gross Negligence, or criminal acts of Design-Builder or any DB-Related Entity;

(c) Design-Builder's liability for its indemnity obligations under Article 7 of the General Conditions of Contract; and

(d) Design-Builder's liability for any loss, cost, or expense to the extent such loss, cost or expense is paid by the proceeds of insurance (excluding payment of deductibles) up to the specific amounts Design-Builder is required to carry under Exhibit 7.1 to this Agreement.

9.3.3 Binding on Other Persons and Entities. The provisions of this Section 9.3: (a) shall be binding on and extend to the benefit of all successors, assignees, employees, officers, directors and Affiliates of each Party; and (b) except to the extent prohibited by applicable Legal Requirements or specific terms to the contrary in this Section 9.3, shall apply even in the event of the fault, negligence (in whole or in part), tort, strict liability, breach of contract or otherwise, of the person or entity in whose favor such provisions operate.

9.4 Alternative Technical Concepts. The accepted Alternative Technical Concepts ("ATCs"), as set forth in Design-Builder's Technical Proposal, are intended to modify and/or replace, as applicable, the Project Requirements. Design-Builder acknowledges that Owner's acceptance of

such ATCs is not intended to shift any risk or responsibility to Owner in the event that any ATC fails to be available (e.g., Equipment or Material that is unavailable from a Supplier), fails to perform as proposed by Design-Builder, or is otherwise not able to be used. In such event, Design-Builder shall, at its sole cost and expense, and without any adjustment to the Contract Price or Contract Times, perform the Work as originally required by the Project Requirements (i.e., prior to the modification and/or replacement of the Project Requirements to account for the ATC), or as required to produce a result that is reasonably acceptable to Owner.

9.5 Self-Performance Requirements. Design-Builder shall perform with its own organization, or an Affiliate of Design-Builder, not less than _____ percent (___%) of the total Contract Price. The dollar value included in the above percentage shall include the value of labor, Equipment and Materials directly performed or procured by Design-Builder or its Affiliate and shall not include the value of work performed or provided by Design Consultants or Subcontractors.

9.6 MBE/WBE Requirements. Owner has adopted a Minority/Women Business Enterprise ("MBE/WBE") Program (Sections 3-421 through 3-469, Code of Ordinances). Design-Builder shall comply with all MBE/WBE requirements set forth in such Program in performing its obligations under the Contract Documents.

9.7 Workforce Program and Prevailing Wage Requirements

9.7.1 Workforce Program Requirements. Owner has adopted a Construction Employment ("Workforce") Program (Sections 3-501 through 3-525, Code of Ordinances). Design-Builder shall comply with all Workforce requirements set forth in such Program in performing its obligations under the Contract Documents.

9.7.2 Prevailing Wages. Design-Builder shall comply and require each of its Subcontractors to comply with:

- (a) Sections 290.210 to 290.340, RSMO the State of Missouri Prevailing Wage Law (the "Law");
- (b) 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules");
- (c) The Annual Wage Order (the "Wage Order") issued by the State of Missouri's Department of Labor and Industrial Relations; and
- (d) Any applicable Annual Incremental Wage Increase (the "Wage Increase") to the Annual Wage Order.

The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof the Contract Documents and shall be collectively referred to in this Section 9.7.2 as the "Prevailing Wage Requirements." Design-Builder shall pay and require each of its Subcontractors to pay to all workers performing the Work not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. Design-Builder shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Design-Builder and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. If Design-Builder shall fail to start to perform Design-Builder's obligations under the Contract Documents within sixty (60) days from the Agreement Date,

Design-Builder and each of its Subcontractors shall be obligated to pay all workers in accordance with any new Wage Order, as subsequently amended by any applicable Wage Increase, issued by the Department of Labor and Industrial Relations within the aforementioned sixty (60) day period. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached or incorporated in the Contract Documents.

9.8 Attachments and Exhibits. The following attachments ("Attachments") and exhibits ("Exhibits") are specifically made part of, and incorporated by reference into, this Agreement:

Attachment A	Project Requirements
Exhibit 4.1	Design-Builder's Cost Proposal
Exhibit 7.1	Insurance Requirements
Exhibit 7.2(a)	Form of Performance Bond
Exhibit 7.2(b)	Form of Payment Bond
Exhibit 8.3	Elements of Design-Builder's Technical Proposal
Exhibit 9.8(a)	Mobilization and Engineering Schedule
Exhibit 9.8(b)	Proposed Baseline Schedule
Exhibit 9.8(c)	Schedule of Values for Mobilization and Engineering
Exhibit 9.8(d)	List of Key Personnel

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design-Builder.

OWNER:

DESIGN-BUILDER:

City of Kansas City, Missouri

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

GENERAL CONDITIONS OF CONTRACT

Article 1 General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings), *provided, however*, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document. For convenience, this Section 1.2 includes an index of capitalized terms used in the Agreement and these General Conditions of Contract.

Acceptance means satisfaction by Design-Builder of all Acceptance Date Conditions.

Acceptance Date means the date on which Acceptance of the Project occurs.

Acceptance Date Conditions means the preconditions for the achievement of Acceptance, as set forth in Section 8.2.1 below.

Acceptance Standards means the standards set forth in the Project Requirements that the Project must meet during the performance of the Acceptance Tests.

Acceptance Tests means those tests set forth in the Project Requirements required to achieve Acceptance.

Acceptance Test Plans means the testing protocols, procedures and processes for the performance of the Acceptance Tests prepared and documented by Design-Builder and approved by Owner in accordance with Section 2.14.3 below.

Acceptance Test Report means the report and all supporting data provided by Design-Builder to Owner in accordance with Section 2.14.6 below and the Project Requirements demonstrating that the Acceptance Tests have been conducted, the Acceptance Standards have been demonstrated and all other Acceptance Date Conditions have been achieved.

Addenda means written or graphic instruments issued by or on behalf of Owner prior to the Agreement Date that clarify, correct, or modify the RFP Documents.

Affiliate means, (a) any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding an interest in Design-Builder; and (b) any person or entity for which ten percent (10%) or more of the equity interest in such person or entity is held directly or indirectly, beneficially or of record by: (i) Design-Builder; (ii) any of Design-Builder's members, partners or shareholders that own ten percent (10%) or more of Design-Builder or Design-Builder's members, partners or shareholders; or (iii) any Affiliate of Design-Builder under clause (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a person and/or entity, whether through voting securities, by contract, family relationship or otherwise.

Agreement has the meaning set forth in the Preamble, and refers to the document titled “Agreement by and Between Owner and Design-Builder,” signed by both Parties, and further includes all Exhibits expressly identified in the Agreement.

Agreement Date has the meaning set forth in the Preamble.

Allowance Payment Item means an item or portion of the Work which has not been defined sufficiently, or for which Owner has yet to make certain decisions necessary, to permit pricing by Design-Builder.

Allowance Payment Value means the estimated dollar amount included in the Schedule of Values as a placeholder value for an Allowance Payment Item, pending acceptance by Owner of pricing offered by Design-Builder and other applicable terms.

Alternative Technical Concepts (ATCs) mean those modifications to the Project Requirements proposed by Design-Builder in its Proposal and that were accepted by Owner.

Application for Payment means a request for payment in form acceptable to Owner that is submitted by Design-Builder to Owner on a monthly basis, or other periodic basis acceptable to Owner, and which includes, without limitation, all supporting documentation and information required by Owner or the Contract Documents.

Bankrupt Party has the meaning set forth in Section 11.5.1 below.

Baseline Schedule has the meaning set forth in Section 2.1.3 below. The Baseline Schedule, among other things, shall identify certain events that are critical to the orderly progress and timely completion of the Work and the dates by which such events are required to occur. The Baseline Schedule shall be in a critical path method format, and shall include all information, data, and detail required by the Project Requirements.

Books and Records means all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, correspondence, receipts, vouchers, estimates, records, contracts, cost data, schedules, Subcontracts, schedules, job cost reports, and other data, including computations and projections, of Design-Builder and any of its Subcontractors related to bidding, negotiating, pricing, or performing the Work.

Builder's Risk Insurance means the policy of insurance required under the Agreement identified as the Builder's Risk policy, which policy is intended to provide property insurance for the construction Work in progress and other coverages.

Certificate of Acceptance means a certification issued by Owner to Design-Builder, stating that Design-Builder, to the best of Owner's actual knowledge and belief, has achieved Acceptance, and confirming that date upon which such event occurred as well as other information as more specifically set forth in Section 8.2 below.

Certificate of Final Completion means a certification issued by Owner to Design-Builder, stating that Design-Builder, to the best of Owner's actual knowledge and belief, has achieved Final Completion, and confirming that date upon which such event occurred as well as other information as more specifically set forth in Section 8.3 below.

Change Order has the meaning set forth in Section 9.1.3 below.

Commencement Date has the meaning set forth in Section 3.1 of the Agreement.

Commissioning means starting up, operating and maintaining the Work, or specific portions of the Work, in order to test, tune and adjust the Equipment and Materials, systems, subsystems and processes comprising the Work to: (a) achieve stable operating conditions; (b) prepare the

Project for Design-Builder's performance of the Acceptance Tests; and (c) conduct and document the results of Acceptance in accordance with the Project Requirements.

Commissioning Plan means the testing protocols, procedures and processes for conducting Commissioning activities in accordance with the Project Requirements and Section 2.14.1 below.

Compensable Delays has the meaning set forth in Section 8.6.1 below.

Confidential Information has the meaning set forth in Section 13.1.1 below.

Contract Documents means those documents specifically referenced and listed in the Section 9.1 of the Agreement as Contract Documents.

Contract Price has the meaning set forth in Section 4.1 of the Agreement.

Contract Time(s) has the meaning set forth in Section 3.2 of the Agreement.

Cost of the Work has the meaning set forth in Section 9.8.1 below. *day* or *days* mean calendar days unless otherwise specifically noted in the Contract Documents.

DB-Related Entity means Design Consultants, Subcontractors, Sub-Subcontractors, and anyone for whose acts any of them may be legally or contractually responsible.

Delay Liquidated Damages mean those liquidated damages associated with the failure of Design-Builder to achieve Acceptance on or before the Scheduled Acceptance Date and/or Final Completion on or before the Scheduled Final Acceptance Date.

Design-Builder has the meaning set forth in the Preamble.

Design-Builder's Cost Proposal means Exhibit 4.1 to the Agreement.

Design-Builder's Project Manager means that person designated by Design-Builder under Section 2.1.1 below, who will be the principal representative of Design-Builder with respect to the performance of the Work.

Design-Builder's Representative means that person designated by Design-Builder under Section 2.1.1 below, who shall be the principal representative of Design-Builder with respect to contractual matters, and shall have full authority to act on behalf of Design-Builder and make binding decisions on behalf of Design-Builder with respect to any matter arising out of or relating to the Contract Documents.

Design-Builder's Safety Representative means that person designated by Design-Builder under Section 2.8.1 below, whose principal duty shall be the prevention of accidents and the protection of all persons and property located on or adjacent to the Site. Design-Builder's Safety Representative shall take such action as appropriate to ensure the proper implementation of, and compliance with, safety policies, precautions, procedures and plans.

Design-Builder Proposed Change Order means a proposed change order submitted to Owner from Design-Builder in accordance with Section 9.5 below.

Design Consultant is a qualified, licensed design professional, eligible to provide professional engineering, architectural and/or land surveying services, who may be an employee of Design-Builder, or may be retained by Design-Builder or any DB-Related Entity, to furnish design services required under the Contract Documents.

Differing Site Conditions has the meaning set forth in Section 4.3.1 below.

Directive Letter has the meaning set forth in Section 9.6.1 below.

Electronic Data has the meaning set forth in Section 12.1.1 below.

Equipment and Materials shall mean all of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the terms of the Contract Documents to complete the Work and to be incorporated into the Project or provided to Owner. The term "Equipment and Materials" shall not be construed to include any construction equipment, supplies, materials, apparatus or tools owned by Design-Builder or any DB-Related Entity that are used to complete the Work but are not contemplated under the Contract Documents to become incorporated into the Project or to be provided to Owner.

Excusable Delay has the meaning set forth in Section 8.4.1 below.

Exhibits has the meaning set forth in Section 9.8 of the Agreement.

Final Application for Payment means the Application for Payment submitted by Design-Builder to Owner after Design-Builder has achieved Final Completion, requesting payment of the unpaid balance of the Contract Price (less any amounts properly withheld by Owner).

Final Completion has the meaning set forth in Section 8.3 below.

Final Completion Date means the date that Final Completion occurs.

Force Majeure Events are those events that are beyond the reasonable control of Design-Builder, all DB-Related Entities, and Owner, including but not limited to the events of war, terrorism, floods, labor disputes (other than those set forth in Section 8.4.2(b)), earthquakes, epidemics, pandemics, public health emergencies, unusually severe and abnormal weather conditions, and other acts of God.

General Conditions of Contract refers to this document.

Good Engineering and Construction Practice means those methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good engineering, equipping, installation, construction, commissioning, and testing practices for the design, construction, and improvement of capital projects in the water treatment industry similar to the Project in scope and complexity using the design-build delivery method, under similar circumstances, as followed in the United States.

Governmental Approval means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

Governmental Unit means any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other person and/or entity having jurisdiction over the Site, performance of the Work, the Project or the Parties.

Gross Negligence means: (a) a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct; and/or (b) such wanton or reckless conduct or omissions as constitutes, in effect, a disregard for harmful, foreseeable and avoidable risks or consequences; provided that Gross Negligence does not include any act or failure to act insofar as it: (i) constituted mere ordinary negligence; or (ii) was done or omitted in accordance with the written instructions or written approval of the Parties.

Hazardous Environmental Condition means the presence of Hazardous Materials in such

quantities or circumstances that may be reasonably considered to present an imminent or substantial safety or health hazard for Owner, Design-Builder, any DB-Related Entity, and their respective employees, agents or representatives, the general public or the surrounding environment.

Hazardous Materials means any materials, waste, substances and chemicals deemed to be hazardous under applicable Legal Requirements.

Key Personnel means those individuals designated as such in Exhibit 9.8(d) to the Agreement.

Legal Requirements means all applicable federal, state and local laws, codes, ordinances (including the Code of Ordinances of Kansas City, Missouri), rules, statutes, regulations, orders and decrees, and other requirements of any Governmental Unit, including, without limitation, any interpretation of such items by the applicable Governmental Unit.

Liquidated Damages means Delay Liquidated Damages.

Mobilization and Engineering Schedule means that schedule attached as Exhibit 9.8(a) to the Agreement.

Named Team Members means those persons or entities specifically identified in Design-Builder's Technical Proposal as "Named Team Members."

Notice of Design-Builder Claim for Change Order has the meaning set forth in Section 9.5.1 below.

Notice of Termination for Convenience means a written notice from Owner to Design-Builder that terminates the right of Design-Builder to perform all or a portion of the Work, specifying the date upon which such notice shall be deemed effective and any other applicable terms.

Operations and Maintenance Data (O&M Data) mean the manual(s) and other information as required by the Project Requirements that provide overall operating approach and strategy for the Project, as well as the Services Manuals required for operating and maintaining the Equipment and Materials, facilities and systems, including the related computer programs prepared by Design-Builder containing detailed standard procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Project, developed and maintained as required by Section 2.10 below.

Overhead and Profit Markup means all field, Project, and home office overhead, including, but not limited to: (a) field supervision and administration above the general foreman level, such as superintendents, assistant superintendents, purchasing agents, accountants, clerks, timekeepers, office managers, and all others on the field staff; (b) office supplies; (c) drinking water; (d) temporary heat, light and power; (e) field toilets; (f) costs of services; (g) small tools and expendable materials required for, or consumed in, the performance of the Work; (h) telephone system and charges; (i) facsimile machines, telephones, telegrams, and the charges associated therewith; (j) photographs; (k) photocopying; (l) postage; (m) insurance; (n) taxes; (o) general and administrative expenses incurred at the home, branch, and/or district offices; and (p) profit.

Owner is the City of Kansas City, Missouri.

Owner Indemnitee means and includes Owner, Owner's Advisor, and their officers, directors, employees, representatives, and agents.

Owner's Advisor is the entity set forth in the Agreement.

Owner's Representative means that person designated by Owner under Section 3.3.1

below, who shall have full authority to act on behalf of Owner with respect to the Project.

Party or Parties has the meaning set forth in the Preamble.

Payment Bond has the meaning set forth in Section 7.2.1(b) of the Agreement.

Performance Bond has the meaning set forth in Section 7.2.1(a) of the Agreement.

Preamble means the introductory paragraphs of the Agreement that identify, among other things, the Agreement Date, the Parties and the background to the Parties entering into the Agreement.

Pre-Existing Intellectual Property means Design-Builder's proprietary algorithms, software, hardware, databases and other background technology and intellectual property that Design-Builder developed or licensed from third parties prior to the Agreement Date.

Project is the project set forth in Article 1 of the Agreement.

Project Requirements mean all documents set forth in Attachment A to the Agreement.

Project Warranties has the meaning set forth in Section 2.9.1 below.

Project Warranties Term means that period from the Agreement Date through the date that is two (2) years following the Acceptance Date, as such period may be extended pursuant to Section 2.9.6, *provided, however*, that if the Contract Documents require a longer warranty period for a specific element of the Work, the Project Warranties Term for such specific element of the Work shall be that longer warranty period.

Proposal means that document submitted by Design-Builder pursuant to the RFP.

Proposal Submittal Date means the date Design-Builder submitted its Proposal to Owner.

Proposed Baseline Schedule means that schedule attached as Exhibit 9.8(b) to the Agreement.

Punch List means that list of Work that has been identified as incomplete in accordance with Section 2.11 below.

Released for Construction Documents mean those final, complete design documents that: (a) are to be used for performing the construction and in correlation with all applicable Governmental Approvals; (b) have been signed and sealed by a properly licensed Design Consultant or a properly licensed employee of Design-Builder; and (c) have been approved by Owner in accordance with Section 2.4.5 below.

RFP has the meaning set forth in the Preamble.

RFP Documents mean those documents identified as such in the RFP.

Scheduled Acceptance Date means the date that is set forth in Section 3.2.2 of the Agreement.

Scheduled Final Completion Date means the date that is set forth in Section 3.2.3 of the Agreement.

Schedule of Values for Mobilization and Engineering means that schedule of values attached as Exhibit 9.8(c) to the Agreement.

Separate Contractor means a person and/or entity, other than Design-Builder, retained by Owner to perform work or to provide services, or Equipment and Materials, in connection with the Project.

Site is the parcels of land or premises on which the Project is located, as more specifically described in the Project Requirements.

Subcontract means any and all agreements between Design-Builder and any DB-Related Entity.

Subcontractor means any person or entity (other than Design Consultants) with whom Design-Builder has entered into any Subcontract for such person or entity to perform any portion of the Work, including Suppliers.

Sub-Subcontractor is any person or entity (other than a Design Consultant) retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work, including Suppliers.

Subsystem Test Plans means the testing protocols, procedures and processes for conducting functional testing activities in accordance with the Project Requirements and Section 2.13.2 below.

Supplier is any person or entity retained by Design-Builder or a DB-Related Entity to provide Equipment and Materials, or construction equipment, supplies or other goods to be used in the performance of the Work but not incorporated into the Work.

TIA has the meaning set forth in Section 8.5.3 below.

Training Plan means Design-Builder's plan for the training of Owner employees in the long-term operations and maintenance of the Project, as developed and executed by Design-Builder, in conjunction with the qualified technical trainers of Subcontractors, Sub-Subcontractors and Suppliers, and in accordance with the Project Requirements.

Work means all work, services, activities and other obligations to be performed by Design-Builder under the Contract Documents, including without limitation, design, engineering, permitting, procurement of Equipment and Materials, project management, supervision, construction, commissioning, start-up, testing and all other services and deliverables reasonably inferable from the Contract Documents required to achieve Final Completion.

Work Change Directive means a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in any Contract Time, Contract Price, or other terms in the Contract Documents pertaining to the change in the Work.

Work Product means all drawings, specifications, calculations, data, models, images, materials, products, documents, and work developed or produced by or on behalf of Design-Builder in connection with the Project, including, without limitation all materials, products, and such items developed or produced by all Design Consultants, Subcontractors and Sub-Subcontractors, whether in hard-copy, digital or electronic data, or any other medium.

Article 2

Design-Builder's Services and Responsibilities

2.1 General.

2.1.1 The parties will meet within seven (7) days after the Commencement Date to discuss issues affecting the administration of the Work and to implement the necessary procedures,

including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.2 The Mobilization and Engineering Schedule shall be the basis for monitoring Design-Builder's performance of the Work until such time as the Baseline Schedule has been approved by Owner in accordance with Section 2.1.3 below. Likewise, the Schedule of Values for Mobilization and Engineering shall be used as the basis for payment for Design-Builder's activities for the first one hundred eighty (180) days after the Commencement Date. The Mobilization and Engineering Schedule will be updated each month to indicate planned and actual progress and forecast activities within the 180-day period covered by such schedule.

2.1.3 Within one hundred twenty (120) days from the Commencement Date, Design-Builder shall submit to Owner, for its review and approval, the following:

(a) A proposed Baseline Schedule that includes, among other things: (1) the order in which Design-Builder proposes to carry out the Work; and (2) the times when submissions and approvals or consents by Owner are required (*provided, however*, that such times shall be no less than Owner's minimum review duration identified in Section 3.1 below). The proposed Baseline Schedule shall be derived from the Proposed Baseline Schedule, and meet the format and other requirements established by the Contract Documents to demonstrate that all major Project components, activities, and events are being performed in a logical sequence for Design-Builder to achieve the Contract Times.

(b) A proposed Schedule of Values that shall be consistent with the Schedule of Values for Mobilization and Engineering, and shall consist of a detailed breakdown of the Contract Price into measurable components of the completed Work for the purpose of making payment to Design-Builder. The Schedule of Values shall be compatible with and representative of the Baseline Schedule.

(c) A proposed forecast of monthly cash flow requirements for the entire Project, incorporating the actual cash flow for the time elapsed since the Commencement Date.

(d) If Owner does not approve a proposed submission under Paragraphs (a), (b), or (c) above, Design-Builder shall submit a revised submission to Owner within seven (7) days of its receipt of Owner's comments on such submission. This process shall continue until such time as the submission is so approved by Owner, which submission shall be then deemed, as applicable, the Proposed Baseline Schedule, Schedule of Values for Mobilization and Engineering, and forecast of monthly cash flow Requirements. Design-Builder shall provide Owner with updates of these documents as set forth in the Contract Documents.

(e) Owner's review and approval of the Baseline Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 Design-Builder shall designate a member of its Key Personnel as its Project manager (the "Design-Builder's Project Manager"), who shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager will be stationed at the Site and present at all appropriate times. Design-Builder will have a representative at the Site authorized to act on its behalf when Design-Builder's Project Manager is not present. Design-Builder shall also designate a qualified member of its Key Personnel as its Project representative (the "Design-Builder's Representative"), who shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Neither Design-Builder's Project Manager or Design-Builder's Representative may be replaced without prior written approval of Owner, with such approval not to be unreasonably withheld, and any replacement shall be acceptable to Owner.

2.1.5 Design-Builder shall provide management, supervision and professional staff for the Work in accordance with the organizational chart set forth in Design-Builder's Technical Proposal. Design-Builder acknowledges the importance of its Key Personnel in successfully performing the Project. Absent separation of employment, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner, with such approval not to be unreasonably withheld. It is understood and agreed that Design-Builder will provide Owner with at least thirty (30) days written notice of any request to withdraw any Key Personnel or Named Team Member. Any replacement personnel shall have equivalent skill, experience and reputation. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Owner has a reasonable objection to such individual.

2.1.6 Design-Builder shall participate in monthly progress meetings with Owner. During such meetings, progress during the prior month shall be reviewed. These meetings shall be attended by, among other: (a) Design-Builder's Project Manager and other required Design-Builder personnel, as well as key Subcontractors and Design Consultants responsible for Work completed during the specified duration and Work scheduled during the upcoming reporting duration; and (b) Owner representatives and others as designated by Owner. Owner may direct that personnel from Design-Builder and DB-Related Entities attend any or all meetings if Owner believes, in its sole opinion, that such personnel are necessary to have at such meetings.

2.1.7 Design-Builder assumes responsibility to Owner for the proper performance of the Work of all DB-Related Entities and any acts and omissions in connection with such performance.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide or furnish through Design Consultants or qualified, licensed design professionals employed by Design-Builder, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents.

2.2.2 Design-Builder shall incorporate all obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant and Subcontractors, including but not limited to the obligations relative to ownership and use of the Work Product set forth in Article 12 below.

2.3 Standard of Care.

2.3.1 Design-Builder shall perform the Work in accordance with: (a) the Contract Documents; (b) applicable Legal Requirements and Governmental Approvals; and (c) Good Engineering and Construction Practice. Notwithstanding the above, if any of (a), (b) or (c) in the preceding sentence conflict, Design-Builder shall be obligated to perform the Work in accordance with the more stringent standard.

2.4 Design Development Services.

2.4.1 Design-Builder shall review all technical specifications and design requirements included in the Project Requirements to determine whether such specifications or requirements include any errors, omissions or other deficiencies that would in any manner or to any degree impair the ability of Design-Builder to complete the Work in accordance with the Contract Documents. Design-Builder shall, within a reasonable period of time after discovery of the errors, omissions or other deficiencies, notify Owner in writing of any such errors, omissions or deficiencies, which notice shall include a reasonable description of the issue and its likely impact on the performance of the Work. In connection with such notice, Design-Builder may request an appropriate Change Order, in accordance with the requirements of Articles 8 and 9 herein, that the Contract Price and/or Contract Time(s) be adjusted to compensate Design-Builder for the effects of any such errors, omissions or deficiencies, *provided, however*, that Owner reserves all rights to defend this requested Change

Order if Owner believes that the error, omission or deficiency should have been discovered by Design-Builder prior to submitting its Proposal. The failure of Design-Builder to provide notice in accordance with this Section 2.4.1, including Articles 8 and 9 as applicable) shall constitute a waiver of any right to any price, schedule or performance relief associated with any error, omission or deficiency included in the Project Requirements.

2.4.2 Notwithstanding Section 2.4.1 above, or anything else in the Contract Documents, Design-Builder assumes and shall have exclusive responsibility for the accuracy and efficacy of the Released for Construction Documents. Accordingly, in no event shall Design-Builder be entitled to any price, schedule or performance relief associated with any error, omission or deficiency in the Released For Construction Documents, and shall bear full responsibility for the consequences of such errors, omissions or deficiencies, notwithstanding the fact that the Project Requirements may have included certain design criteria and requirements for the Work.

2.4.3. Owner shall review and act upon design submittals as set forth in the Project Requirements. Notwithstanding anything to the contrary in the Contract Documents, Owner's review, comment and/or approval of any design submittal, including but not limited to the Released for Construction Documents, shall not be deemed to transfer any design liability from Design-Builder to Owner or relieve Design-Builder of any of its obligations under the Contract Documents or liability for the design services that are part of the Work.

2.4.4 The Released for Construction Documents shall be consistent with the latest set of approved interim design submissions, and shall be submitted to Owner and approved by Owner in accordance with the Project Requirements. Design-Builder shall proceed with construction in accordance with the approved Released for Construction Documents. Any modifications to the Released for Construction Documents will constitute a change to the Contract Documents and Design-Builder shall seek Owner approval in advance of issuing such revisions.

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

2.5 Legal Requirements.

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

2.5.2 Design-Builder may request an appropriate Change Order, in accordance with the requirements of Articles 8 and 9 herein, that the Contract Price and/or Contract Time(s) be adjusted to compensate Design-Builder for the impacts of any changes in the Legal Requirements enacted after the Agreement Date. Such impacts may include, without limitation, revisions Design-Builder is required to make to the Released for Construction Documents because of such changes in Legal Requirements. For the avoidance of doubt, any tariff adopted, promulgated, issued, or modified by the U.S. federal government after the Agreement Date shall be treated as a change in Legal Requirements under this Section 2.5.2, provided that such tariff or modification was not scheduled prior to the Agreement Date. Notwithstanding the above, the relief afforded by this Section 2.5.2 shall not apply to changes in Legal Requirements relating to: (a) Design-Builder's or any DB-Related Entity's corporate existence or the maintenance of its business; (b) changes in Legal Requirements affecting payroll taxes or other taxes associated with labor; or (c) changes in Legal Requirements affecting taxes imposed on an entity's gross revenue, income or profits.

2.6 Government Approvals and Permits.

2.6.1 Except as specifically identified in Section 3.4.1 below, Design-Builder shall obtain, maintain, and pay for all costs to obtain and maintain (including all application, permit and filing fees) for all necessary Governmental Approvals from or by any Governmental Unit that may be

required for the proper prosecution and execution of the Work, including any additional Governmental Approval identified in the Project Requirements as the responsibility of Design-Builder. If any such Governmental Approval is required to be formally issued in the name of Owner, Design-Builder shall undertake all commercially reasonable efforts to obtain such Governmental Approvals with Owner's reasonable support and cooperation. Design-Builder shall develop all data and technical documents for Governmental Approval submittals, prepare and submit all applications, participate in meetings with Governmental Units and Owner as required, and expedite all Governmental Approvals to meet Project schedule requirements. Governmental Approval applications and other documentation required in connection with a Governmental Approval shall be subject to approval by Owner. Design-Builder shall deliver to Owner, promptly after Design-Builder's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by the Contract Documents.

2.6.2 Design-Builder shall provide all commercially reasonable assistance to Owner to obtain those Governmental Approvals that are the responsibility of Owner under Section 3.4.1 below. No construction activity will commence until: (a) all Governmental Approvals required for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (b) Owner has been notified that such Governmental Approvals have been obtained; and (c) Owner has, after reviewing the validity and scope of the Governmental Approval, authorized Design-Builder to proceed.

2.6.3 Design-Builder shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals. Design-Builder shall not be entitled to an adjustment in the Contract Price and/or Contract Time(s) for any events arising from or related to Design-Builder or any DB-Related Entity violating or failing to comply with any Governmental Approval, including but not limited to suspensions arising therefrom. Such violations and failures to comply shall be at the sole risk of Design-Builder.

2.7 Design-Builder's Construction Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a Separate Contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, commissioning, start-up, testing, Equipment and Materials, construction equipment, supplies, temporary utilities and other temporary facilities and other related services to permit Design-Builder to achieve Acceptance and Final Completion of the Project consistent with the Contract Documents. Except as otherwise expressly set forth in the Agreement or these General Conditions of Contract, Design-Builder retains all market risk, whether or not foreseeable, pertaining to cost and availability of labor, Equipment and Materials, and all other items required or used in connection with the performance of the Work.

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed in Missouri and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor. Those Subcontractors who are Named Team Members shall be deemed acceptable to Owner for the scope of Work designated in Design-Builder's Technical Proposal.

2.7.4 Design-Builder shall coordinate the activities of all Subcontractors. If any Separate Contractor performs work on, adjacent, or in proximity to the Project or the Site, or has any element of work that interfaces or affects the Work, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Design-Builder specifically agrees to attend and participate in any coordination meetings that are held by Owner

to manage and coordinate the work of Design-Builder and Separate Contractors.

2.7.5 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Acceptance, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work.

2.7.6 Subject to Section 4.3 below, Design-Builder shall be responsible for all utility relocations necessary or convenient to its performance of the Work. For all such relocations, Design-Builder will meet all of Owner's requirements, procedures and standards.

2.7.7 Design-Builder shall be responsible for making arrangements to obtain, provide and pay for all temporary and permanent utilities associated with the Work, except for those utilities specifically identified in the Contract Documents as being provided by Owner and furnished without cost to Design-Builder.

2.7.8 During any adverse weather (including but not limited to unusually severe and abnormal weather conditions as referenced in Section 8.4.3 below), Design-Builder shall take commercially reasonable precautions so that the Work may progress properly.

2.8 Design-Builder's Responsibility for Project Safety.

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

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

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors of any tier of their own contractual and legal obligations and responsibility for: (a) complying with all Legal Requirements, including those related to health and safety matters; and (b) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Project Warranties.

2.9.1 Design-Builder warrants to Owner that the Work shall, through the Project Warranties Term: (1) be new, of recent manufacture and of good quality; (2) conform to the requirements of the Contract Documents; and (3) be free of construction faults or defects, as established by the Project Requirements (collectively the "Project Warranties"). The Project Warranties are subject to the following:

(a) The Project Warranties include remedy for damages or defects caused by Commissioning and Acceptance Tests performed by Design-Builder.

(b) The Project Warranties exclude remedy for damages or defects caused by modifications not undertaken or executed by Design-Builder under this Agreement. In addition, the Project Warranties exclude remedy for damages or defects caused by Owner's improper or insufficient maintenance, Owner's improper operation, or normal wear and tear under normal usage.

2.9.2 Design-Builder shall perform or cause to be performed all warranty work in a manner that will minimize interference with the ongoing operations of the Project. Design-Builder shall provide a written plan for all proposed warranty work, unless expressly waived by Owner. If Owner prefers to accept nonconforming Work that is discovered prior to Final Completion, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued, at Owner's option, to reflect a reasonable reduction in the Contract Price.

2.9.3 If Owner determines at any time during the Project Warranties Term that any of the Work is not in conformance with the requirements of the Project Warranties, it shall provide written notice to Design-Builder of such determination. Design-Builder shall, within seven (7) days of receipt of such written notice, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. Notwithstanding the above, Design-Builder shall respond to a verbal or electronic notification from Owner of an emergency warranty condition that could cause serious loss or damage within twenty-four (24) hours of such notification. Such response shall require that a competent representative or representatives of Design-Builder familiar with the Project, including its specific equipment, design and operational requirements, inspect the Work and, while on Site: (a) correct the problem; (b) if the problem cannot be corrected while on Site, mitigate while on Site the imminent harm from the emergency; and (c) fully correct the problem within a reasonable period of time. If Design-Builder fails to commence the necessary steps within, as applicable, such seven (7) day period (or in the event of any emergency warranty condition, respond within a twenty-four (24) hour period and correct and/or mitigate the problem as set forth in the preceding sentence), Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces or with third party contractors. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction, including but not limited to any retesting and reinspection costs.

2.9.4 Owner may, based on good cause, direct Design-Builder to perform a "root cause" analysis of any alleged defect in the Work. If Design-Builder fails to perform such analysis as directed by Owner, or if Owner concludes that the "root cause" analysis is flawed, Owner may elect to conduct an independent analysis of the alleged defect, whereupon Design-Builder shall cooperate with Owner and provide such information relevant to the alleged defect as Owner may request. If the "root cause" or independent analysis reveals a defect or defects in any part of the Work, Contractor shall be responsible for the costs and expenses of remedying the such defects, including the costs of the "root cause" or independent analysis. If the "root cause" or independent analysis demonstrates that there is no defect, then Owner shall bear the reasonable costs and expenses of such analyses. All remedial measures related to defects revealed by any "root cause" or independent analysis must be approved by Owner prior to implementation by Design-Builder.

2.9.5 Nothing contained in this Section 2.9 shall be construed to establish a period of limitation with respect to other obligations that Design-Builder has under the Contract Documents or under Legal Requirements with respect to the Work, including warranties and obligations with respect to latent defects. The Project Warranties Term relates only to the specific obligations of Design-Builder to respond to notices from Owner under the Project Warranties, and has no relationship to the time within which the obligation of Design-Builder to comply with the Contract Documents may be enforced, nor the time within which proceedings may be commenced to establish Design-Builder's liability with respect to its obligations under the Contract Documents.

2.9.6 The "call-back" obligations set forth in this Section 2.9 shall apply to all Work modified, corrected, repaired, replaced and/or reperformed pursuant to the Contract Documents. If, after the Acceptance Date, any Work is modified, corrected, repaired, replaced and/or reperformed, then the Project Warranties Term applicable to such portion of the Work that has been modified, corrected, repaired, replaced and/or reperformed shall be extended for one year from the date of completion of the modification, correction, repair, replacement or reperformance, but in no event longer than three (3) years after the Acceptance Date.

2.9.7 During the Project Warranties Term, Design-Builder and Owner shall be permitted to enforce all warranties provided by Suppliers and other third parties with respect to the Work. However, no such warranty shall relieve Design-Builder of any obligation with respect to the Project Warranties.

2.9.8 Design-Builder acknowledges and agrees that:

(a) It shall be fully responsible for the costs associated with all warranty work and shall reimburse Owner for its costs resulting from a breach of the Project Warranties, subject to the terms and conditions of the Contract Documents.

(b) The Project Warranties are in addition to, and not in limitation of, any other warranties, rights and remedies available under the Contract Documents or Legal Requirements, and shall not limit Design-Builder's liability or responsibility imposed by the Contract Documents or Legal Requirements with respect to the Work, including liability for negligent design defects, latent construction defects, strict liability, negligence or fraud.

(c) The provisions of this Section 2.9 shall survive the termination of the Agreement.

2.9.9 Without limiting any of the Project Warranties, Design-Builder shall, for the protection of Owner, obtain from all Subcontractors and Suppliers from which Design-Builder procures Equipment and Materials such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Documents, each of which shall be assigned to Owner to the full extent of the terms thereof. No such warranty or guarantee shall relieve Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, or Equipment or Materials shall be the cause for any increase in the Contract Price or otherwise excuse Design-Builder from the performance of any Work or warranty obligation. For the avoidance of doubt, disclaimers and limitations in specific Equipment and Materials that conflict with this Section 2.9 shall not be construed to limit Design-Builder's obligations or Owner's rights under this Section 2.9.

2.9.10 Nothing in the Contract Documents is intended to limit any third party warranty that provides Owner with greater warranty rights than those provided under the Project Warranties.

2.9.11 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE CONTRACT DOCUMENTS, DESIGN-BUILDER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, LATENT OR PATENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE RELATING TO THE WORK PERFORMED UNDER THE CONTRACT DOCUMENTS, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

2.10 O&M Data.

2.10.1 Design-Builder shall develop and submit the O&M Data in accordance with the Project Requirements. The O&M Data shall: (a) contain a detailed description of the means and methods of properly operating and maintaining the Project; (b) document standard operating procedures and predictive, preventive and corrective maintenance procedures, practices and schedules; and (c) otherwise be sufficiently detailed to permit the Project to be operated and maintained by Owner's operations and maintenance staff.

2.11 Punch List Requirements.

2.11.1 Design-Builder shall submit a proposed Punch List to Owner when Design-Builder believes that the Work has achieved Acceptance in compliance with the Contract Documents. In no event shall the Punch List contain any incomplete items necessary for performance of the Acceptance Tests. Owner shall have the right to approve each Punch List in its reasonable discretion. The failure to include any items on such list does not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents.

2.11.2 Design-Builder shall promptly complete all items on the Punch List. Owner shall have the option to correct or otherwise resolve any and all Punch List items not promptly completed by Design-Builder by using its own forces or by hiring others. The reasonable cost of such correction or resolution of remaining punch list items by Owner or others shall be deducted from the final payment to Design-Builder.

2.11.3 Design-Builder acknowledges the long-term nature of the Commissioning and Acceptance Tests activities required under the Contract Documents and agrees that Owner has a material interest in the prompt completion of the items to be included on the Punch List, notwithstanding the achievement of Acceptance.

2.12 Training Plan.

2.12.1 Design-Builder shall prepare and submit to Owner the Training Plan for training of Owner's supervision, operations and maintenance employees in accordance with the Project Requirements. Owner approval of the Training Plan is a condition precedent to certain testing required for the achievement of Acceptance, which approval will not be unreasonably withheld. Consequently, Design-Builder shall complete training of designated Owner employees in accordance with the approved Training Plan prior to Acceptance in order to enable such Owner employees to assume operation and maintenance responsibility for the Project upon the Acceptance Date.

2.13 Commissioning, Functional Testing and Acceptance Testing

2.13.1 Design-Builder shall prepare and submit to Owner for its review and approval a detailed Commissioning Plan and schedule in accordance with the Project Requirements. Owner approval of the Commissioning Plan and schedule is a condition precedent to certain testing required for the achievement of Acceptance, which approval will not be unreasonably withheld.

2.13.2 Design-Builder shall prepare and submit to Owner for its review and approval detailed Subsystem Test Plans in accordance with the Project Requirements. In no event may Design-Builder commence with the performance of any installation or functional testing prior to Owner approval of the applicable Subsystem Test Plan, which approval will not be unreasonably withheld.

2.13.3 Design-Builder shall prepare and submit to Owner for its review and approval detailed Acceptance Test Plans in accordance with the Project Requirements. In no event may Design-Builder commence with the performance of any Acceptance Test prior to Owner approval of the applicable Acceptance Test Plan, which approval will not be unreasonably withheld.

2.13.4 At least fourteen (14) days prior to the actual commencement of any Acceptance Test, Design-Builder shall certify in writing that it is ready to begin the Acceptance Test in accordance with the requirements of this Section 2.13, the Acceptance Test Plan and the Project Requirements.

2.13.5 Design-Builder shall not commence the Acceptance Tests until the following events have occurred:

(a) The requirements of Sections 2.13.3 and 2.13.4 above have been met and Owner has approved the Acceptance Test Plan with respect to the Acceptance Tests; and

(b) Design-Builder is prepared with adequate supervision, labor, Equipment and Materials to start-up the Work in accordance with the Contract Documents.

2.13.6 Design-Builder shall perform all Acceptance Tests in accordance with the Contract Documents, including but not limited to the approved Acceptance Test Plans. All Acceptance Tests shall be conducted in coordination with Owner. Design-Builder shall permit Owner and any designated representative of Owner to inspect the preparations for the Acceptance Tests and to be present for the conduct of the Acceptance Tests for purposes of ensuring compliance with the Acceptance Test Plan and the integrity of the Acceptance Tests results.

2.13.7 Within seven (7) days following the last day of successfully completing the Acceptance Tests, Design-Builder shall furnish Owner with the preliminary Acceptance Test Report consistent with the requirements specified in the Project Requirements. Owner shall review and provide approval or conditional approval within seven (7) days of receipt of such preliminary report. Within twenty-one (21) days following the last day of successfully completing the Acceptance Tests, Design-Builder shall furnish Owner with the Acceptance Test Report consistent with the requirements specified in the Project Requirements. The Acceptance Test Report shall describe and certify: (a) each Acceptance Test conducted; (b) the results of the Acceptance Tests; (c) the level of satisfaction of the Acceptance Standards relating thereto; and (d) the level of satisfaction of all Acceptance Date Conditions. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Acceptance Tests, and copies of laboratory reports conducted in conjunction with the Acceptance Tests, including all laboratory sampling and test results. No failure of Design-Builder to furnish the certified Acceptance Test Report within the twenty-one (21) day period following the conclusion of the Acceptance Tests shall operate to adjust the Scheduled Acceptance Date.

2.14 Care, Custody and Control, Risk of Loss and Damage to Owner Property

2.14.1 Design-Builder shall have care, custody, and control of the Work (including but not limited to having responsibility for the security of the Site) until the Acceptance Date.

2.14.2 Design-Builder shall bear all risk of loss concerning the Work until the Acceptance Date, regardless of: (a) the extent to which the loss was insured or the availability of insurance proceeds; and/or (b) whether Owner had title to the Work or paid for any of the Work that was subject to a loss.

Article 3 **Owner's Services and Responsibilities**

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide Contractor with reasonable access to the Site, including land rights and areas for storage reasonably sufficient that Design-Builder may perform the Work in accordance with the Contract Times.

3.1.3 Owner shall provide timely reviews and approvals (where required) of interim design submissions and the Released for Construction Documents consistent with the turnaround times set forth in the Contract Documents and the Baseline Schedule, *provided, however* that, unless stated otherwise in the Contract Documents, Owner shall have twenty-one (21) days after receipt of such submissions to act upon such submissions, unless: (a) a shorter review period is specifically indicated in the Project Requirements; or (b) Design-Builder and Owner mutually agree upon a shorter review period for a specific submission. Design-Builder may, for more complex or time-sensitive submittals, request joint review meetings with Owner in the interest of expediting such reviews, and Owner will, to the extent it is reasonably able to do so, attempt to satisfy such requests. Owner approval, or narrative indicating approval by Owner or indication that Owner is approving, means that Owner is reviewing for conformance with the Contract Documents and indicating its belief at a specific time that submittals being reviewed are in conformance. In providing such approval, Owner is not accepting any responsibility or liability for itself or relieving responsibility for performance of the Design-Builder under the Contract Documents, for which the Design-Builder remains wholly responsible..

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

3.2 Furnishing of Services and Information.

3.2.1 Owner has provided the RFP Documents for Design-Builder to consider in developing the Proposal and for executing the Work.

3.2.2 Owner agrees to pay for power consumed by the Project and furnish and/or pay for influent water, solids, and fuels required for startup, commissioning and activities related to the normal operation of Plant equipment.

3.3 Owner's Representative.

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

3.3.2 Owner's Representative shall have full authority to act on behalf of Owner with respect to matters requiring Owner's approval or authorization. Owner's Representative may delegate all or a portion of its authority to others by written notice to Design-Builder, which delegated authority may be revoked or modified at any time by written notice to Design-Builder.

3.3.3 Owner's Representative may be replaced with seven (7) days' prior written notice to Design-Builder, and may delegate its authority and responsibilities to assistants with written notice Design-Builder.

3.4 Government Approvals.

3.4.1 Owner shall obtain and pay for only the Governmental Approvals expressly set forth in the Project Requirements as being the sole responsibility of Owner.

3.4.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those Governmental Approvals that are Design-Builder's responsibility.

3.5 Separate Contractors.

3.5.1 Owner is responsible for all work performed on the Project or at the Site by Separate Contractors with whom Owner has contracted. Owner shall contractually require its Separate Contractors to cooperate, and coordinate their activities so as not to interfere, with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions.

4.1.1 Where Owner has advised Design-Builder of known Hazardous Materials or Hazardous Environmental Conditions at the Site, these Hazardous Materials and Hazardous Environmental Conditions are part of the Work and Design-Builder shall take such action as is necessary, in accordance with applicable Legal Requirements, to plan for and to remediate and render harmless all such Hazardous Materials and Hazardous Environmental Conditions. Remediation plans for such known Hazardous Materials and Hazardous Environmental Conditions shall be provided to Owner for approval prior to undertaking the remediation.

4.1.2 If Design-Builder encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with applicable Legal Requirements, to protect the interests of any affected party. Design-Builder shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify Owner and, if required by Legal Requirements, assist Owner in providing notifications to all Governmental Units having jurisdiction over the Project or Site.

4.1.3 Design-Builder, in consultation with Owner, shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Legal Requirements. Design-Builder shall, as may be directed by Owner and prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain on Owner's behalf all applicable Governmental Approvals to implement such plans. During the period of any investigation and remediation efforts, Design-Builder shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

4.1.4 Except for those Hazardous Materials and Hazardous Environmental Conditions set forth in Section 4.1.6 below, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of unknown Hazardous Environmental Conditions.

4.1.5 To the fullest extent permitted by Legal Requirements, Owner shall indemnify and hold harmless Design-Builder from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from unknown Hazardous Environmental Conditions. Nothing in this Section 4.1.5 shall obligate Owner to indemnify or hold harmless Design-Builder from and against the consequences of the breach of contract, negligence, recklessness or willful misconduct of Design-Builder or any DB-Related Entity.

4.1.6 Notwithstanding anything to the contrary in this Section 4.1, Design-Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Material or Hazardous Environmental Condition present at, on, in or under, or migrating and/or emanating to or from the Site, to the extent brought or caused to be brought on the Site by any act or omission of Design-Builder or any DB-Related Entity; (b) Hazardous Materials or Hazardous Environmental Conditions that are part of the Work pursuant to Section 4.1.1 above; and (c) the creation or exacerbation of any known or unknown Hazardous Environmental Condition due to the breach of contract, negligence, recklessness or willful misconduct of Design-Builder or any DB-Related Entity. To the fullest extent permitted by Legal Requirements, Design-Builder shall indemnify, defend and hold harmless each Owner Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Items (a), (b) and/or (c) above.

4.1.7 As between Owner and Design-Builder, Owner is the generator of any pre-existing Hazardous Materials or Hazardous Environmental Condition.

4.1.8 Owner represents that the Site has not been designated as a "Superfund" site by the United States Environmental Protection Agency.

4.2 Inspection of Site Conditions.

4.2.1 Design-Builder represents and warrants that it has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction which are ascertainable or visible upon a thorough investigation of the Site, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof.

4.2.2 Design-Builder shall, after the Agreement Date, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to Owner promptly after such reports or analyses are generated.

4.3 Differing Site Conditions.

4.3.1 Concealed or latent physical conditions or subsurface conditions at the Site that: (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. The term "Differing Site Conditions" excludes: (a) conditions of which Design-Builder had actual or constructive knowledge as of the Agreement Date; and (b) conditions that should have been discovered through a reasonable Site investigation performed in accordance with Section 4.2. For the avoidance of doubt, Hazardous Environmental Conditions are not deemed Differing Site Conditions, and shall be treated as set forth under Section 4.1 above.

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

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall obtain and maintain, at its own cost and expense, the insurance coverages specified in Exhibit 7.1 of the Agreement, which insurance shall be in accordance with this Section 5.1.

5.1.2 All insurance required by Section 5.1 shall be from insurance companies that are duly licensed or authorized to do business in the state of Missouri, and have a current policyholder's management and financial size category rating of not less than "A-.VIII" according to A.M. Best's Financial Strength and Financial Size Category.

5.1.3 Design-Builder shall deliver to Owner, with copies to each additional insured, the following:

(a) Certificates of insurance and endorsements establishing that Design-Builder has obtained and is maintaining the policies and coverages required hereunder, with the understanding that updated, compliant certificates of insurance and endorsements shall be delivered annually, at least ten (10) days prior to the expiration of any policy, to evidence renewal of the required insurance coverages.

(b) Upon request by Owner or any additional insured, evidence of such required insurance, including documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant endorsements, exclusions, and evidence of insurance required to be purchased and maintained by Design-Builder, Design Consultants, or Subcontractors. In any documentation furnished under this provision, Design-Builder, Design Consultants, and Subcontractors may block out (redact) any confidential premium or pricing information or other information not applicable to this Project or Contract.

(c) Failure of Owner or any additional insured to demand the documents required by this Section 5.1.3, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the obligation of the relevant party (i.e., Design-Builder, Design Consultant, or Subcontractor) to obtain and maintain such insurance.

5.1.4 Design-Builder shall require its Design Consultants and Subcontractors to purchase and maintain the insurance coverages specified under Section 7.1 to the Agreement.

5.1.5 Owner does not represent that insurance coverage and limits established in Section 7.1 of the Agreement will be adequate to protect the interests of Design-Builder, Design Consultants, or Subcontractors. Each such party is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Design-Builder deems necessary.

5.1.6 The insurance and insurance limits required under the Agreement are minimums and shall not be deemed as a limitation on Design-Builder's liability, or that of any DB-Related Entity, under the indemnities granted to Owner, additional insureds and other individuals and entities in the Contract Documents or otherwise.

5.1.7 If in any instance Design-Builder has not performed its obligations respecting obtaining and maintaining insurance coverage required hereunder, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies, then for purposes of determining Design-Builder's liability and the limits thereon or determining reductions in compensation due from Owner to Design-Builder on account of available insurance, Design-Builder shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Design-Builder performed such obligations and not committed such failure.

5.1.8 Design-Builder, Design Consultants, and Subcontractors shall be solely responsible for any and all deductibles or self-insured retentions that shall apply under any required, or otherwise purchased, insurances and shall have no recourse against Owner for any such costs.

5.1.9 All policies of insurance that Design-Builder is required to purchase and maintain under the Agreement shall:

(a) Contain a provision requiring the insurer to give not less than thirty (30) days' prior notice to Owner whenever the insurer gives Design-Builder a notice of cancellation or non-renewal with respect to the policy (except in the case of any non-premium payment, not less than ten (10) days' prior notice, which the insurer shall be obligated to give to Owner simultaneously with providing such notice to Design-Builder). The provision required by the preceding sentence shall not be deemed to infer a right of cancellation that would otherwise not exist in the absence of such provision.

(b) Delete any specific design-build or similar exclusions that could compromise coverage because of Design-Builder's involvement in the design-build process.

(c) Contain coverage terms and conditions that reflect the industry standard for projects of a similar size, scope, and nature of this Project that the commercial market will provide and support as of the date of such insurance procurement and any subsequent renewals.

(d) Other than for professional liability insurance, workers compensation/employer's liability insurance and builder's risk insurance, where additional insured coverage is required include cross-liability clauses allowing one insured to bring a claim against another insured party. With regard to pollution liability insurance, a cross-liability clause will be allowed as long as it does not impact Owner's ability to sue another insured party and collect under the policy.

(e) Other than for professional liability insurance and workers compensation/employer's liability insurance, be endorsed so that the insurer agrees to waive, to the extent permitted by law, all rights of subrogation or action that it may have or acquire against Owner, Owner Indemnitees, or any additional insured.

(f) Other than for professional liability insurance, workers compensation/employer's liability insurance, automobile liability insurance, and contractor pollution liability insurance, contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds.

(g) With regard to builder's risk and any other first-party property insurance, have each policy endorsed to contain a standard mortgagee clause to the effect that Owner and other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured, or failure to comply with a statutory requirement.

(h) For commercial general liability and umbrella/excess liability insurance, , not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs.

(i) Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability must:

1. Include and list as additional insureds Owner and the Owner Indemnitees, and include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

2. Afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

3. Not seek contribution from insurance maintained by the additional insured; and

4. As to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Design-Builder's acts or omissions, or the acts and omissions of DB-Related Entities, in the performance of Design-Builder's operations.

5.2 Performance and Payment Bonds.

5.2.1 Design-Builder shall provide Owner with the Performance and Payment Bonds in accordance with Section 7.2 of the Agreement.

Article 6 **Payment**

6.1 General.

6.1.1 Owner shall pay Design-Builder for the Work in accordance with Articles 4 and 5 of the Agreement and this Article 6.

6.1.2 Owner shall pay Design-Builder through monthly progress payments described in Section 6.2 below, with payments to be based upon the Schedule of Values agreed upon by the Parties pursuant to Section 2.1.3 above. In making such progress payments, Owner shall retain the amounts set forth in Section 5.2.1 of the Agreement, as well as other amounts permitted under the Contract Documents or at law.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, including, without limitation, such documents, information and data as Owner may require to: (a) waive or release lien rights for all Work performed (other than with respect to any retainage then withheld); and (b) evaluate or verify the right to receive payment of any amount requested for payment.

6.2.2 The Application for Payment may request payment for Equipment and Materials not yet incorporated into the Project, provided that: (a) Owner is satisfied that the Equipment and Materials are suitably stored at either the Site or another acceptable location; (b) the Equipment and Materials are protected by suitable insurance; and (c) upon the earlier of incorporation into the Project or payment, Owner will receive the Equipment and Materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier. The passage of title shall not be construed as relieving Design-Builder from the sole responsibility for all Work upon which payments have been made (including but not limited to risk of loss or the restoration of any damaged Work), or as waiving the right of Owner to require the fulfillment of all

of the terms of the Contract Documents.

6.3 Withholding of Payments.

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

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement. Payments which Owner disputes in good faith shall not be deemed due.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due and is not subject to a good faith dispute, then Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 below. All payments due and unpaid, other than those subject to a good faith dispute, shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

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

6.6 Final Payment.

6.6.1 Upon achieving Final Completion in accordance with Section 8.3 below, Design-Builder shall provide Owner with a Final Application for Payment. The Final Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, including, without limitation the following:

(a) An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, Equipment or Materials, construction equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests.

(b) A general release executed by Design-Builder waiving all claims, except for receipt of final payment by Design-Builder and those claims previously made in writing to Owner and remaining unsettled at the time of final payment, which previously made claims shall be specifically listed in an attachment to the general release.

(c) Consent of Design-Builder's surety to final payment.

(d) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

(e) Final Project Workforce Monthly Report and Final Companywide Workforce Monthly Report.

6.6.2 After receipt of a proper Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement. If Owner is not in agreement with said Application, Owner shall return the final Application for Payment to Design-Builder, indicating in writing the reasons for not recommending final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Final Application for Payment.

6.6.3 Final payment shall be an absolute bar to the assertion of any claim of any type by Design-Builder other than those expressly set forth in the attachment set forth in Section 6.6.1(b) above.

Article 7

Indemnification

7.1 Intellectual Property Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against any Owner Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement or unauthorized use of any patent, trademark, copyright, or trade secret now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep all Owner Indemnitees regularly informed of all developments in the defense of such actions.

7.1.2 If any Owner Indemnitee is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent, trademark, copyright or trade secret suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense: (a) modify the Work so as to avoid infringement of any such patent, trademark copyright, or trade secret; or (b) replace said Work with Work that does not infringe or violate any such patent, trademark, copyright or trade secret; *provided, however*, that any such modification or replacement shall not adversely affect the performance, use, operation, or any material characteristic of the Project, and shall be subject to the approval of the Owner Indemnitees.

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner Indemnitees from any claims or mechanic's liens brought against Owner Indemnitees or against the Project as a result of the failure of Design-Builder or any DB-Related Entity to pay for any services, Equipment and Materials, materials, labor, equipment, taxes or other items or obligations

furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from any Owner Indemnitee that such a claim has been asserted or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond that will remove such claim or lien from title. If Design-Builder fails to do so, Owner Indemnitees will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and third party property damage or destruction (other than to the Work itself) to the extent resulting from the intentional misconduct or negligent acts or omissions of Design-Builder or any DB-Related Entity. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 7.4.

7.4.2 If an employee of any Design-Builder or any DB-Related Entity has a claim against any Owner Indemnitee, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder or any DB-Related Entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Defense and Indemnification Procedures.

7.5.1 If any Owner Indemnitee receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of Design-Builder's indemnification under the Contract Documents, it shall by writing as soon as practicable: (a) inform Design-Builder of such claim; (b) send to Design-Builder a copy of all written materials Owner Indemnitee has received asserting such claim; and (c) notify Design-Builder that either: (i) the defense of such claim is being tendered to Design-Builder; or (ii) Owner Indemnitee has elected to conduct its own defense for a reason set forth below.

7.5.2 If the insurer under any applicable insurance policy accepts tender of defense, Design-Builder and Owner Indemnitee shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then the following provisions shall apply.

7.5.3 If the defense is tendered to Design-Builder, it shall within forty-five (45) days of said tender deliver to Owner Indemnitee a written notice stating that Design-Builder: (a) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (b) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (c) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claim under the Contract Documents. If such notice is not delivered within such forty-five (45) days, the tender of defense shall be deemed rejected.

7.5.4 If Design-Builder accepts the tender of defense, Design-Builder shall have the right to select legal counsel for Owner Indemnitee, subject to reasonable approval of Owner Indemnitee, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (a) Design-Builder shall, at Design-Builder's expense, fully and regularly inform Owner Indemnitee of the progress of the defense and of any settlement discussions; and (b) Owner Indemnitee shall, at Design-Builder's expense for all of Owner Indemnitee's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under

the control of or reasonably available to Owner Indemnitee and maintain the confidentiality of all communications between it and Design-Builder concerning such defense to the extent allowed by law.

7.5.5 Owner Indemnitee shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (a) the defense is tendered to Design-Builder and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (b) Owner Indemnitee, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (i) a conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (ii) Design-Builder is otherwise not providing an effective defense in connection with the claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. Owner Indemnitee may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons thereof.

7.5.6 If Owner Indemnitee is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting there from) shall be reimbursed by Design-Builder after completion of the proceeding.

7.5.7 If Owner Indemnitee is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Design-Builder's indemnity. Notwithstanding the foregoing, if Owner Indemnitee elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, Owner Indemnitee shall pay its own costs and expenses relating thereto. In addition, if Owner Indemnitee elects to conduct its own defense because it perceives a conflict of interest, Owner Indemnitee shall pay its own costs and expenses relating thereto.

7.6 Survival.

7.6.1 All of Design-Builder's obligations under this Article 7 shall survive any termination of the Agreement, whether for cause or convenience.

Article 8 **Contract Times**

8.1 General.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve completion of the Work within the Contract Time(s) in accordance with Article 3 of the Agreement.

8.1.2 Design-Builder shall perform the Work, as applicable, in accordance with the Mobilization and Engineering Schedule and the Baseline Schedule. Design-Builder shall provide Owner with monthly updates, or more frequently as required by conditions and progress of the Work, comparing actual progress to the Baseline Schedule, but such updates shall not be deemed to modify the Baseline Schedule or Contract Time(s), nor relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as may be adjusted in accordance with this Article 8.

8.1.3 The conditions for Acceptance are set forth in Section 8.2 below. Design-Builder acknowledges that Owner may want to take-over and operate some elements of the Work before Acceptance of the entire Work. To accomplish this, the Parties will discuss and agree upon the terms upon which Owner may do so, including but not limited to the impact of such on Design-Builder's responsibility for risk of loss, insurance and warranty.

8.2 Acceptance

8.2.1 The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by Design-Builder in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

(a) Design-Builder shall have completed the Acceptance Tests and such tests shall have demonstrated that the Project has met all of the Acceptance Standards, as certified by Design-Builder and agreed to by Owner in accordance with the Contract Documents.

(b) Design-Builder and Owner have agreed in writing upon the Punch List (or, if they are unable to agree, Owner shall have prepared and issued the Punch List to Design-Builder within thirty (30) days of Design-Builder having submitted its proposed Punch List to Owner).

(c) All Governmental Approvals required under Legal Requirements and the Contract Documents to be obtained by Design-Builder which are necessary for the continued routine operation of the Project shall be in full force and effect and certified copies of all such Governmental Approvals shall have been delivered to Owner.

(d) Design-Builder shall be in possession of, and shall have delivered to Owner, copies of the warranties of Equipment and Materials, together with copies of all related operating manuals provided by Suppliers.

(e) Design-Builder shall have delivered to Owner the O&M Data in accordance with Section 2.10 above and the Contract Documents.

(f) Design-Builder shall have delivered to Owner all final Record Documents, the final BIM model, and other closeout documents required by the Contract Documents, as applicable to Acceptance.

(g) Design-Builder shall have satisfied its training obligations with respect to Owner's operations and maintenance staff in accordance with the approved Training Plan and the specific requirements of the Project Requirements.

(h) Owner has approved the Acceptance Test Report.

(i) All Liquidated Damages due under the Agreement have been paid or otherwise satisfied for failure of Design-Builder to achieve Acceptance on or before the Scheduled Acceptance Date.

(j) Design-Builder has satisfied all of the requirements for Acceptance set forth in the Project Requirements.

(k) Design-Builder and Owner have executed a Certification of Acceptance that all of the foregoing conditions have been satisfied.

8.2.2 When Design-Builder considers that Acceptance Date Conditions have been achieved, it shall so notify Owner in writing. Owner shall determine, within twenty-one (21) days following its receipt of such notice, whether it concurs that the Acceptance Date Conditions have been achieved. If Owner disagrees, it shall promptly send written notice to Design-Builder of the basis for its disagreement. Design-Builder shall expeditiously correct the conditions raised by Owner in order to achieve the Acceptance Date Standards. The preceding process will continue until Owner determines that Acceptance has been achieved.

8.2.3 The Acceptance Date shall be the day on which Owner has executed the Certificate of Acceptance. However, for the sole purpose of determining Design-Builder's liability to Owner for Delay Liquidated Damages for failure to achieve Acceptance on or before the Scheduled

Acceptance Date, Acceptance shall be deemed effective as of the date Design-Builder has executed the Certificate of Acceptance.

8.3 Final Completion.

8.3.1 Final Completion shall be deemed to have occurred when all of the following conditions have been satisfied:

- (a) Design-Builder has achieved Acceptance in accordance with Section 8.2 above.
- (b) All Work (including all repairs identified during or required due to the performance of successful Acceptance Tests and all clean-up and removal of construction materials, demolition debris and temporary facilities) is complete, and in all respects is in compliance with the Contract Documents.
- (c) Design-Builder shall have delivered to Owner all closeout documents and other deliverables required by the Contract Documents.
- (d) Design-Builder's surety has consented to the release of final payment to Design-Builder.
- (e) Design-Builder has certified to Owner that all of its claims against Owner have been resolved, except for those set forth in the attachment to the general release described in Section 6.6.1(b) above.
- (f) All Liquidated Damages due under the Agreement have been paid or otherwise satisfied.
- (g) Design-Builder has satisfied all of the requirements for Final Completion set forth in the Project Requirements.
- (h) Design-Builder and Owner have executed a Certification of Final Completion that all of the foregoing conditions have been satisfied.

8.3.2 When Design-Builder considers that Final Completion has been achieved, it shall so notify Owner in writing. Owner shall determine, within twenty-one (21) days following its receipt of such notice, whether it concurs that Final Completion has been achieved. If Owner disagrees, it shall promptly send written notice to Design-Builder of the basis for its disagreement. Design-Builder shall expeditiously correct the conditions raised by Owner in order to achieve Final Completion. The preceding process will continue until Owner determines that Final Completion has been achieved

8.3.3 The Final Completion Date shall be the day on which Owner has executed the Certificate of Final Completion. However, for the sole purpose of determining Design-Builder's liability to Owner for Delay Liquidated Damages for failure to achieve Final Completion on or before the Scheduled Final Completion Date, Final Completion shall be deemed effective as of the date Design-Builder has executed the Certificate of Final Completion.

8.4 Excusable Delays.

8.4.1 The term "Excusable Delay" shall refer to delays in the performance of the Work to the extent caused directly by acts, omissions, conditions, events, or circumstances beyond the reasonable control of Design-Builder and all DB-Related Entities), including, by way of example, acts or omissions of Owner or anyone under Owner's control (including Owner's Separate Contractors), changes in the Work, Differing Site Conditions, unknown Hazardous Environmental Conditions, Force Majeure Events, and suspensions of work under Section 11.1 below.

8.4.2 Notwithstanding Section 8.4.1 above, all cost, time, and other risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be deemed Excusable Delays, and shall not be the basis for any relief, monetary or otherwise, to Design-Builder:

(a) general market and economic conditions affecting the availability, supply or cost of labor, Equipment and Materials, construction equipment, supplies, or commodities;

(b) strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect a specific trade on a national or regional level and were not caused by the improper acts or omissions of Design-Builder or any DB-Related Entity;

(c) delays in obtaining or delivery of Equipment and Materials, or any other goods or services, from any DB-Related Entity, unless the DB-Related Entity's reason for delay arises from an event that would otherwise be excusable to Design-Builder under these General Conditions of Contract;

(d) delays of common carriers, unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Design-Builder under these General Conditions of Contract;

(e) bankruptcy or insolvency of any DB-Related Entity;

(f) the inability of a DB-Related Entity to perform, unless such inability would be otherwise excusable to Design-Builder under these General Conditions of Contract;

(g) any acts, omissions, conditions, events, or circumstances that were caused by or arose from the negligent acts, omissions, fault, recklessness, willful misconduct, breach of contract, or violation of law by Design-Builder or any DB-Related Entity; and

(h) the exercise of any right or any act by Owner permitted under the Contract Documents, except to the extent the Contract Documents expressly require an adjustment in the Contract Time(s) as a result of such exercise or act (e.g., a change in the Work that will delay performance).

8.4.3 If Design-Builder intends to seek Excusable Delay classification for any weather condition, it shall demonstrate, as a condition to qualifying for an Excusable Delay, that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Site.

8.4.4 If Design-Builder intends to seek Excusable Delay classification for a delay in the issuance of a Governmental Approval, it shall demonstrate that: (a) Design-Builder and all applicable DB-Related Entities have submitted all applications, data, studies, reports, responses and other information required under Legal Requirements in order to obtain the Governmental Approval; (b) Design-Builder and all applicable DB-Related Entities have in all respects used commercially reasonable efforts to obtain the Governmental Approval; and (c) Design-Builder and all applicable DB-Related Entities have consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Unit in a manner that, while not expressly required under Legal Requirements, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar Governmental Approvals in a timely manner in light of the discretion accorded Governmental Units under Legal Requirements.

8.5 Adjustment of Contract Time(s).

8.5.1 Design-Builder shall be entitled to request a Change Order adjusting the Contract Time(s) to reflect not more than the amount of time Design-Builder is actually delayed by an Excusable Delay, expressly conditioned upon Design-Builder demonstrating that: (a) Design-Builder has complied with the procedural requirements of Section 8.4 and this Section 8.5; (b) the delay impacts the critical path of the Work as demonstrated by Section 8.5.3 below; (c) the delay was not foreseeable as of the Agreement Date by Design-Builder, and would not have been foreseen as of the Agreement Date by a reasonably experienced design-builder; (d) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid and mitigate the delay and did not, through itself or any DB-Related Entity, cause the delay; and (e) the delay for which relief is requested is not within the scope of those events or circumstances described in Section 8.4.2.

8.5.2 If Design-Builder intends to seek an adjustment in the Contract Time(s) as the result of an Excusable Delay, it shall comply with Sections 8.5.3 and 9.4 below.

8.5.3 Design-Builder shall demonstrate the critical path impact of an Excusable Delay and the impact on the Contract Time(s) through a written time impact analysis ("TIA") establishing the influence of the event on the most current monthly updated Baseline Schedule. Each TIA shall include a fragmentary network, and for events that have yet to occur (such as an Owner proposed change), the fragmentary network shall demonstrate how Design-Builder proposes to incorporate such event into the most current monthly updated Baseline Schedule. The TIA shall demonstrate: (a) the time impact based on the date the event occurred, or, in the instance of an Owner proposed change, the date such proposed change was given to Design-Builder; (b) the status of the Work at such point in time; and (c) the time computation of all affected activities.

8.6 Compensation for Delays

8.6.1 Design-Builder shall be entitled to request an adjustment of the Contract Price pursuant to the provisions of Article 9 for all Excusable Delays for which Design-Builder is entitled to a time extension pursuant to Section 8.5 above ("Compensable Delays"), *provided, however*, that Compensable Delays shall not be deemed to include: (a) Force Majeure Events; or (b) Excusable Delays where Design-Builder's performance was or would have been concurrently delayed or interrupted by any event that does not otherwise qualify as an Excusable Delay ("Concurrent Delay"). Design-Builder's sole remedy for a Concurrent Delay is an extension of the Contract Time(s), provided that Design-Builder has complied with the requirements of Section 8.5 above.

8.7 Recovery Schedules

8.7.1 Notwithstanding the right of Design-Builder to request a time extension for an Excusable Delay pursuant to this Article 8, Design-Builder agrees that it will, if directed by Owner, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay. Should Owner have a reasonable belief that the Contract Time(s) will not be met, then Owner has the right, but not the obligation, to so notify Design-Builder and direct Design-Builder to overcome such delay by working additional overtime, engaging additional personnel and taking such other measures as necessary to complete the Work within the Contract Time(s). If such delay is not an Excusable Delay, Design-Builder shall bear all costs related to such overtime, additional personnel and other measures. If such delay is an Excusable Delay, and Design-Builder has met the requirements of this Article 8 for an adjustment to the Contract Time(s) for such delay, then Design-Builder may request an adjustment to the Contract Price in accordance with the requirements of Article 9 for the increase in costs incurred by Design-Builder directly related to such overtime, additional personnel and other measures.

Article 9

Changes to the Contract Price and Contract Times

9.1 Right of Owner to Make Changes.

9.1.1 Without invalidating the Agreement, Owner may by written order, at any time and from time-to-time, authorize and/or request changes in, additions to, or deletions in the Work, including but not limited to those involving: (a) changes in, additions to, or deletions in the Contract Documents; (b) changes in the method, manner, sequence and time of performance of the Work (provided that Design-Builder retains and accepts full responsibility for all associated construction means, methods, techniques, sequences, and procedures); (c) changes in Owner-furnished services or deliverables, or (d) a direction to accelerate performance of the Work. If Owner proposes making a change in the Work, Owner shall advise Design-Builder and Design-Builder shall follow the processes set forth in Section 9.2 below.

9.1.2 No oral instruction, order or statement by Owner or Owner's Representative shall constitute a change under this Article 9. If Design-Builder believes that any oral instruction, order or statement by Owner may result in a change in the Work or require an adjustment to the Contract Price or the Contract Time(s), Design-Builder shall request that the oral instruction, order or statement be given in writing and shall thereafter comply with the provisions of this Article 9.

9.1.3 A "Change Order" is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon the scope of a change in the Work, and the agreed adjustment, if any, to the Contract Price, Contract Time(s), or any other requirement of the Contract Documents. Unless specifically stated to the contrary in the Change Order, an executed Change Order shall constitute the final and complete compensation and satisfaction for all costs and schedule impacts related to: (a) the implementation of the changes that are the subject of the Change Order; and (b) the cumulative impact of effects resulting from such changes on all prior Work and changes in the Work to be performed as scheduled.

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

9.2 Work Change Directives.

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

9.2.2 Upon receipt of a Work Change Directive, Design-Builder shall promptly proceed with the change in the Work involved, unless Owner directs otherwise. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the Parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.2.3 If the Parties are not able to agree on the method for adjusting the Contract Price for a Work Change Directive within a reasonable time, then Owner shall pay Design-Builder for such Work on a Cost of the Work basis as set forth in Section 9.7.1(c) below.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.

9.3.2 Owner may request minor changes in the Work that do not involve an adjustment in the Contract Price or Contract Time(s), and do not materially or adversely affect the Work. If Design-Builder disputes that such order involves a minor change, Design-Builder shall notify Owner in accordance with Section 9.4 below.

9.3.3 Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, *provided, however*, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Procedures Following Owner's Notice of Proposed Change.

9.4.1 Design-Builder shall, within twenty-one (21) days after receipt of notice of a proposed Owner change, prepare and submit to Owner in writing the information set forth in Section 9.5.2 below as if such change were the subject of a Design-Builder Proposed Change Order, and such other information and data as Owner may reasonably request. Owner shall endeavor to review Design-Builder's submittal with Design-Builder within twenty-one (21) days of its receipt of such submittal. If the Parties reach agreement on the terms of Owner's proposed change and Owner elects to proceed with such change, a Change Order shall be executed by the Parties. If the Parties are unable to reach agreement on the terms of the proposed change, Owner shall have the right, in its sole discretion, to direct Design-Builder to proceed with the change by issuing a Work Change Directive to Design-Builder.

9.4.2 Owner shall have the right, at any time and at its sole discretion, not to undertake any proposed change. If Owner elects not to undertake a proposed change for which Design-Builder performed design and preconstruction services in developing its submittal under Section 9.4.1 above, Design-Builder shall be paid its reasonable design and preconstruction costs incurred for such submittal.

9.5 Design-Builder Proposed Change Orders.

9.5.1 If Design-Builder believes that it is entitled under the Contract Documents to an adjustment to the Contract Price, Contract Time(s), or other relief due to any event or situation arising out of or related to the Work (including but not limited to alleged Excusable Delays, disputes over Owner's instructions or interpretation of the Contract Documents), Design-Builder shall, within seven (7) days after Design-Builder knows, or should have reasonably known, of such event or situation giving rise to the requested relief, submit to Owner a written notice labeled "Notice of Design-Builder Proposed Change Order." The Notice of Design-Builder Proposed Change Order shall describe the general nature of the event or situation and, if such Notice involves an Excusable Delay, the probable duration thereof.

9.5.2 Design-Builder shall, within fourteen (14) days after providing Owner with a Notice of Design-Builder Proposed Change Order, submit to Owner in writing: (a) a description of the facts, circumstances and contractual basis for the relief sought, with sufficient specificity for Owner to assess the matter; (b) the cost data supporting any proposed adjustments to the Contract Price; and (c) the scheduling information and analysis required under Section 8.5.3 above to support any request for adjustment to the Contract Time(s).

9.5.3 Owner shall endeavor to review Design-Builder's submittal under Section 9.5.2 above within fourteen (14) days of its receipt of such submittal. If Owner believes that Design-Builder's request is justified, in whole or in part, Owner shall advise Design-Builder and an appropriate Change Order shall be executed. If Owner disputes Design-Builder's request, and the Parties are unable to resolve the dispute, such dispute shall be resolved in accordance with Article 10 below. Owner may request clarifications and/or additional information to assist with its decision to such proposed change order.

9.6 Owner Directive Letters

9.6.1 If the Parties are unable to reach agreement on the terms of a Design-Build Proposed Change Order under the processes set forth in Section 9.5 above, then Owner may, in its sole discretion, issue to Design-Build a written notice ("Directive Letter") that directs Design-Build to proceed in accordance with the terms of such notice notwithstanding the inability of the Parties to reach agreement on the terms of the Design-Build Proposed Change Order. Design-Build shall fully comply with all Directive Letters, and shall have the right to pursue its remedies under Article 10 below.

9.7 Contract Price Adjustments.

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

- (a) Unit prices set forth in the Agreement or as subsequently agreed to between the Parties;
- (b) A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner; or
- (c) If the Parties have not reached agreement on the basis of (a) or (b) above, the Contract Price shall be adjusted based upon the Cost of the Work and Overhead and Profit Markup as set forth in Section 9.8 below.

9.8 Cost of the Work and Overhead and Profit Markup.

9.8.1 The term "Cost of the Work" shall mean costs: (i) reasonably, actually and properly incurred by Design-Build in the proper performance of the Work associated with the change; (ii) reasonably documented; and (iii) that would not have been incurred but for the change in the Work. The Cost of the Work shall include only the following:

(a) Craft Labor.

(1) Actual wages shall be computed on the base hourly rates paid by Design-Build to its craft labor for all levels general foreman (or equivalent level) and below to perform the changed Work at the Site or, with Owner's agreement, at locations off the Site. No supervision or project management time above the general foreman level shall be included by Design-Build as a direct labor cost, as this is covered by the Overhead Markup.

(2) Labor burden shall be established as a percent of the actual wages paid for each craft under (a) above. The burden shall be limited to payment for: vacation allowance, health and welfare, pension, apprenticeship programs and other similar programs as required for each craft, social security, unemployment insurance, and workers' compensation insurance. Labor burden shall not include expenses relating to employee profit sharing plans, bonuses, voluntary employee contributions to charities, savings plans, or general liability insurance

(b) Equipment and Materials. Design-Build's net cost, including freight and transportation F.O.B Site, for all Equipment and Materials. All actually received quantity discounts and prompt payment discounts shall be reflected as credits for any Equipment and Materials purchased.

(c) Small Tools and Supplies. Small tools and supplies shall be paid based on five percent (5%) of the labor costs allowed in Item .1 above. Equipment and tools having a replacement value of \$500 or less, whether or not consumed or used, shall be considered small tools compensated by the preceding percentage and no separate payment will be made therefor under any other category of cost.

(d) Construction Equipment.

(1) All construction equipment leased specifically for changes in the Work shall be at Design-Builder's net invoiced cost.

(2) If construction equipment is owned and actually engaged in the performance of the change in the Work, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. In the case of any machinery or equipment not referred to in the Blue Book Rental Rates, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of 3% of the purchased price of such equipment. The hourly rate in such cases will be determined by dividing the monthly rate by 176 when actually operating. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 40% of the rate determined herein, without inclusion of operating costs.

(e) Subcontractors. Payments properly made by Design-Builder to Subcontractors for performance of portions of the Work, including any bond premiums incurred by Subcontractors. Each Subcontractor will price its change in the Work based upon the requirements set forth in Items (a) through (d) above.

(f) Design and Engineering Changes.

(1) Payment will be made for the cost of labor for design and engineering services, whether provided by Design-Builder or a Design Consultant, equal to the sum of the following: (i) actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead rate to be agreed-upon between Owner and Design-Builder, not to exceed the applicable audited overhead rate. For Design Consultants, up to an additional ten percent (10%) on the total of such labor and overhead costs may be allowed to account for profit on design and engineering service labor.

(2) Payment will be made for the recovery of necessary expenses for other direct costs incurred in performing the work of a design and/or engineering change order, whether incurred by Design-Builder or a Design Consultant, provided that such costs are not included in Design-Builder's or Design Consultant's indirect cost or overhead rate. Costs for travel, meals and lodging shall be reimbursed in accordance with Owner's Travel Reimbursement Guidelines.

(g) Bond and Builder's Risk Insurance. Payment for additional bond cost will be based upon a rate that reflects the actual additional bond premiums. Payment for additional Builder's Risk Insurance premiums will be based on the actual additional premium for the change.

(h) Miscellaneous. Other costs reasonably and properly incurred in the performance of the Work may be considered Cost of the Work to the extent approved in writing by Owner.

9.8.2 The Overhead and Profit Markup to be applied to the Cost of the Work for a change shall be as follows:

.1 For: (a) craft labor engaged under Section 9.8.1(a) above; (b) Equipment and Materials furnished under Section 9.8.1(b) above; (c) small tools and supplies furnished under Section 9.8.1(c) above; (d) rented and owned construction equipment under Section 9.8.1(d) above; and (e) miscellaneous costs under Section 9.8.1 (h) above, an Overhead and Profit Markup of ten percent (10%) will be applied.

.2 For design professional services labor engaged under Section 9.8.1(f) above, an Overhead and Profit Markup of ten percent (10%) will be applied.

.3 For bonds and Builder's Risk Insurance under Section 9.8.1(g) above, no

Overhead and Profit Markup will be applied.

.4 Contractor and each higher-tier Subcontractor not performing the Work will be allowed to apply an Overhead and Profit Markup of five percent (5%) on the lower-tier Subcontractor's direct costs (i.e., excluding the lower-tier Subcontractor's Overhead and Profit Markup, regardless of the tier of the Subcontractor.

9.8.3 In the event of a Compensable Delay, Design-Builder will be entitled to recover for its time-related Project overhead costs that would not have been incurred but for the Excusable Delay. Overhead and Profit Markup of ten percent (10%) will be applied to such Project overhead costs.

9.9 Emergencies.

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

9.10 Duty to Proceed.

9.10.1 Except only for Design-Builder's right to stop work under Section 11.3.1 below, no dispute between Design-Builder and Owner, including but not limited to those relating to the entitlement, cost or time associated with a notice of proposed Owner change or Design-Builder Notice of Proposed Change Order, shall interfere with the progress of the Work. Design-Builder shall have the duty to diligently proceed with the Work in accordance with Owner's instructions despite any dispute, including but not limited to those events where the Parties are in disagreement as to whether instructions from Owner constitute a change to the Work and justify adjustments to the Contract Price and/or Contract Time(s). Design-Builder's sole recourse in the event of such a dispute will be to pursue its rights under Article 10 below.

9.11 Burden of Proof.

9.10.1 Design-Builder shall bear the burden of proof in establishing its entitlement to relief under this Article 9, including but not limited to adjustments in the Contract Price and Contract Time(s).

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such Party shall provide written notice to the other Party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming Party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other Party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize and resolve any disputes. If any disputes do arise, Design-Builder and Owner each commit to resolving such disputes in an amicable, professional and expeditious manner.

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

10.2.3 If a dispute is not resolved at the field level within fourteen (14) days of the written notice provided for in Section 10.1.1, then, upon the written request of either Party, the dispute shall be elevated to Design-Builder's senior representative and Owner's Director or designee. Such individuals shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute. Five (5) days prior to any meetings between such individuals, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

10.2.4 Either Party shall have the right to exercise its right to initiate its rights to litigation under Section 10.4 below if a dispute has not been resolved within sixty (60) days of the request of a Party under Section 10.2.3 above to elevate the dispute to the individuals set forth in Section 10.2.3 above.

10.3 Mediation.

10.3.1 If, after the meeting set forth in Section 10.2.3 above, the senior representatives determine that the dispute cannot be resolved on terms satisfactory to both Parties, the Parties may mutually agree to mediate the dispute. For the avoidance of doubt, mediation is voluntary and will not be a condition precedent to the initiation of litigation. Any mediation will be based upon a process mutually agreed upon by the Parties.

10.4 Litigation.

10.4.1 Any and all legal proceedings between the Parties shall be solely and exclusively initiated and maintained in the state or federal courts of Jackson County, Missouri. Owner and Design-Builder each irrevocably consents to the jurisdiction of such courts in any such proceeding and each Party waives any objection it may have to the jurisdiction of any such proceeding. Any legal proceedings shall consist of a bench trial and not a trial by jury, and each party hereby waives its right to a jury trial in connection with any legal proceedings.

10.4.2 Notwithstanding Section 10.4.1 above, any prevailing Party may seek enforcement of any judgment rendered in a court in any jurisdiction where the non-prevailing Party or its property may be located.

10.5 Duty to Continue Performance.

10.6.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any Dispute between Design-Builder and Owner.

Article 11

Stop Work and Termination Rights

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, at any time, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed either sixty (60) consecutive days or in the aggregate more than one hundred twenty (120) days.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) under Articles 8 and 9 below if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by Owner under Section 11.1.1.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder, at any time, fails to: (a) provide a sufficient number of skilled workers; (b) supply the Equipment and Materials required by the Contract Documents; (c) comply with applicable Legal Requirements; (d) timely pay, without cause, Design Consultants or Subcontractors; (e) achieve Acceptance within one hundred eighty (180) days of the Scheduled Acceptance Date, as such date may be adjusted pursuant to Article 8 above; or (f) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents, by Legal Requirements, or at law or in equity, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below, and as provided at law.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be promptly cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence and diligently continue to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence and diligently continue to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration. Notwithstanding anything to the contrary, if Owner has provided Design-Builder with three (3) initial notices of Owner's intent to terminate the Agreement for any of the reasons set forth in Section 11.2.1 above, then Owner shall have no further obligation to provide Design-Builder with an opportunity to cure, and may terminate the Agreement for cause as set forth in a written notice from Owner.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the Site and take possession, for the purpose of completing the Work, of all Work Product, Equipment and Materials, construction equipment, supplies, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, Equipment and Materials, construction equipment, supplies, and other items; *provided, however*, that Owner shall not take possession of any construction equipment, supplies, scaffolds, tools, appliances and other similar items owned or rented by Design-Builder.

11.2.4 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including Liquidated Damages and other amounts due, Design-Builder will only be entitled to be paid for Work performed prior to its default (unless otherwise agreed to by the Parties), and the balance will be for the account of and retained by Owner. If the actual and reasonable costs of finishing the Work exceed the unpaid balance, Design-Builder shall, within thirty (30) days of receipt of written notice setting out the amount of the excess costs, pay the difference to Owner. Such costs and expense shall include not only the reasonable cost of

completing the Work (including costs to accelerate the Work as necessary to achieve Acceptance as near as possible to the Scheduled Acceptance Date), but also losses, damages, costs and expense, including reasonable attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages and limitations of liability set forth in Article 6 of the Agreement.

11.2.5 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted automatically to and treated as a termination for convenience under the provisions of Section 11.6 below.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work if Owner has failed to pay amounts properly due under Design-Builder's Application for Payment, *provided, however*, that amounts subject to a good faith dispute shall not be deemed properly due.

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

11.4 Design-Builder's Right to Terminate for Cause.

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

(a) The Work has been stopped for sixty (60) consecutive days, or more than one hundred twenty (120) days in the aggregate, because of court order, any Government Unit having jurisdiction over the Work, failure of Owner to obtain Governmental Approvals that are Owner's responsibility under the Contract Documents, or orders by Owner under Section 11.1.1 above, provided that such stoppages are not due to the acts or omissions of Design-Builder or any DB-Related Entity; and

(b) Owner's failure to cure the problems set forth in Section 11.3.1 above within sixty (60) days after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Section 11.6 below.

11.5 Bankruptcy of Owner or Design-Builder.

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

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

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

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

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

11.6 Owner's Right to Terminate for Convenience.

11.6.1 Design-Builder's performance of Work under the Agreement may be terminated by Owner in accordance with this Section 11.6 in whole or in part, without cause or whenever Owner shall determine that such termination is in the best interest of Owner. Any such termination shall be effected by delivery to Design-Builder of a Notice of Termination for Convenience, specifying the extent to which performance of Work under the Agreement is terminated, and the date upon which such termination becomes effective.

11.6.2 Design-Builder shall comply with instructions in the Notice of Termination for Convenience and, unless such notice directs otherwise:

(a) Immediately discontinue the Work on the date specified in such notice and to the extent specified in such notice;

(b) Place no further orders or Subcontracts except as may be necessary for completion or such portion of the Work as is not discontinued;

(c) Assign to Owner any Subcontract relating to the performance of Work that is discontinued that Owner elects in writing, at its sole election and without obligation, to have assigned to it, with Owner assuming, and Design-Builder being relieved of, all obligations under the Subcontract accruing from the date of the assignment;

(d) Promptly cancel or terminate, on terms reasonably and commercially appropriate, all Subcontracts that Owner does not elect to have assigned to Owner to the extent that such Subcontracts relate to the performance of Work that is discontinued;

(e) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination for Convenience;

(f) Take such action as may be necessary, or as Owner may direct, for the protection and preservation of the property related to the Agreement which is in the possession of Design-Builder and in which Owner has or may acquire an interest; and

(g) Deliver to Owner all Work Product produced during the period commencing on the Agreement Date to the date of the termination, which Work Product shall, for the avoidance of doubt, become the property of Owner (except for the intellectual property set forth in Section 12.3 below), to the extent that it may not have been the property of Owner before the date of termination.

Design-Builder shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Section 11.6.

11.6.3 In the event of a termination for convenience, Design-Builder shall be entitled to receive only the following with respect to the terminated portion of the Project (to the extent not previously paid or subject to a good faith dispute) as its sole and exclusive remedy for such termination:

(a) Its costs performed through the date of termination in accordance with the Schedule of Values;

(b) The reasonable costs incurred by Design-Builder in the performance of its obligations under Section 11.6.2 above directly resulting directly from such termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts; and

(c) A fair and reasonable Overhead and Profit Markup attributable to the Work performed on the terminated portion of the Work up to the time of termination.

Design-Builder shall not be entitled to recover any overhead costs or profit on unperformed portions of the Work. In no case shall Design-Builder or any DB-Related Entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section 11.6.

11.6.4 The obligation of Owner to pay amounts due in settlement of Subcontracts under Section 11.6.3 above shall be limited to the reasonable costs incurred by Design-Builder in settling and closing out Subcontracts that Owner does not elect to have assigned to it under Section 11.6.3 above and shall be subject to cost substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in Section 11.6.3 above with respect to the convenience termination settlement payment to Design-Builder.

11.6.5 The total sum to be paid to Design-Builder under Section 11.6.3 above shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the price of Work not terminated.

Article 12

Ownership of Work Product

12.1 Ownership of Work Product

12.1.1 Owner shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Owner's ownership rights, include without restriction or limitation, the right of Owner, and anyone contracting with Owner, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by Owner on another project. The rights conferred herein to Owner include, without limitation, Owner's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

12.2 Use of Work Product at Owner's Risk

12.2.1 Owner's use of the Work Product on any subsequent procurement by Owner on another project shall be at Owner's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. Owner waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from Owner's use of the Work Product on another project.

12.3 Pre-Existing Intellectual Property

12.3.1 Owner acknowledges and agrees that in the performance of the Work hereunder Design-Builder will use Pre-Existing Intellectual Property. Design-Builder shall retain all right, title and interest in Pre-Existing Intellectual Property. Design-Builder hereby grants to Owner licenses to the Pre-Existing Intellectual Property on a non-exclusive, cost free, irrevocable, perpetual basis for use by Owner. Owner shall not license, transfer or otherwise make available Pre-Existing Intellectual Property to any third-party without the written consent of Design-Builder, which consent is hereby granted for purposes of completing, operating, maintaining or repairing the Project following the termination or completion of this Agreement. Owner's use of any such Pre-Existing Intellectual Property for purposes other than in connection with the Project shall be at its own risk and Design-Builder shall have no liability therefor.

Article 13

Electronic Data

13.1 Electronic Data.

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

13.2 Transmission of Electronic Data.

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

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

13.2.3 By transmitting Work Product in electronic form, the transmitting Party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 12 above. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting Party of tangible goods.

13.3 Electronic Data Protocol.

13.3.1 The Parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the Parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 13.3.

13.3.2 Electronic Data will be transmitted in the format agreed upon in Section 13.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

Article 14

Retention and Owner's Access to Books and Records

14.1 Owner's Right to Examine, Copy and Audit.

14.1.1 Owner shall have the right to examine, copy and audit all Books and Records in connection with Work to be performed on a Cost of the Work or similar basis, including adjustments for Compensable Delays under Section 9.8.3 and disputes. In the event that Design-Builder is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the Books and Records of the joint venture sponsor, and those of each individual joint venture member. No audit rights shall extend to any lump-sum amount or unit price once the parties have agreed upon such amount or price, except to the extent such audit rights are required under applicable Legal Requirements.

14.1.2 Upon written notice by Owner, Design-Builder immediately shall make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five (5) days' notice of the examination and/or audit. Owner may take possession of such Books and Records by reproducing such Books and Records for off-site review or audit. When requested in Owner's written notice of examination and/or audit, Design-Builder shall provide Owner with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows Owner to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, Design-Builder shall provide Owner with two licenses with maintenance agreements authorizing Owner to access and analyze all such Books and Records. If Design-Builder is unable to provide the licenses, Design-Builder shall provide Owner with access to Design-Builder's project accounting system whereby Owner can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, manhour reports, and the like.

14.1.3 Owner has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

14.1.4 Design-Builder shall preserve all of its Books and Records, and Owner may examine, audit, or reproduce the Books and Records, from the Agreement Date until the later of three (3) years after: (a) final payment under this Contract; (b) final settlement of a termination for convenience under Section 12.2; or, in the event of litigation between the Parties, (c) the final resolution of any such litigation.

14.1.5 Failure by Design-Builder to make available to Owner its Books and Records or Design-Builder's refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for termination.

14.1.6 Design-Builder shall insert a clause containing all the provisions of this Article 14 in all Subcontracts over \$10,000.

Article 15

Miscellaneous

15.1 Confidential Information.

15.1.1 Confidential Information is defined as information which is determined by the transmitting Party to be of a confidential or proprietary nature and: (a) the transmitting Party identifies as either confidential or proprietary; (b) the transmitting Party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain, and was not available to the receiving Party prior to its disclosure on a non-confidential basis (provided that the source of the information is not known by the receiving Party to be bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal or fiduciary duty), or was not independently developed by the receiving Party without the use of any Confidential Information by the disclosing Party. The receiving Party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

15.1.2 Design-Builder may share Confidential Information with the other DB-Related Entities as appropriate for the procurement and execution of the Work.

15.1.3 The confidentiality obligations herein shall expire within three (3) years of the Final Completion Date.

15.2 Assignment.

15.2.1 Neither the Agreement nor any right, privilege, delegation, or interest thereunder may be assigned or transferred in whole or in part by Owner or Design-Builder without the prior written consent of the other Party, and any attempted assignment or transfer without such written consent shall be void, except as set forth in Section 15.2.2 below.

15.3 Successorship.

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

15.4 Governing Law.

15.4.1 This Agreement and all Contract Documents shall be governed by the laws of Missouri, without giving effect to its conflict of law principles or any provision of the laws of Missouri that would void or make unenforceable any waiver, release or limitation on liability or remedies set forth in or required by this Agreement or the Contract Documents.

15.5 Severability.

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

15.6 Third Party Rights.

15.6.1 Except as set forth below, this Agreement is exclusively for the benefit of Owner and Design-Builder and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights. Notwithstanding the above, it is understood and agreed that: (a) Owner is an intended third-party beneficiary of all Subcontracts; (b) Owner Indemnitees are intended beneficiaries of the indemnification rights afforded to them under the Contract Documents; and (c) nothing shall impair the rights of any DB-Related Entity to seek recovery under Builder's Risk Insurance.

15.7 No Waiver.

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

15.8 Headings.

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

15.9 Amendments.

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

END OF GENERAL CONDITIONS OF CONTRACT



KCMO PRELIMINARY VENDOR SECURITY QUESTIONNAIRE

FORM 1

This vendor or 3rd party-vendor cybersecurity questionnaire is required to be completed by all potential vendors proposing or already doing business with the City of Kansas City, Missouri (KCMO) or with any KCMO affiliated agency or department.

Additional information may be requested depending on the answers or lack of answers that are provided. (Please attach all related information and documentation including contact information).

This information is discoverable under the MO Sunshine Law. No redactions will be allowed.

Vendor Questions: (Please provide requested details under each question or append to the end of this document with reference to the specific question being answered)

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company have a pre-employment screening policy for employees and contractors? Please explain the process or attach policy/operating procedure.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company carry cybersecurity insurance. If yes, please provide information regarding carrier, limits and any special coverages you may purchase.

☐ Yes ☐ No - As a supplier to the City of KCMO, will you comply with all applicable privacy and security laws for KCMO business? Please explain how.

☐ Yes ☐ No - As a supplier to the City of KCMO, do you have certifications (ex. ISO 27001, SOC, PCI, HIPAA, etc.). Please provide documentation.

☐ Yes ☐ No - As a supplier to the City of KCMO, will KCMO files and records be periodically reviewed for retention and purging purposes? Please explain how you will meet legal, contractual, and service level requirements.

☐ Yes ☐ No - As a supplier to the City of KCMO, do you have formal process for purging all files and records and removing accesses upon completion of the service, task, or contract? Please provide description or policy.

☐ Yes ☐ No - As a supplier to the City of KCMO, will you commitment to a response time if KCMO has a question or emergency? Please describe them and any "off" hours.



☐ Yes ☐ No - As a supplier to the City of KCMO, does your company maintain up-to-date versions of anti-virus software, anti-malware, antispyware, and operating systems security patches? Please elaborate.

☐ Yes ☐ No - As a supplier to the City of KCMO, will KCMO always retain ownership of its data?

☐ Yes ☐ No - As a supplier to the City of KCMO, do you plan to or have agreements with any third parties that could allow them to collect or use KCMO data?

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company hire an external audit firm to perform a compliance review of your operational controls? If yes, how often.

☐ Yes ☐ No - As a supplier to the City of KCMO, will third party vendors (e.g., subcontractor, managed shared hosting) be used by your company and be restricted from having access to the system or application data of KCMO?





KCMO PRELIMINARY VENDOR SECURITY QUESTIONNAIRE

FORM 2- CONFIDENTIAL and PROPRIETARY

This vendor or 3rd party-vendor cybersecurity questionnaire is required to be completed by all potential vendors proposing or already doing business with the City of Kansas City, Missouri (KCMO) or with any KCMO affiliated agency or department.

Additional information may be requested depending on the answers or lack of answers that are provided. (Please attach all related information and documentation including contact information).

This information has been deemed non-discoverable under the MO Sunshine Law. The City will not be releasing this form under the MO Sunshine Law.

Vendor Questions: (Please provide requested details under each question or append to the end of this document with reference to the specific question being answered)

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company have a written controls plan that contains the administrative, technical, and physical safeguards you use to collect, process, protect, store, transmit, dispose, or otherwise handle KCMO data (e.g., Information Security Plan)? Please provide.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your system or application which will be storing our company data provide access control mechanisms (e.g., unique user IDs, passwords standards, role-based access)? Please explain.

☐ Yes ☐ No - As a supplier to the City of KCMO, does the system or application provide multi-tenant controls for separation of users and data within the service? If yes, please provide policy/procedures.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company utilize encryption methods for data in transit and data at rest where technically possible and legally permissible? Please explain i.e. use of data serialization for privacy.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company have a written business continuity/disaster recovery plan, which is tested on a periodic basis? Please elaborate and provide a copy your plan(s)



☐ Yes ☐ No - As a supplier to the City of KCMO, does your company ensure adequate steps are taken to guard against unauthorized access to KCMO data (e.g., firewall)? Please list the technology and processes that are in place.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company maintain up-to-date versions of anti-virus software, anti-malware, antispyware, and operating systems security patches? Please elaborate.

☐ Yes ☐ No - As a supplier to the City of KCMO, will your company actively monitor and manage your IT security environment to prevent security incidents or breaches? Please elaborate.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company perform application security testing? Please describe and provide samples along with methodology.

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company have a written plan to promptly identify, report, and respond to breaches of security related to KCMO data (e.g., incident response plan)?

☐ Yes ☐ No - As a supplier to the City of KCMO, will third party vendors (e.g., subcontractor, managed shared hosting) be used by your company and be restricted from having access to the system or application data of KCMO?

☐ Yes ☐ No - As a supplier to the City of KCMO, does your company provide assurance (in the form of a written report) for you and your third-party vendor's security and controls while KCMO data is being collected, processed, and retained? If yes, please provide your most current report

☐ Please provide the results of your last security audit you have for your company and any relevant third-party service provider your company contracts.

☐ What specific services are included in KCMO monthly service fee? What services will be an additional fee?

☐ What is or will be the length of this contract? What is or will be the Service Level Agreement (SLA) with KCMO and how often is KCMO able to change or modify this SLA?

ADDITIONAL INFORMATION

1. KCMO reserves the right to perform an audit at any time during the term of any agreement between KCMO and a vendor to verify their compliance with the



answers provided.

2. KCMO may require additional information based the answers or lack of answered provided.
3. Vendors should provide copies of requested documentation including any certifications, prior assessments, or test results.

