

PROJECT MANUAL

Wyandotte County Park Trail



Bid B41164

PARKS & RECREATION DEPARTMENT

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/ KANSAS CITY, KANSAS

CONTRACT DOCUMENTS

FOR

Bid B41194

WYANDOTTE COUNTY PARK TRAIL

PROJECT PRJ2077

Prepared by: _____
Professional Engineer

Date

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LEGAL NOTICE OF INVITATION FOR BIDS
UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS
OFFICE OF THE COUNTY ENGINEER

Bids are being solicited for a capital construction project known as:

Project Name **Wyandotte County Park Trail, B41164**
Project ID No. **PRJ2077**
Bid Date **November 5, 2024**
Contract Time **Ninety (90) Calendar Days**
Estimated Value **\$625,000-\$700,000 (Base Bid)**
 \$325,000-\$400,000 (Bid Alternate No.1)

Bids will be received until 8:45 a.m. on the above date, the Office of the Unified Government Clerk, Municipal Office Building, 701 North Seventh Street, Kansas City, Kansas, 66101. At 9:00 a.m., in the Commission Chambers, the bids will be publicly opened and read aloud.

MBE/WBE Good Faith Outreach Manual Is part of this solicitation.

A pre-bid conference will be held *at 2:00 PM, Central Standard Time, on October 24, 2024 at Wyandotte County Park, 126th St. & State Ave., Bonner Springs, Kansas 66012.* The purpose of the conference is to discuss the work to be performed with the prospective contractors and allow them to ask questions concerning the Bid. Questions and answers will be transcribed and sent to prospective offerors as soon as possible after the meeting.

Bid security is required. The Unified Government reserves the right to reject any or all bids. The Instructions to Bidders section of this Project Manual, below, contains additional requirements.

The Unified Government of Wyandotte
County/Kansas City, Kansas

INSTRUCTIONS AND INFORMATION TO BIDDERS

1. This Project Manual is the official communication from the Unified Government regarding this project. No information outside the Project Manual or any subsequent amendment shall modify or change the Project Manual or affect the risk or obligation assumed by the bidder or relieve him from fulfilling any of the conditions of the Project Manual. Prospective bidders shall familiarize themselves with the Project Manual in its entirety, including all Contract Documents and the definitions contained in Section 1 of the General Conditions. Should a prospective bidder be in doubt as to the meaning of any provision in the Project Manual, he or she may submit to the Unified Government a written request for an interpretation. Any written request for interpretation shall be submitted to the Unified Government no later than seven (7) days from the date set for bid opening. Any interpretation of the Project Manual shall be made by amendment and provided to all bidders.
2. Sealed bids will be received until the date and time stated in the Legal Notice of Invitation for Bids, at which time the bids will be publicly opened and read aloud in the Chambers of the Unified Government Board of Commissioners, located in the Lobby Level of the Municipal Office Building, 701 N 7th Street, Kansas City, Kansas.
3. Bids shall be submitted in sealed envelopes, addressed to the Unified Government Clerk, 701 North 7th Street, Suite 323, Kansas City, Kansas 66101. The outside of each sealed envelope containing a Bid Form shall plainly be marked "Bid" and shall state the name of the project and the name and address of the bidder. If forwarded by mail, the sealed envelope containing the Bid Form must be mailed inside another envelope to the addressee.
4. Within ten days from the date of receipt of the notice of award, the successful bidder shall come into compliance with Article XI, section 29-586 of the Unified Government's Procurement Code regarding Equal Employment Opportunity and Affirmative Action Programs; see also Sections 18-137 and 18-138. For information regarding compliance requirements, Contact the Procurement & Contract Compliance Department located on the 6th Floor of the Municipal Office Building, 701 N. 7th Street, Kansas City, Kansas 66101, Room 649 or sreed@wycokck.org call (913) 573-5440 for information regarding compliance requirements.
5. Along with the bid, all bidders must submit, on the form provided, a completed Affidavit of Intended Utilization, listing the names of Subcontractors and Suppliers proposed for use and designating what Work each is to perform under the contract. An Affidavit of Intended Utilization is required whether or not project goals are established. The Unified Government encourages solicitations from local-, minority-, and women-owned businesses, on all projects whether or not project goals are established. Prime bidders may access a listing of L/M/WBE firms by visiting www.wycokck.org and clicking the link titled "Supplier Database."
6. When a project goal for participation by MBEs or WBEs is established in the agreement, additional submittals are required. These additional requirements are located in the section of this project manual titled "Additional Requirements when MBE/WBE Goals are Established".

7. All bids shall be submitted on the printed Bid Form, or photocopy thereof, included in this Project Manual. All blank spaces must be filled in, in ink or typewritten, and the Bid Form must be fully completed and executed when submitted. Only one executed copy of the Bid Form is required. All other forms required to be submitted shall be completed by the bidder and submitted with the Bid Form. The Bid Form and all required forms shall be fastened together in one package. A second complete copy of the Bid Form and all other required forms, fastened as a second package, shall be submitted in the same envelope.
8. All Bids in excess of \$50,000.00 must be accompanied by bid security in the form of a bank-certified check, cash, or a Bid Bond underwritten by a surety company licensed to issue Bid Bonds in the State of Kansas. The bid security shall be in an amount not less than five percent (5%) of the total bid. The Bid Bond shall be in substantially the Bid Bond form provided in this Project Manual. The check or Bid Bond shall be made payable to the Unified Government of Wyandotte County/Kansas City, Kansas. As soon as the bids have been compared, the Unified Government will return the checks or cash of all except the three lowest responsible and responsive bidders. Upon execution of the contract by the Unified Government, the checks or cash shall be returned to unsuccessful bidders.
9. Bids may be modified or withdrawn by written notice to the Unified Government Clerk, 701 North 7th Street, 3rd Floor Suite 323, Kansas City, Kansas 66101, prior to the time and date for bid opening. No bidder may withdraw or modify a bid within sixty (60) days after the actual date of bid opening.
10. The Unified Government may issue amendments to this Project Manual prior to the time for receipt of bids. The bidder shall acknowledge receipt of all amendments by executing and submitting them with the bid. Amendments shall be sent to all prospective bidders known to have received a Legal Notice of Invitation for Bids. Any postponement of the opening date of bids shall be effectuated by amendment.
11. Bidders shall visit the site of work and existing facilities and shall fully inform themselves of existing conditions and limitations. Responsibility for differing site conditions shall be determined in accordance with Section 16 of the General Conditions, attached Bidders are responsible for studying all reports of subsurface exploration and other technical data which may be identified in the bidding documents; being familiar with all federal, state, and local laws and regulations that may affect cost, progress, or performance of the work; and preparing a complete bid including all required documents.
12. A conditional or qualified bid will be rejected. The Unified Government reserves the right to waive minor irregularities in a bid and to correct obvious mathematical errors on a bid form. The Unified Government reserves the right to reject any or all bids, as provided Section 29-178 of the Procurement Code of the Unified Government of Wyandotte County/Kansas City, Kansas. Bidders understand and agree that rejection of bids shall create no liability on the part of the Unified Government of Wyandotte County/Kansas City, Kansas.

13. All bids must include a unit price tabulation for one or more geographical sites and single grand total. Comparison of bids will be based on the grand total. A single bidder will be selected.

Lastly, the Offeror **must** provide a **minimum of three (3) references** for projects similar in scope and size the Offeror has completed. Each reference should include the name of the client, name of the contact, title of the contract, phone number and email of the contact and role the contact performed on the project with their company/agency/entity.

14. The contract for the work shall be awarded to the lowest responsive and responsible bidder whose bid does not exceed available funds as certified by the appropriate Fiscal Officer. Bidders not complying with all of the requirements contained in the Legal Notice of Invitation for Bids and the Instructions and Information to Bidders may be judged nonresponsive. Bidders' responsibility or non-responsibility shall be determined. Bidders shall supply information as requested by the Procurement Officer concerning the responsibility of such bidder. The Unified Government may waive informalities in its determination of responsiveness and responsibility.

15. **SAM.gov Registration Requirements**

As required by federal law, all potential contractors must be registered in the System for Award Management (SAM.gov) before submitting a proposal. SAM.gov is a centralized database that is used by the federal government to manage procurement and financial assistance. **Failure to be registered in SAM.gov will result in disqualification from this Bid/RFP process.**

To register, contractors must:

- Visit <https://sam.gov> and create a user account.
- Complete the SAM.gov registration, including obtaining a **Unique Entity Identifier (UEI)**, as required.
- Provide current information on their business status, including any certifications, debarment information, and financial capability.

Verification of SAM.gov Registration

- Contractors must include their **SAM.gov registration status** in their proposal, including their **UEI** number and the expiration date of their registration.
- The [Agency Name] will verify the SAM.gov status of all contractors before making an award. Contractors whose registrations are expired, inactive, or incorrect will not be eligible for consideration.

16. Written notice of award shall be sent to the successful bidder via email with read receipt for acknowledgement. Within ten (10) days from the date of receipt of the notice of award, the successful bidder shall perform the following:
 - (a) For contracts in excess of \$50,000.00, submit a performance bond to the Unified Government Clerk, at the address paragraph 9., above, in the amount of 100% of the contract price and a payment bond to the State of Kansas in the amount of 100% of the price specified in the contract for the protection of all persons supplying labor, materials, equipment, and supplies to the contractor or its subcontractor. Said payment bond shall comply with the requirements of K.S.A. 60-1111, as amended, and shall be filed with the Clerk of the District Court of Wyandotte County, Kansas.
 - (b) Designate an Agent:
 - i. If the contractor is not a corporation or a resident of the State of Kansas, file an Appointment of Process Agent Form in the office of the Clerk of the Wyandotte County District Court, with a copy to the Clerk of the Unified Government and the Buyer.
 - ii. If the contractor is a foreign corporation, but has applied to and been authorized by the Kansas Secretary of State to do business in Kansas in accordance with Chapter 17 of the Kansas Statutes Annotated, as amended, and has a resident agent in the State of Kansas, execute and submit the foreign Corporation Resident Agent Designation form to the Clerk of the Unified Government with a copy to the Buyer.
 - (c) Submit a certificate of insurance evidencing insurance as required by Section 27 of the attached General Conditions.
 - (d) Execute the agreement.

The Unified Government may at its option declare the bidder in default if the bidder fails to perform all of the above-enumerated conditions, in which case the bid security shall become the property of the Unified Government.

17. All bonds required by this Project Manual shall contain all terms and conditions contained in the provided bond forms and shall be executed by a surety company authorized to do business in the State of Kansas and countersigned by an agent licensed by the Unified Government of Wyandotte County/Kansas City, Kansas. The attorney in fact who signs bonds must file with each bond a certified and effective dated copy of their power of attorney.
18. The Unified Government, within thirty (30) days of the successful bidder's compliance with all the conditions contained in paragraph number 15, above, shall sign and return to the bidder a photocopy of the executed agreement. Should the Unified Government not execute the Agreement within thirty (30) days period, the Bidder may by written notice withdraw its signed agreement. Such notice of withdrawal shall be effective upon receipt of notice by the Unified Government.

19. A Notice to Proceed will be issued to the successful bidder within thirty (30) days of the execution of the Agreement by the Unified Government. In the event a Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Unified Government and the successful bidder. If a Notice to Proceed has not been issued within the mutually agreed time, the successful bidder may, by written notice as provided in section 17, above, terminate the Agreement without further liability on the part of either party.
20. Prior to beginning performance under the Agreement, the successful Bidder must pay all occupational taxes due the Unified Government. For information, contact the Unified Government of Wyandotte County/Kansas City, Kansas Business License Division at (913) 573-8690.
21. The Unified Government of Wyandotte County/Kansas City, KS, Johnson County KS, City of Kansas City MO, and Jackson County MO, (collectively the “Local Governments”), have agreed to cooperate with each other to ensure that tax funded contracts are performed in compliance with the Local Governments’ tax laws. The successful bidder agrees that it shall comply with the respective these tax laws throughout the term of this Agreement and any Agreement renewals and that proof of its compliance shall be a condition of award. All successful bidders entering into an Agreement and subsequent renewal with the Unified Government in the amount of \$50,000.00 or more must obtain a Tax Clearance Certification. The Tax Clearance Certification must be signed by an authorized official from all four (4) of the Local Governments and submitted to the Unified Government Procurement and Contract Compliance Department. The Tax Clearance Certification shall be valid for a period of one year from the date of issuance and shall not be dated more than sixty (60) days prior to any notice to proceed to contract by the County. For information, instructions, and forms regarding compliance requirements, contact the Contract Compliance Division located on the 3rd Floor of the Municipal Office Building, 701 N. 7th Street, Kansas City, Kansas 66101, Room 318 or call (913) 573-5443

AGREEMENT

**UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS
AGREEMENT**

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the Unified Government of Wyandotte County/Kansas City, Kansas, hereinafter called "Unified Government," and

(Contractor)

as (an individual), or (a partnership), or (a corporation), hereinafter called "Contractor," collectively referred to as "the Parties."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the construction of the Project known as:

**Project Name: Bid B41164, Wyandotte County Park Trail
Project I.D.: PRJ2077**

2. The Contractor will furnish all of the Work, Material, Equipment, and other services necessary for the construction and completion of the Project described above.
3. The Contractor will complete all the Work required by the Contract Documents within **ninety (90)** Days after the date established in the Notice to Proceed unless the period for completion is otherwise extended by mutual agreement in writing by the Parties. Should the Contractor fail to complete the work within this period or any mutually agreed extension of time, it further agrees to pay, as liquidated damages, the sum of **\$1,200.00** for each **Day** thereafter as provided in Section 24 of the General Conditions.
4. The Contractor agrees to perform and complete all the Work described in the Contract Documents for the unit prices listed in the Bid Form, for an estimated total amount of **AMOUNT WORDS (AMOUNT NUMBERS)**. Actual payment shall be the sum of the products of the installed and accepted quantity of each bid item, measured by the Architect/Engineer as described in Contract Documents, times its unit price. The Contractor acknowledges that the unit prices listed in the Bid Form contemplate the construction of all facilities complete, in conformance with the Contract Documents, and that the cost of work required by the Contract Documents for which a specific unit price is not listed is included in the unit price for the closest applicable item.
5. It is understood that the Architect/Engineer representing the Unified Government shall be **the Unified Government's Director of Parks and Recreation**.

6. The term "Contract Documents" is defined as "The contract including the complete Project Manual, Legal Notice of Invitation for Bids, Instructions and Information to Bidders, executed Bid Form, Bid Bond, Amendments, Agreement, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, additional written instruction and detailed drawings approved by the Engineer/Architect, Drawings, general Conditions, Supplemental General Conditions, Special Conditions, Technical Provisions." See section 1.1.9 of the General Conditions.
7. In the event of conflict between any provision of the Contract Documents, the order of precedence is as provided by Section 4 of the General Conditions.
8. The Unified Government will pay the Contractor in the manner and at such times as set forth in Section 25 of the General Conditions such amounts as required by the Contract Documents. Said work shall be paid for from a Community Development Block Grant.
9. This Agreement shall be binding upon all parties hereto and their representative heirs, executor, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, an original on the date first above written.

OWNER:
Unified Government of Wyandotte
County/Kansas City, Kansas

By _____
County Administrator

CONTRACTOR:

 (Contractor)

By _____

Name _____

Address _____

ATTEST:

Unified Government Clerk

ATTEST:

Title

**UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS - GENERAL CONDITIONS
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UNIFIED GOVERNMENT OF WYANDOTTE
COUNTY/KANSAS CITY, KANSAS
GENERAL CONDITIONS

1. **DEFINITIONS:** Wherever used in the Invitation for Bids, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural and/or of either sex thereof:

1.1 **AMENDMENT** - Written or graphic instruments issued prior to the opening of Bids which modify or interpret the Invitation for Bids by additions, deletions, clarifications, or corrections.

1.2 **AGREEMENT** - The Unified Government's Agreement Form voluntarily signed and witnessed by the Unified Government and Contractor and made a part of the Contract Documents.

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

1.4 **BIDDER** - Any person, firm, or corporation submitting a Bid for the Work.

1.5 **BONDS** - Bid, performance and payment bonds, and other instruments of security, furnished by the contractor and his surety in accordance with the Invitation for Bids.

1.6 **CHANGE ORDER** - a written order signed by the Procurement Officer, directing the contractor to make changes which the Changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

1.7 **UNIFIED GOVERNMENT** - The Unified Government of Wyandotte County/Kansas City, Kansas, a Municipal Corporation.

1.8 **CONSULTANT** - A person, firm, or corporation contracted with by the Unified Government to perform specific technical or professional tasks as set forth in the signed written agreement between the Unified Government and Consultant.

1.9 **CONTRACT DOCUMENTS** - The contract including Project Manual, Legal Notice of Invitation for Bids, Instructions and Information to Bidders, executed Bid Form, Bid Bond, Amendments, Agreement, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, additional written instruction and detailed drawings approved by the Engineer/Architect, Drawings, general Conditions, Supplemental General Conditions, Special Conditions, Technical Provisions.

1.10 **CONTRACT PRICE** - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

1.11 **CONTRACT TIME** - The number of days stated in the Contract Documents for the completion

of the Work. Time shall be measured in calendar days or working days as specified in the Agreement.

1.12 **CONTRACTOR** - The person, firm, or corporation with whom the Unified Government has executed the Agreement.

1.13 **CONTROLLING ITEM OR CURRENT CONTROLLING ITEM** - That feature or features of the work which if delayed or prolonged, at the time in question, will delay the completion of the project. The controlling item may be an activity or it may be a curing period or other mandatory waiting period.

1.14 **DAYS** - Except for calculation of Contract Time when working days are specified, all periods of time prescribed in the Contract Documents shall be measured in calendar days. In computing time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is Saturday, Sunday, or a Unified Government holiday, in which event the period shall run to the end of the next business day.

1.15 **DRAWINGS** - The part of the Contract Documents which show the characteristics and scope of the Work to be performed and which have been prepared and/or approved by the Engineer/Architect.

1.16 **ENGINEER/ARCHITECT** - The Procurement Officer or his designee, or the Consultant hired by the Unified Government to perform professional services as designated in the Agreement.

1.17 **EQUIPMENT** - All machinery and equipment, together with the necessary supplies for operation, upkeep, and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

1.18 **INVITATION FOR BIDS** - All documents, whether attached or incorporated by reference, utilized for soliciting bids, including but not limited to the Legal Notice of Invitation for Bids, Instructions and Information to Bidders, General Conditions, Supplemental General Conditions, Technical Provisions, Special Conditions, Agreement Form, Bid Form, Bond Forms, EEO Requirements, Drawings, and Amendments.

1.19 **MANUFACTURER** - The person, firm or corporation responsible for the commercial manufacturing, assembling or processing of materials and/or equipment to be incorporated in the Project.

1.20 **MATERIAL** - Any substance specified for use in the construction of the project and its appurtenances.

1.21 **MONUMENT** - A boundary marker.

1.22 **NOTICE OF AWARD** - The written notice of the acceptance of the Bid by the Unified Government to the successful Bidder.

1.23 **NOTICE TO PROCEED** - A written notice

issued by the Unified Government to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Contract Time.

1.24 **PROCUREMENT CODE** - The Procurement Code of the Unified Government of Wyandotte County/Kansas City, Kansas, effective June 27, 1983 by ordinance Number 64497, and amendments thereto. This document may be viewed during normal business hours in the office of the Unified Government Clerk or online:

https://library.municode.com/ks/wyandotte_county/_unified_government/codes/code_of_ordinances?nodeId=CH29PRCO.

1.25 **PROCUREMENT OFFICER** - Any person duly authorized to administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

1.26 **PROJECT** - The undertaking to be performed as provided in the Contract Documents with payment to the Contractor from the Unified Government.

1.27 **PROJECT REPRESENTATIVE** - The Engineer/Architect's agent assigned to the project site who shall act under the supervision and direction of the Engineer/Architect. He shall confer with the Engineer/Architect regarding his actions, and shall generally communicate with the Unified Government only through the Engineer/Architect.

1.28 **SHOP DRAWINGS** - All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, Manufacturer, Supplier, or Distributor, which illustrate how specific portions of the Work will be fabricated, installed, formed, or constructed.

1.29 **SPECIFICATIONS** - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship, including Technical Provisions and Special Conditions.

1.30 **SPECIAL CONDITIONS** - A part of the Contract Documents being a modification, amplification and/or additional information of the General, or Supplemental General Conditions or Technical Provisions.

1.31 **SPECIFIED COMPLETION DATE** - The date on which the contract work is specified to be completed.

1.32 **SUBCONTRACTOR** - An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

1.33 **SUBSTANTIAL COMPLETION** - That date as certified by the Engineer/Architect when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract

Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

1.34 **SUPPLEMENTAL GENERAL CONDITIONS** - A part of the Contract Documents consisting of modifications and additions to the General Conditions or Instructions to Bidders that are applicable to a specific project of procurement agency.

1.35 **SUPPLIER** - Any person, firm, corporation, or organization who supplies Materials or Equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

1.36 **SURETY** - The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

1.37 **TECHNICAL PROVISIONS** - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship required for the Project.

1.38 **WORK** - All labor, equipment, and tools necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.

1.39 **WORKING DAY** - When working days are specified, a working day shall be any day from the starting date through the completion of the project except as follows:

a. Saturdays, Sundays, Unified Government holidays, and the dates from December 24 through January 2, inclusive, unless the Contractor requests and receives permission to work on these dates.

b. Days on which adverse weather, or conditions immediately resulting from adverse weather, prevent work on the controlling item for at least 50% of the total daily time.

c. Days on which the current controlling item is delayed or suspended due to acts of the Engineer/Architect for at least 50% of the total daily time.

d. Days on which correction of differing site conditions prevent work on the current controlling item for at least 50% of the total daily time. Differing site conditions shall be those listed in General Condition 16.1.

Only whole days will be counted. On non-working days Contractor may, at his option and with no count against the contract time, pursue any work not affected by weather or other conditions affecting the controlling item.

Working and non-working days shall be determined and recorded at regular intervals by the Engineer/Architect. Contractor shall review calculation of time and resolve any differences with the Engineer/Architect prior to each partial pay

submittal.

1.40 WRITTEN NOTICE - Any notice to any party to the Agreement in writing the service thereof is completed when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the Work, or so mailed or delivered to the party listed with the Clerk of the District Court of Wyandotte County as the Contractor's Process Agent.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS.

2.1 The Contractor may be furnished additional written instructions and detail drawings, by the Engineer/Architect, as necessary to carry out the Work required by the Contract Documents.

2.2 The Contractor shall carry out the Work in accordance with the additional written instructions and detail drawings.

3. SCHEDULES, REPORTS, AND RECORDS FOR PUBLIC PROJECTS.

3.1 The Contractor shall submit to the Engineer/Architect such schedule of quantities and costs, progress schedules, payrolls, reports, estimates record, and other data where applicable as are required by the Contract Documents for the Work to be performed.

3.2 Prior to the commencement of Work, the Contractor shall submit construction progress schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the Work, estimated date of completion of each part and, as applicable, the dates at which special detail drawings will be required, and respective dates of submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The Contractor shall also submit a schedule of payments that he anticipates he will earn during the course of the Work.

4. DRAWINGS AND SPECIFICATIONS.

4.1 The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the Unified Government.

4.2 In case of conflict between the Drawings and Specifications, the drawings shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Special Conditions shall govern over Technical Provisions and the General Conditions.

4.3 Any discrepancies, inconsistencies, or

ambiguities found between the Drawings or Specifications shall be immediately reported to the Engineer/Architect, in writing, who shall promptly correct them in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities, but before correction by the Engineer/Architect, shall be done at the Contractor's risk.

5. SHOP DRAWINGS.

5.1 Where required by the special conditions or technical provisions, the Contractor shall provide to the Engineer/Architect not less than 4 copies of all Shop Drawings which bear the certification that the Contractor has reviewed, checked, and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents. The Contractor shall also note on the Shop Drawings all deviations from the Contract Documents. The Engineer/Architect's approval of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The Engineer/Architect may elect not to review shop drawings not required by the contract documents. The approval of any Shop Drawing which substantially deviates from the requirement of the Contract Documents shall be evidenced by a Change order. If the Contractor requires more than 1 copy returned of "approved" or "approved if corrected as noted" drawings, additional copies shall be included in original submittal with all additional copies returned to the Contractor.

5.2 The review action by the Engineer/Architect will be as shown:

Action By <u>Engineer</u>	Retained By <u>Engineer</u>	Required <u>Resubmittal</u>
Approved	3	no
Approved if Corrected as Noted	3	no
Correct and Resubmit	1	yes
Not Approved	1	yes

5.3 Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or sample has been approved by the Engineer/Architect. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer/Architect.

6. MATERIALS, SERVICES AND FACILITIES.

6.1 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all Materials, labor, tools, Equipment, water, light, power, transportation, supervision, temporary construction of

any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

6.2 Contractor shall furnish only new Material of the type, size, and strength class with all accessories as specified, indicated, and/or necessary for a completed project.

6.3 Manufacturer of Material to be incorporated within the project shall be experienced in the design, manufacture, testing, and commercial supplying of the specified materials.

6.4 Materials and Equipment shall be so transported, stored, and installed as to insure the preservation of their quality and fitness for the Work. Said transporting, handling, and storage shall conform to the Manufacturer's recommendations unless otherwise required in the Contract Documents. Stored Materials and Equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.

6.5 Damaged Materials will be subject to rejection and cannot be incorporated within the project without written approval from the Engineer/Architect.

6.6 Manufactured articles, Materials, and Equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the Manufacturer unless otherwise specifically stated in the Contract Documents.

6.7 Contractor shall submit to the Engineer/Architect six (6) copies each of Manufacturer's design, Material specifications, quality control methods, recommended installation instructions, warranties, delivery dates, manufacturing location, and, if specifically requested, samples of Materials to be incorporated within the Project for approval. Purchase of Materials not approved by the Engineer/Architect will be done only at the Contractor's risk.

6.8 Materials, supplies and Equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer/Architect.

6.9 Materials, supplies, or Equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

6.10 Contractor shall require, secure, and submit to the Engineer/Architect six (6) copies of all material certifications and test transcripts for all Materials incorporated within the Project. Material testing shall be performed by the Manufacturer's quality control personnel and/or approved independent testing laboratory, all in conformance with applicable and acceptable standards. Provisions shall be made that the Engineer/Architect and/or approved independent test laboratory personnel may witness such tests.

Failure of the Engineer/Architect to reject Materials will not be grounds for acceptance if defects are later found; however, all Materials rejected by the Engineer/Architect as unsuitable, nonconforming, and/or failing to meet minimum required test results shall not be used and shall be removed from the Project site by the Contractor.

7. INSPECTION AND TESTING.

7.1 All Materials and Equipment used in the construction of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

7.2 Tests and certifications are required to demonstrate that all products installed in the work comply with the specifications. Responsibility for testing shall be as indicated below:

a. The Unified Government is responsible for acceptance tests on installed products and on products delivered for installation; such as field or laboratory tests for slump, air and strength of concrete, temperature of asphalt mixes, reference and relative density of asphalt mixtures, reference and relative density of embankment and fill material, infiltration/exfiltration test and televising of sewer mains, thickness and surface straight edging, and the like; except for those tests listed in "c." below. Engineer/Architect shall determine the time, location, and frequency of field testing and sampling. Upon request the Unified Government will provide Contractor with one copy of test results.

If Contractor has reasonable objection to the testing laboratory employed by the Unified Government, Contractor shall submit a written protest using the procedure for claims based on procurement officer's actions or omissions.

b. Contractor shall reimburse the Unified Government for tests performed by the Unified Government when the results of those tests do not meet specified limits.

c. Contractor and his suppliers are responsible for process control tests normally conducted at the source of supply, such as certifications of manufactured products, concrete and asphalt mix designs, mixing plant quality monitoring tests, gradation tests of pipe bedding and imported fill material, fertilizer and seed certifications, and the like. Submittal of tests and certifications shall follow the procedures for shop drawings.

Contractor shall be responsible for the following field tests: tightness testing of manholes and sewer lines; mandrel testing of non-rigid sewer mains; start-up, demonstration, and adjustment of HVAC, mechanical,

electrical, or communication systems; and profilograph testing of concrete and asphalt pavements where required by the technical specifications, special conditions, or drawings. When profilograph testing is ordered by the Engineer because of poor subjective ride quality, compensation for the testing shall be based on General Condition 7.7.

d. Contractor shall employ an independent commercial laboratory, acceptable to the Engineer, to conduct source of supply tests. The laboratory shall have the staff, equipment, qualifications, and experience to perform the tests in accordance with the specified standards.

e. Contractor shall cooperate with Unified Government's field testing and sampling; interrupting, exposing, and repairing the work when necessary; and providing labor, sample material, and facilities to accommodate the testing and sampling.

7.3 If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to be specifically inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer/Architect timely notice of readiness. The Contractor will then furnish the Engineer/Architect the required certificates of inspection, testing, or approval.

7.4 Inspections, tests, or approvals by the Engineer/Architect or others shall not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

7.5 The Engineer/Architect and/or his representatives will at all times have access to the Work. In addition, authorized representatives and agents of any participating Federal, State, or local agency shall be permitted to inspect all Work, Materials, payrolls, records of personnel, invoices of Material, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

7.6 If any Work is covered contrary to the instructions of the Engineer/Architect or his project representative, or if Work is covered prior to inspection required by the Contract Documents, said Work must, if requested by the Engineer/Architect, be uncovered for inspection and replaced at the Contractor's expense

7.7 If after the Work is covered in accordance with the Engineer/Architect's instructions and the requirements of the Contract Documents the Engineer/Architect subsequently issues instructions to uncover the Work for inspection, the contractor shall uncover the Work in question. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, inspection and

reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, inspection, and reconstruction and an appropriate Change Order shall be issued

8. SUBSTITUTIONS.

8.1 Whenever Material or Equipment is identified on the Drawings or Specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and not to limit competition, and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Engineer/Architect, such material, article, or piece of equipment is of equal substance and function to that specified, the Engineer/Architect may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

9. PATENTS.

9.1 The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the Unified Government, Engineer/Architect, or Consultants harmless from loss on account thereof, except that the Unified Government shall be responsible for any such loss when a particular process, design, or the product of a particular Manufacturer or Manufacturers is specified. However, if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer/Architect.

10. CONSTRUCTION STAKING.

10.1 The Contractor shall perform all construction staking; completed staking shall be reviewed by the Engineer/Architect before work commences

10.2 The Unified Government will furnish necessary boundary surveys and establish all baselines for locating the principal component parts of the Work, together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents.

10.3 The Contractor shall retain or provide a Land Surveyor, licensed to practice in the State of Kansas,

to develop and make any detailed surveys necessary for the construction of the Work.

10.4 The Contractor shall carefully preserve bench marks, reference points, and stakes and, in case of willful or careless destruction by his operations, or those of his Subcontractors or Material suppliers, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

11. PROTECTION OF WORK, PROPERTY, AND PERSONS.

11.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all Materials or Equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities forty-eight (48) hours in advance when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Unified Government or the Engineer/Architect or consultant or anyone employed by any of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

11.3 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer/Architect or Unified Government, shall act to prevent threatened damage, injury, or loss. He will give the Engineer/Architect prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR.

12.1 The Contractor will supervise, inspect, and direct the Work. He will be solely responsible for the

mean methods, techniques, procedures, and safety of construction. Except where limited by the Engineer/Architect's authority to adjust schedule to meet objectives listed in Condition 33.2, the Contractor shall be responsible for sequence of the work. The Contractor will employ and maintain on the Work a qualified superintendent who has full knowledge of and prior experience with the Materials and methods necessary to conform with the terms of and intent of these Contract Documents and who shall have been designated to the Engineer/Architect in writing by the Contractor as the Contractor's representative at the site. The superintendent shall have full authority to act on behalf of the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be present on the site at all times.

12.2 The Contractor shall not change the superintendent without prior approval of the Engineer/Architect, except if the superintendent leaves the Contractor's employment before approval can be given.

13. CHANGES.

13.1 CHANGE ORDER - The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a Change Order, may order:

- a. changes in the work within the scope of the Contract Documents; and
- b. changes in the time for performance of the Work that do not alter the scope of the Contract Documents.

13.2 ADJUSTMENTS OF PRICE OR TIME FOR PERFORMANCE - If any such Change Order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Work under these Contract Documents, whether or not changed by the order, an adjustment shall be made and the Contract Documents modified in writing accordingly. Any adjustment in Contract Price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of these Contract Documents. (Section 14 of the General Conditions).

Failure of the parties to agree to an adjustment shall not excuse a Contractor from proceeding with the Work as changed, provided that the Unified Government promptly and duly makes such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the Work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

13.3 WRITTEN CERTIFICATION - The Contractor shall not perform any Change Order in excess of \$500 unless it bears, or the Contractor has separately received, a written certification, signed by the Fiscal

Officer, that funds for the Change Order are available; and, if acting in good faith, the Contractor may rely upon the validity of such certification.

13.4 TIME PERIOD FOR CLAIM - Within 30 days after receipt of a written Change Order under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Unified Government is prejudiced by the delay in notification.

13.5 CLAIM BARRED AFTER FINAL PAYMENT - No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under these Contractor Documents.

13.6 CLAIMS NOT BARRED - In the absence of such a Change Order, nothing in the Contract Documents shall restrict the Contractor's right to pursue a claim arising under the Contract Documents if pursued in accordance with the Clause entitled "Claims Based on a Procurement Officer's Actions or Omissions" (Section 22 of the General Conditions) or for breach of contract.

14. PRICE ADJUSTMENT.

14.1 PRICE ADJUSTMENT METHODS - Any adjustment in Contract Price pursuant to clauses in these Contract Documents shall be made in one or more of the following ways:

- a. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b. by unit prices specified in the Contract Documents or subsequently agreed upon;
- c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Contract Documents or subsequently agreed upon;
- d. in such other manner as the parties may mutually agree; or
- e. in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of cost attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of Exhibit A, Unified Government Cost Principles, and subject to the provisions of Article IX (Legal and Contractual Remedies) of the Unified Government Procurement Code.

14.2 SUBMISSION OF COST OR PRICING DATA - The Contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 29-200 (Cost or Pricing Data) of the

Procurement Code.

15. VARIATIONS IN ESTIMATED QUANTITIES.

15.1 VARIATIONS REQUIRING ADJUSTMENTS - Where the quantity of a pay item in these Contract Documents is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in these Contract Documents, an adjustment in the Contract Price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

15.2 ADJUSTMENTS OF PRICE - Any adjustment in Contract Price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. (Section 14 of the General Conditions).

16. DIFFERING SITE CONDITIONS, PRICE ADJUSTMENTS.

16.1 NOTICE - The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer/Architect of:

- a. subsurface or latent physical conditions at the site differing materially from those indicated in these Contract Documents; or
- b. unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in these Contract Documents.

16.2 ADJUSTMENTS OF PRICE OR TIME FOR PERFORMANCE - After receipt of such notice, the Engineer/Architect shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the Work under these Contract Documents, whether or not changed as a result of such conditions, an adjustment shall be made and the Contract Documents modified in writing accordingly. Any adjustment in Contract Price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. (Section 14 of the General Conditions.)

16.3 TIMELINESS OF CLAIM - No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in this clause; provided, however, that the time prescribed therefore may be extended by the Procurement Officer in writing.

16.4 NO CLAIM AFTER FINAL PAYMENT - No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under these Contract Documents.

16.5 KNOWLEDGE - Nothing contained in this section shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

17. TIME FOR COMPLETION.

17.1 The date beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Contract Time shall commence on a date specified in the Notice to Proceed.

17.2 The Contractor will proceed with the Work at such rate of progress to insure full completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Unified Government, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.

18. TERMINATION FOR DEFAULT FOR NON-PERFORMANCE OR DELAY - DAMAGES FOR DELAY - TIME EXTENSIONS.

18.1 DEFAULT - If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will assure its completion within the time specified in these Contract Documents, or any extension thereof, fails to complete said Work within such time, or commits any other substantial breach of these Contract Documents, and further fails within 14 days after receipt of written notice from the Procurement Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the Work or such part of the Work as to which there has been delay. In such event the Unified Government may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the Work, such Materials, appliances, and plant as may be on the site of the Work and necessary for the Work. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the Unified Government resulting from the Contractor's refusal or failure to complete the work within the specified time.

18.2 LIQUIDATED DAMAGES UPON TERMINATION - If fixed and agreed liquidated damages are provided in these Contract Documents, and if the Unified Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable

time as may be required for final completion of the Work.

18.3 LIQUIDATED DAMAGES IN ABSENCE OF TERMINATION - If fixed and agreed liquidated damages are provided in the Contract Documents, and if the Unified Government does not terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the Work is completed or accepted.

18.4 TIME EXTENSION - The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

a. the delay in the completion of the Work arises from causes such as: acts of God; acts of the public enemy; acts of the Unified Government or any other governmental entity in either a sovereign or contractual capacity; acts of another Contractor in the performance of a contract with the Unified Government; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of Subcontractors due to causes similar to those set forth above; or shortage of Materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of Materials, unless the Contractor furnishes to the Engineer/Architect proof that the Contractor has diligently made every effort to obtain such Materials from all known sources within reasonable reach of the Work, and further proof that the inability to obtain such Materials when originally planned did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor's operations; and

b. the Contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the Contract Documents), notifies the Engineer/Architect in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

18.5 ERRONEOUS TERMINATION FOR DEFAULT - If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. (Section 23 of the General Conditions.)

18.6 Where the Contractor's services have been so

terminated by the Unified Government, said termination shall not affect any right of the Unified Government against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Unified Government will not release the Contractor from compliance with the Contract Documents.

18.7 ADDITIONAL RIGHTS AND REMEDIES - The rights and remedies of the Unified Government provided in this section are in addition to any other rights and remedies provided by law or under these Contract Documents.

19. SPECIFIC ACTS CONSTITUTING SUBSTANTIAL BREACH.

19.1 The following acts committed by the Contractor will constitute a substantial breach of the Contract Documents and may result in termination of the Work.

- a. If the Contractor is adjudged bankrupt or insolvent.
- b. If the Contractor makes a general assignment for the benefit of his creditors.
- c. If a trustee or receiver is appointed for the Contractor or any of his property.
- d. If the Contractor files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or applicable laws.
- e. If the Contractor repeatedly fails to supply sufficient skilled workmen or suitable Material or Equipment.
- f. If the Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, Material, or Equipment.
- g. If the Contractor disregards ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work.
- h. If the Contractor disregards the authority of the Purchasing Officer or consultant.

19.2 Acts other than those specified in 19.1 may constitute substantial breach.

19.3 The procedure for termination for substantial breach of the Contract Documents shall be in accordance with the clause entitled "Termination for Default for Non-performance or Delay - Damages for Delay - Time Extensions" (Section 18 of General Conditions).

20. CORRECTION OF WORK.

20.1 The Contractor shall promptly remove from the premises all Work rejected by the Engineer/Architect for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Unified Government and

shall bear the expense of making good all Work of other Contractors or Subcontractors destroyed or damaged by such removal or replacement.

20.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of Written Notice, the Unified Government may remove such Work and store the Materials, at the expense of the Contractor.

21. SUSPENSION OF WORK.

21.1 SUSPENSION FOR CONVENIENCE - The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as may be determined to be appropriate for the convenience of the Unified Government.

21.2 ADJUSTMENT OF COST - If the performance of all or any part of the Work is for an unreasonable period of time suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of these Contract Documents, or by the failure of the Procurement Officer to act within the time specified in these Contract Documents (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of these Contract Documents necessarily caused by such unreasonable suspension, delay, or interruption and the Contract Documents modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

- a. that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- b. for which an adjustment is provided for or excluded under any other provision of these Contract Documents.

21.3 TIME RESTRICTION ON CLAIM - No claim under this clause shall be allowed:

- a. for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- b. unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract Documents.

21.4 ADJUSTMENTS OF PRICE - Any adjustment in Contract Price made pursuant to this section shall be determined in accordance with the Price Adjustment Section of These Contract Documents. (Section 14 of the General Conditions.)

22. CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS.

22.1 NOTICE OF CLAIM - If any action or omission on the part of the Procurement Officer requiring a performance change within the scope of the Contract Documents constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the Work in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

- a. The Contractor shall have given Written Notice to the Procurement Officer:
 - i. prior to the commencement of the Work involved, if at that time the Contractor knows of the occurrence of such action or omission;
 - ii. within 30 days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the Work; or
 - iii. within such further time as may be allowed by the Procurement Officer in writing.
- b. The notice required by Subparagraph (22.1.a.) of this paragraph described as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
- c. The Contractor maintains, and upon request makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

22.2 LIMITATION - Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any Unified Government officers and any Contractors from acting in collusion or bad faith in issuing or performing Change Orders which are clearly not within the scope of the Contract Documents.

22.3 ADJUSTMENTS OF PRICE - Any adjustment in the Contract Price made pursuant to this section shall be determined in accordance with the Price Adjustment section of these Contract documents. (Section 14 of the General Conditions.)

23. TERMINATION FOR CONVENIENCE.

23.1 TERMINATION - The Unified Government may, when the interests of the Unified Government so

require, terminate the Unified Government's obligations under these Contract Documents, in whole or in part, for the convenience of the Unified Government. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

23.2 CONTRACTOR'S OBLIGATIONS - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop Work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated obligations. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated obligations. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Unified Government. The Contractor must still complete the obligation not terminated by the notice of termination and may incur obligations as necessary to do so.

23.3 RIGHT TO CONSTRUCTION AND SUPPLIES - The Procurement Officer may require the Contractor to transfer title and deliver to the Unified Government in the manner and to the extent directed by the Procurement Officer:

- a. any completed construction; and
- b. such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called 'Construction Material') as the Contractor has specifically produced or specially acquired for the performance of the terminated obligation(s).

The Contractor shall protect and preserve property in the possession of the Contractor in which the Unified Government has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such construction, supplies, and Construction Materials in accordance with the standards of K.S.A. 84-2-706. This in no way implies that the Unified Government has breached the Contract Documents by exercise of the Termination for Convenience Clause.

23.4 COMPENSATION

- a. The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data, submitted to the extent required by Section 29-200 (Cost or Pricing Data) of the Procurement Code, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c)

of this Paragraph.

b. The Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 29-200 (Cost or Pricing Data) of the Procurement Code and that the settlement does not exceed the total Contract Price plus settlement costs reduced by payments previously made by the Unified Government, the proceeds of any sales of construction, supplies, and Construction Materials under Paragraph 23.3 of these General Conditions, and the Contract Price of the Work not terminated.

c. Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the Contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this Paragraph:

i. with respect to all contract Work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

A. the cost of such Work plus a fair and reasonable profit on such portion of the Work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such Work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Work would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

B. costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 23.2 of these General Conditions. These costs must not include costs paid in accordance with Subparagraph (c.i.A) of this Paragraph;

C. the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated obligation(s) and for the termination and settlement of subcontracts there-under, together

with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated obligations.

ii. The total sum to be paid the Contractor under this Paragraph shall not exceed the total Contract Price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction, supplies, and Construction Materials under Paragraph 23.3 of these General Conditions, and the Contract Price of Work not terminated.

d. Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph shall be in accordance with Exhibit A, Unified Government Cost Principles.

24. LIQUIDATED DAMAGES.

24.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the Contract Documents, the Contractor shall pay to the Unified Government the amount listed in the Agreement as Liquidated Damages for each calendar day of delay pursuant to the "Termination for Default for Non-performance or Delay - Damages for Delay - Time Extensions" section. (Section 18 of the General Conditions.)

25. PAYMENTS FOR WORK PERFORMED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

25.1 At least twenty (20) days before each progress payment falls due, the Contractor may submit, but not more than once a month, to the Engineer/Architect a partial payment estimate on a form suitable to the Engineer/Architect, filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Engineer/Architect may reasonably require. The Engineer/Architect will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the Procurement Officer, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Unified Government will, within thirty (30) days of presentation to the Procurement Officer of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate. The Unified Government will retain five (5) percent of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents. The Procurement Officer at any time, however, after fifty (50) percent of the work has been completed, if s/he

finds that satisfactory progress is being made, may reduce retainage on the current and remaining estimates. When the work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced to only that amount necessary to assure completion.

25.2 Prior to Substantial Completion, the Unified Government, with the approval of the Engineer/Architect, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

25.3 Upon completion and acceptance of the work, the Engineer/Architect shall issue a certificate attached to the final payment request that the Work has been accepted by her/him under the conditions of the Contract Documents. The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by the Unified Government, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.

25.4 The Contractor will indemnify and save the Unified Government and the Engineer/Architect, and their agents and employees harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. Prior to final payment and prior to any progress payment when so requested by the Unified Government, the Contractor shall furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so, the Unified Government may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Unified Government to either the Contractor, his surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Unified Government shall be considered as a payment made under the Contract Documents by the Unified Government to the Contractor and the Unified Government shall not be liable to the Contractor for any such payments made in good faith.

26. ACCEPTANCE OF FINAL PAYMENT AS RELEASE.

26.1 The acceptance by the Contractor of final payment shall be made and shall operate as a release to the Unified Government of all claims and all liability to the Contractor, other than claims in stated amounts

as may be specifically excepted by the Contractor, for all things done or furnished in connection with this Work and for every act and neglect of the Unified Government and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bonds.

27. INSURANCE.

27.1 The Contractor shall purchase and maintain during the term of this contract such insurance as will protect him and the Unified Government of Wyandotte County/Kansas City, Kansas, from claims set forth below which may arise out of or result from the Contractor's execution of the Work, whether such execution be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Unified Government of Wyandotte County/Kansas City, Kansas, shall be identified as an additional insured or provided with an owner's protective policy written on an occurrence basis on coverage set forth in Section 27.3 of this clause for:

- a. Claims under workman's compensation disability benefit and other similar employee benefits;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
- e. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

27.2 Certificates of insurance acceptable to the Unified Government shall be filed with the Unified Government within ten (10) days of the Notice of the Award. These Certificates shall contain a provision that states, "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." At the discretion of the Unified Government, the Contractor shall file copies of endorsed insurance policies with the Unified Government prior to commencement of the Work.

27.3 The Contractor shall procure and maintain Contractor's General Public Liability and Property Damage Insurance, including vehicle coverage issued to the Contractor and protecting him and the Unified Government of Wyandotte County/Kansas City,

Kansas, from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by himself or by any Subcontractor under him. Insurance may be combined Bodily Injury and Property Damage Liability but in no event shall the limit of liability be less than \$500,000 for all damages arising out of bodily injury, including death, and all property damage sustained by any one person in any one accident, and \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

27.4 The Contractor shall acquire and maintain, if applicable, Fire and Extended Coverage Insurance upon the Project to the full insurable value thereof for the benefit of the Unified Government, the Contractor, and Subcontractors as their interest may appear. This provision shall in no way release the Contractor's surety from obligations under the Contract Documents to fully complete the Project.

27.5 The Contractor shall procure and maintain at his own expense, during the Contract Time, in accordance with the laws of the State of Kansas, Worker's Compensation Insurance, including occupational disease provisions, for all of its employees at the site of the Project, and in case any Work is sublet, the Contractor shall require such Subcontractor similarly to provide Worker's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous Work under these Contract Documents at the site of the Project is not protected under Worker's Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide adequate and suitable insurance for the protection of his employees not otherwise protected.

27.6 The Contractor shall secure, if applicable, "All Risk" type Builder's Risk Insurance for Work to be performed. Unless specifically authorized by the Unified Government, the amount of such insurance shall not be less than the Contract price totaled in the Bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the Contract Time, and until the Work is accepted by the Owner. The policy shall name as the insured the Contractor and the Unified Government of Wyandotte County/Kansas City, Kansas.

27.7 The Contractor, in addition to all other insurance requirements herein, shall procure and maintain insurance in the type and amount as may be required in any license, permit, or agreement obtained for the Project and which is necessary to complete the Work (i.e., Highway Permit, Railroad Crossing Agreement, Corps of Engineers Permit) regardless of who secured the license, permit, or agreement.

28. CONTRACT SECURITY.

28.1 Where the contract is in excess of \$50,000.00, the Contractor shall furnish the Unified Government with a Performance Bond in the amount of 100% of the Contract Price. Where the contract is in excess of \$50,000.00, the Contractor shall furnish the Unified Government with a Labor and Material Payment Bond in the amount of 100% of the Contract Price. Bonds shall be delivered within ten (10) days of receipt of Notice of Award. The Performance Bond shall be conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreement of the contract documents. The Payment Bond shall be conditioned upon the prompt payment by the Contractor to all persons supplying labor and Materials in the prosecution of the Work provided by the Contract Documents and shall comply with the requirements of K.S.A. 60-1111 including, but not limited to the requirement that it be filed with the Clerk of the Wyandotte County District Court. All bonds shall contain all terms and conditions contained in the provided bond form in the Contract Documents and shall be executed by a surety company authorized to do business in the State of Kansas. Attorneys-in-fact who sign bonds must file with each bond a certified and effective dated copy of the power of attorney form.

28.2 The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State of Kansas, the contractor shall within ten (10) days substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Unified Government. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Unified Government.

29. ASSIGNMENTS.

29.1 Neither the Contractor nor the Unified Government shall sell, transfer, assign, or otherwise dispose of any rights or obligation created by the Contract Documents or any portion thereof, or of his right, title, or interest therein, or his obligations thereunder, without written consent of the other party.

30. INDEMNIFICATION.

30.1 The Contractor will indemnify and hold harmless the Unified Government and the Engineer/Architect and their agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor,

Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

30.2 In any and all claims against the Unified Government and the Engineer/Architect, or their agents and employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation acts, disability benefit acts, or other employee benefits acts.

30.3 The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer/Architect, his agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications.

30.4 The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of Materials, workmanship, and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of Material supply.

31. SEPARATE CONTRACTS AND RIGHT TO ENTER TO PERFORM WORK.

31.1 The Unified Government may perform additional Work related to the Project by itself, or it may execute other Contract Documents containing provisions similar to these. The Contractor shall afford the Unified Government and other Contractors reasonable opportunity for the introduction and storage of their Materials and the execution of their Work, and shall properly connect and coordinate its Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of the Unified Government or any other Contractor, the Contractor shall inspect and promptly report to the Engineer/Architect any defects in such Work that render it unsuitable for such proper execution and results.

31.2 The Unified Government's right to perform work and enter other contracts shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work, except such as may be caused by agents or employees of the Unified Government or by other Contractors.

31.3 If the performance of additional Work by other Contractors or the Unified Government is not noted in the Contract Documents prior to the execution of the Contract Documents, written notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the Unified Government or other Contractors involves him in

additional expense or entitles him to an extension of the Contract Time, he may make a claim therefor as provided in the Section entitled "Changes" (Section 13 of the General Conditions).

32. SUBCONTRACTING.

32.1 The Contractor may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors.

32.2 The Contractor shall not award subcontracts which total more than fifty (50) percent of the Contract Price, without prior written approval of the Unified Government.

32.3 Prior to the execution and delivery of the Contract Documents, the successful Bidder will submit to the Engineer/Architect for Unified Government's acceptance an updated list of the names of Subcontractors and Suppliers proposed for those portions of the Work and designating which Work each is to perform. For the purpose of reporting supplier participation, a reportable supplier is one who provides directly to the general contractor (first tier supplier). The general contractor is not required to report first tier supplier participation if the total purchases from the first tier supplier is less than \$2,500.00. The Affidavit of Intended Utilization has been provided to facilitate this requirement. Failure to submit this form may be interpreted as non-responsiveness and will be grounds for rejection of bids. Upon contract completion, any changes in the list of subcontractors or suppliers used or payment amount must be submitted to Purchasing before final payment will be made.

32.4 Twenty-five (25) days prior to initiation of Work by any Subcontractor and Suppliers the Contractor shall submit such Subcontractor's name to the Engineer/Architect for the Unified Government's approval. Ten (10) days prior to initiation of Work by such Subcontractor or Supplier, the Engineer/Architect shall notify the successful Bidder in writing if either the Unified Government or Engineer/Architect, after due investigation, has reasonable objection to any Subcontractor or Supplier on such list. The failure of the Unified Government or the Engineer/Architect to make objection to Subcontractor or Supplier shall constitute an acceptance of such Subcontractor or Supplier, but shall not constitute a waiver of any right of the Unified Government or the Engineer/Architect to reject defective Work, Material, or Equipment not in conformance with the requirements of the Contract Documents.

32.5 The Contractor will not make any substitution for any Subcontractor or Supplier who has been accepted by the Unified Government Engineer/Architect, unless the Engineer/Architect approves such a change in writing. The Contractor Utilization Plan may be used to facilitate this requirement. The failure of the Unified Government or the Engineer/Architect to make objection to

Subcontractors or Suppliers shall constitute an acceptance of such Subcontractor or Supplier, but shall not constitute a waiver of any right of the Unified Government or the Engineer/Architect to reject defective Work, Material, or Equipment not in conformance with the requirements of the Contract Documents.

32.6 The Contractor shall be fully responsible to the Unified Government for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

32.7 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractor and to give the Contractor the same power as regards terminating any subcontract that the Unified Government may exercise over the Contractor under any provisions of the Contract Documents.

32.8 Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and the Unified Government.

33. ENGINEER/ARCHITECT'S AUTHORITY.

33.1 The Engineer/Architect shall act as the Unified Government's representative during the construction period. S/he shall decide questions which may arise as to quality and acceptability of Materials furnished and Work performed. S/he shall interpret the intent of the Contract Documents in a fair and unbiased manner and shall not be held liable for the result of any interpretation or decision rendered in good faith.

33.2 The Engineer/Architect shall not and will not be responsible for the Contractor's construction means, controls, techniques, sequences, procedures, or safety. Except the Engineer/Architect may direct the sequencing, phasing, and date of performance of the work and may change the location and quantities of the work as necessary to meet the following objectives:

- a. To ensure the completion of priority elements of the project within the funds available;
- b. To ensure the least practicable inconvenience to the public;
- c. To ensure the compliance with weather and seasonal limitations;
- d. To ensure the timely completion of field quality control testing and visual inspections;
- e. To ensure the coordination of work of other contractors, utilities or Unified Government crews in the best interest of the Unified Government.

No additional payment shall be made for delays

arising from changes to sequence, phasing, or date of performance that could be reasonably anticipated from the nature, location, and time of year of the work.

33.3 The Engineer/Architect shall promptly make decisions relative to interpretation of the Contract Documents.

33.4 The Engineer/Architect may make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.

34. PROJECT REPRESENTATIVE.

The Engineer/Architect may provide one or more full time Project Representatives to assist the Engineer/Architect in carrying out his responsibilities at the site. The duties, responsibilities, and limitations of any such Project Representative shall be as follows:

34.1 Liaison

- a. Serve as the Engineer/Architect's liaison with the Contractor working principally through the Contractor's superintendent.
- b. Cooperate with the Contractor in its dealings with the various local agencies having jurisdiction over the Project in order to complete service connections to public utilities and facilities.
- c. Assist the Engineer/Architect in obtaining from the Unified Government additional details or information, when required at the job site for proper execution of the Work.

34.2 Review of Work

- a. Conduct on-site observations of the Work in progress for the Engineer/Architect as a basis for determining that the project is proceeding in accordance with the Contract Documents, and report to the Engineer/Architect whenever s/he believes that the Work should be stopped to insure that the completed Project will comply with the requirements of the Contract Documents.
- b. Verify that tests, including equipment and systems start up, which are required by the Contract Documents are conducted and that the Contractor maintains adequate records thereof; observe, record, and report to the Engineer/Architect appropriate details relative to the test procedures and start ups.
- c. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections, and report to the Engineer/Architect.

34.3 Interpretation of Contract Documents

- a. Transmit to the Contractor the Engineer/Architect's interpretations of the Contract Documents.

34.4 Records

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents including all Addenda, Change Orders, and additional Drawings issued subsequent to the award of the contract, the Engineer/Architect's interpretations of the Contract Documents, progress reports, and other project related documents.
- b. Keep a diary or log book, recording hours on the job site, weather conditions, list of visiting officials, daily activities, decisions, observations in general, and specific observations in more detail as in the cases of observing test procedures.
- c. Maintain a set of Drawings on which authorized changes are noted and deliver such Drawings to the Engineer/Architect at the completion of the project.

34.5 Guarantees, Certificates, Maintenance Operation Manuals

- a. During the course of the Work, assemble guarantees, certificates, maintenance operation manuals, and other required data furnished by the Contractor and upon acceptance of the Project, deliver these documents to the Engineer/Architect for her/his review and forwarding to the Unified Government.

34.6 Completion

- a. Prior to review for completion, submit to the Contractor a list of observed items requiring correction.
- b. Conduct final review in the company of the Engineer/Architect and the Unified Government and prepare a final list of items to be corrected.
- c. Verify that all items on final list have been corrected and make recommendations to the Engineer/Architect concerning acceptance.

34.7 Limitation of Authority - Except upon written instructions of the Engineer/Architect, the Project Representative:

- a. Shall not authorize any deviation from the Contract Documents.
- b. Shall not undertake any of the responsibilities of the Contractor, the Subcontractors, or the Contractor's Superintendent.
- c. Shall not expedite the Work for the Contractor.
- d. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences, or procedures of

construction unless such is specifically called for in the Contract Documents.

- e. Shall not authorize the Unified Government to occupy the Project in whole or in part.

35. LAND AND RIGHTS-OF-WAY.

35.1 Prior to issuance of Notice to Proceed, the Unified Government will have obtained all land and rights-of-way necessary for carrying out and for the completion of the Work to be performed pursuant to the Contract Documents, unless otherwise set forth in the Special Conditions or by Change Order.

35.2 The Unified Government shall provide to the Contractor written information which delineates and describes the land owned and rights-of-way acquired and any special requirements contained therein. (Shown on the drawings and/or in the Special Conditions.)

35.3 The Contractor shall provide at his own expense and without liability to the Unified Government any additional land and access thereto that the Contractor may desire for temporary construction facilities, for storage of Materials or for additional working area.

36. PERMITS AND LICENSES.

36.1 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor unless otherwise stated in the Special Conditions. The Contractor shall comply with all requirements, furnish required bonds, carry required insurance, pay all inspection fees and comply otherwise with all requirements of all permits and licenses regardless of whom obtained same. Copies of permits and licenses obtained by others, if not included in the Contract Documents, are available at the Engineer/Architect's office during regular business hours. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified.

36.2 If the Contractor observes that the Contract Documents are at variance with other requirements, the Contractor shall promptly notify the Engineer/Architect in writing, and any necessary changes shall be adjusted in accordance with the Section entitled "Changes" (Section 13 of the General Conditions).

37. GUARANTY.

37.1 The Contractor shall guarantee all Materials and Equipment furnished and Work performed. Furthermore, commencing on the Date the Unified Government accepts all Work, the Contractor also warrants and guarantees for a minimum of one year or such longer period as may be established for specific products or installations by the technical provisions that the accepted Work is free from all defects due to faulty Materials, Equipment, or workmanship, and the

Contractor shall promptly make corrections as may be necessary by reason of such defects and the repairs of any damage to other parts of the Work, including damage to adjacent existing improvements, utilities, pavement, and so forth, resulting from such defects. All Materials, Equipment, or Work incorporated in correcting such defects shall also be warranted and guaranteed to conform with the Contract Documents for the applicable guarantee period in the Supplemental General Conditions.

37.2 The Unified Government will give Written Notice to the Contractor of observed defects with reasonable promptness. If for any reason the Contractor shall fail to make any such repairs or adjustments, including other Work that may be made necessary by such defects, within twenty (20) days after date such notice is served upon the Contractor, the Unified Government will have the right and authority to correct or cause the correction of the defects, including that which may be made necessary by said defects, and charge the Contractor for all costs thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

38. DISPUTES.

38.1 All controversies between the Unified Government and the Contractor which arise under, or are by virtue of these Contract Documents and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within thirty (30) days after a written request by the Contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.

38.2 The Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

38.3 Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the Wyandotte County District Court.

38.4 The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of the Work pending final resolution by the Wyandotte County District Court of any controversy arising under, or by virtue of these Contract Documents, except where there has been a material breach of the Contract Documents by the Unified Government, provided, however, that in any event the Contractor shall proceed diligently with the performance of the Work where the Purchasing Director or head of a Purchasing Agency has made a written determination that continuation of Work under the Contract Documents is essential to the public health and safety.

39. TAXES.

39.1 Sales and compensating tax exemption certificate number will be provided by the Unified Government to the Contractor as set forth in K.S.A. 79-3606 (d) and (e), as may be amended.

39.2 If for any reason the exemption certificate number is not furnished the Contractor, the Unified Government will, upon Written Notice from the Contractor, execute a Change Order to compensate the Contractor for such sales and compensating taxes which would otherwise be legally exempted by said certificate number. (Section 13 of the General Conditions). Any adjustment in Contract Price made pursuant to this Section shall be determined in accordance with the Price Adjustment Section of these Contract Documents (Section 14 of the General Conditions).

40. PROCESS AGENT.

40.1 If the Contractor is an individual, partnership, or unincorporated association, and if said Contractor is not a resident of the State of Kansas, said Contractor shall appoint in writing as such Contractor's agent, a resident of the County of Wyandotte, Kansas, as required by K.S.A. 16-113, as amended. Process for the Contractor may be served on such agent in any civil action which arises out of the Contract Documents. The appointment of such agent shall be filed with the Clerk of the District Court of Wyandotte County, Kansas. Any Contractor required hereunder to appoint such an agent shall not receive public moneys pursuant to the Contract Documents until the appointment has been made and filed.

41. SATURDAY, SUNDAY, HOLIDAY. AND NIGHT WORK.

41.1 No Work shall be done on Saturday, Sunday, Unified Government designated holidays, or at night, without the written approval or permission of the Engineer/Architect in each case, except such Work as may be necessary for the proper care, maintenance, and protection of Work already done or of Equipment and public property covered by the Contract Documents. Approval of the Engineer/Architect shall be sought at least forty-eight (48) hours in advance of such Work whenever practicable.

42. PUBLIC CONVENIENCE AND SAFETY.

42.1 The Contractor shall at all times so conduct its Work as to insure the least practicable obstruction to traffic. The convenience of the general public and the residents along the Project, and the protection of persons and property are of prime importance and shall be provided for by the Contractor in an adequate and satisfactory manner. When it is necessary for residents living along the Project to use a portion of road in the Project area, the Contractor shall maintain within the limits of these specifications, that portion of the road in a suitable condition for pedestrian and vehicular travel.

42.2 The Contractor shall be responsible for all traffic control devices necessary at the Project site, including installation, maintenance, and removal of such devices. All traffic control devices supplied by the Contractor shall comply with the standards of the Manual on Uniform Traffic Control Devices, the most current edition, and the Traffic Control Devices Handbook and amendments thereto. The Contractor shall submit a written plan for traffic control during the Project to the Traffic Regulations Division of the Public Works Department for approval prior to the commencement of the Project.

42.3 The Contractor shall contact the Traffic Regulations Division of the Public Works Department prior to any street closure or traffic restriction. The Contractor shall be responsible for notification of the police and fire departments in emergency traffic restriction situations.

43. PRE-CONSTRUCTION CONFERENCE.

43.1 Following execution of the Agreement between the Unified Government and the Contractor, but prior to the date established in the Notice to Proceed for commencement of the Work, a pre-construction conference shall be held at a date, time, and place mutually acceptable to both parties to the Agreement unless otherwise waived by the Engineer/Architect. The conduct of the pre-construction conference is the responsibility of the Engineer/Architect and the prime purpose of the pre-construction conference will be to review the terms and conditions of the Contract Documents. Persons present at the pre-construction conference shall be determined by the Procurement Officer.

44. INTERRUPTION OF SERVICE.

44.1 When making preparations for making correction of the existing system or other work which will interrupt service to the utility users, the Contractor shall notify the affected users, stating the approximate time and duration of interruption of service. The Contractor shall notify the Unified Government authorities and the affected utility companies of any necessary interruption of service and shall limit such interruption to the duration mutually agreeable to all parties.

45. UTILITIES.

45.1 Location, size, material, and depth shown on the drawing for existing utilities are based on information furnished by the utility companies from their records. Actual field locations have not been established by the Unified Government or Engineer/Architect. The Contractor shall investigate and verify plan locations and elevation of underground utilities in the field before commencing Work. Should it become necessary to temporarily move, shift, or relocate utility lines for the construction of this Project, the Work shall be arranged and paid for by the Contractor. Should it become necessary to permanently relocate utility lines to allow room for construction of said lines

they shall be moved at no cost to the Contractor unless otherwise specified in the Special Conditions. The Contractor shall protect all railroad trackage, ties, ballast, utilities, and structures encountered on or adjacent to the line of Work; damage to these facilities caused by the Contractor's Work shall be made good to the owner thereof by the Contractor without incurring any liabilities to the Unified Government or Engineer/Architect.

46. ADDITIONAL COPIES OF PLANS AND SPECIFICATIONS.

46.1 The Unified Government will furnish the Contractor up to 4 sets of Plans and Specifications exclusive of those obtained for bidding. Additional sets will be furnished, upon request, at the cost of reproduction.

47. WORK ON RAILROAD AND HIGHWAY RIGHTS-OF-WAY.

47.1 Installation of casing pipe, pipelines, and appurtenances along or across railroad and highway rights-of-way, shall be made in strict accordance with the instructions and regulations of the respective railroad company, the Kansas Department of Transportation, and the Kansas Turnpike Authority. The cost of railroad, Kansas Department of Transportation, or Kansas Turnpike Authority inspectors and flagmen shall be borne by the Contractor. Performance Bonds and special insurance coverage required by the railroad, the Kansas Department of Transportation, and/or the Kansas Turnpike Authority shall be furnished by the Contractor at no additional cost to the Unified Government.

48. RECORDS.

48.1 The Contractor shall maintain one record copy of all Contract Documents at the site, in good order and annotated to show all changes made during the Work, including the location, size, and type of exposed improvements and the limits of incompressible soils (rock, shale, etc.). These records shall be available to the Engineer/Architect during progress of the Work and shall be delivered to the Engineer/Architect upon completion of the Project.

49. HISTORICAL OR ARCHAEOLOGICAL DEPOSITS.

49.1 If during the course of construction evidence of deposits of historical or archaeological interest is found, the Contractor shall cease operations affecting the find and shall notify the Unified Government who shall notify the Executive Director, Kansas Historical Society. No further disturbance of the deposits shall ensue until the Contractor has been notified by the Unified Government that he may proceed. The Unified Government will issue a Notice to Proceed only after the State official has surveyed the find and made a determination of value and effect and submitted such determination to the Unified

Government. Compensation to the Contractor, if any, for lost time or changes in construction to avoid the find shall be determined in accordance with the Price Adjustment Section. (Section 14 of General Conditions.)

50. FORTY (40) HOUR WEEK PROVISION.

50.1 Laborers, workmen or mechanics in the employ of the Contractor, Subcontractors or other persons doing or contracting to do the whole or a part of the work contemplated and described in these contract documents shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in any workweek. The basic rate of pay shall not be less than the prevailing rate per hour, as provided elsewhere in these general conditions. A violation of this condition shall be a violation of that section of the Code Ordinances of the Unified Government of Wyandotte County/Kansas City, Kansas, that pertains to a forty (40) hour work week and shall be dealt with as provided for therein.

51. INTEREST PAYABLE ON CLAIMS.

51.1 Pursuant to Section 29-480 (Interest) of the Procurement Code, interest on amounts ultimately determined to be due to the Contractor shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decisions or judgment, whichever is later.

52. MULTIPLE AWARDS.

52.1 The Unified Government reserves the right to make a multiple award when circumstances so require. Further, subsequent to award, the Unified Government reserves the right to take separate bids if particular quantity requirements arise which exceed its normal requirement or amount specified in the Contract Documents, or if the Procurement Officer determines that quantities available under the Contract Documents will not meet a nonrecurring special need of the Unified Government. The Unified Government also reserves the right to procure internally.

53. INACCURATE PRICING DATA.

53.1 These Contract Documents may require submission by the Contractor of current cost or pricing data in accordance with Section 29-200 of the Procurement Code. Such data will be required to be certified by the Contractor. Should the data certified by the Contractor subsequently found to have been inaccurate, incomplete, or noncurrent the Unified Government shall be entitled to an adjustment of the Contract Price, to exclude any significant sum by which the price was decreased because of the defective data. The price adjustment shall be done in accordance with Section 14 of these General Conditions.

54. PREVAILING WAGE RATE.

54.1 All construction projects in excess of \$15,000

shall be subject to the following provisions:

a. The Contractor and Subcontractors shall define the jobs of workmen, laborers, and craftsmen engaged in construction activities on this project by classifications listed in the United States Department of Labor General Wage Decision for Wyandotte County, Kansas. The Contractor and Subcontractors shall pay employees performing work on the job site at a rate not less than the current prevailing per diem wage rate applicable to each job classification, except as modified in 54.1 (b).

b. Apprentices and trainees registered in training programs approved by the Department of Labor, may be paid less, but not less than seventy percent (70%) of the applicable rate. Training certificate must accompany the weekly payroll reports.

c. Contractor shall submit weekly reports evidencing compliance. Each report shall be submitted no more than seven (7) days after the pay date which it documents; the reports shall be on a form approved by the Unified Government. No payments will be made unless weekly reports are current and approved by the Unified Government Construction Compliance Officer.

d. Unified Government Construction Compliance Officer will be contacting and interviewing all employees on the job site to assure compliance.

54.2 The prevailing per diem wage rate is the required wages and fringe benefits on federal and federally assisted construction projects as determined by the United State Department of Labor in the General Wage Decision for Wyandotte County, Kansas which is current and effective ten days prior to the bid date. Bidders may rely on the wage decision or modification distributed at the pre-bid conference.

55. REMOVAL OF EMPLOYEES.

55.1 All Work under these Contract Documents shall be performed in a skillful and workmanlike manner. The Engineer/Architect may, in writing, require Contractor to remove from the Work any employee or supervisory personnel the Engineer/Architect deems incompetent or otherwise objectionable.

56. NONDISCRIMINATION IN EMPLOYMENT. PROVISIONS MANDATED BY LOCAL, STATE AND FEDERAL GOVERNMENTS.

During the Performance of this contract, the Contractor agrees as follows:

56.1 The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, sexual orientation, gender identity, national origin or ancestry. The Contractor will take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, religion, color, sex, age, disability, sexual orientation, gender identity, national origin or ancestry. Such action shall include, but not be limited, to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Unified Government setting forth the provisions of this non-discrimination clause.

56.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, disability, sexual orientation, gender identity, national origin or ancestry.

56.3 The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

56.4 The Contractor shall assure that it and all subcontractors will implement the certificate of compliance in connection with this Agreement.

56.5 It the Contractor shall fail, refuse, or neglect to comply with the terms of these contractual conditions, such failure shall be deemed a total breach of the Agreement and such Agreement may be terminated, canceled, or suspended, in whole or in part, and the Contractor may be declared ineligible for any further Unified Government contract for a period of up to one year. Provided that if an Agreement is terminated, canceled, or suspended for failure to comply with this section, the Contractor shall have no claims for damages against the Unified Government on account of such termination, cancellation, or suspension or declaration of ineligibility.

56.6 The Contractor shall assure that it is in compliance with and shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with all applicable sections of the Equal Employment section of this contract and the following, as applicable: Title VI of the Civil Rights Act of 1964 (as amended) (42 USCS § 2000d et seq.); Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.); Title VIII of the Civil Rights Act of 1968 (42 USCS § 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, and amendments thereto); the Kansas Acts Against Discrimination (KSA § 44-1001 et seq., and amendments thereto); Article XI of the Unified Government Procurement Code and Regulations, and amendments thereto; and Sections 18-137 through 18-139 of the Unified Government Code of Ordinances, and amendments thereto. Such

records shall at all times remain open to inspection by an individual designated by the Unified Government for such purpose.

56.7 The Contractor and the Unified Government, in carrying out this Agreement, shall also comply with all other applicable existing federal, state, and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made part of this Agreement.

56.8 The Contractor will be required to conform to Equal Employment Opportunity and Affirmative Action requirements prior to the execution of this Agreement.

57. REVISIONS TO STANDARD GENERAL CONDITIONS.

57.1 Modifications to these General Conditions, if any, are made in the Supplemental Conditions. The Supplemental Conditions may contain additional conditions that are not modifications of a General Condition.

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EXHIBIT A – UNIFIED GOVERNMENT COST PRINCIPLES

Section 101.01 – Applicability of Cost Principles.

(1) Application.

- (a) The cost principles and procedures contained in this Exhibit shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that any deviation from these cost principles may be made as provided in Section 101.10, Authority to Deviate from Cost Principles, below.
- (b) The cost principles and procedures set forth in this Exhibit may be used as guidance in:
 - (i) the establishment of contract cost estimates and prices under contracts awarded on the basis on competitive sealed proposals where the award may not be based on adequate price competition; sole source procurement; competitive selection procedures; and architect, engineer, real estate appraisal, and land surveying services;
 - (ii) the establishment of price adjustments for contract changes including contracts that have been let on the basis of competitive sealed bidding or otherwise based on adequate price competition;
 - (iii) the pricing of termination for convenience settlements; and
 - (iv) any other situation in which cost analysis is used. Cost analysis is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(2) Limitation. These cost principles regulations are not applicable to:

- (a) the establishment of prices under contracts awarded on the basis of competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specified cost elements,

except that this Exhibit does apply to the establishment of adjustments of price for changes made to such contracts;

- (b) prices which are fixed by law or regulation; and
- (c) prices which are based on established catalogue prices as defined in Section 29-1 of the Unified Government Procurement Code or established market prices.

Section 101.02 – Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable to the extent provided in the contract and, if inconsistent with these cost principles, approved as a deviation under Section 101.10, Authority to Deviate from Cost Principles, below. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to its other activities. In pricing a proposal, a contractor shall estimate costs in a manner consistent with its cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

- (a) reasonable, as defined in Section 101.03, Reasonable Costs, below;
- (b) allocable, as defined in Section 101.04, Allocable Costs, below;
- (c) lawful under any applicable law;
- (d) not unallowable under Section 101.05, Treatment of Specific Costs, or Section 101.06, Costs Requiring Prior Approval to Be Allowable as Direct Costs, below; and
- (e) in the case of costs invoiced for reimbursement, actually incurred or

accrued and accounted for in accordance with generally accepted accounting principles.

Section 101.03 – Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business in that industry. In determining the reasonableness of a given cost, consideration shall be given to:

- (a) requirements, imposed by the contract terms and conditions;
- (b) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
- (c) the restraints inherent in, and the requirements imposed by, such factors as generally accepted sound business practices, arms' length bargaining, and federal and State laws and regulations;
- (d) the action that a prudent business manager would take under the circumstances, including general public policy and considering responsibilities to the owners of the business, employees, customers, and the Unified Government;
- (e) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and
- (f) any other relevant circumstances.

Section 101.04 – Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

- (a) is incurred specifically for the contract;
- (b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
- (c) is necessary to the overall operation of the business, although a direct

relationship to any particular cost objective may not be evident.

(2) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Costs. A direct cost is any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs.

- (a) An indirect cost is one identified with no specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.
- (b) Indirect costs shall be accumulated into logical cost groups (or pools), with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.
- (c) The contractor's method of distribution may require examination when:
 - (i) any substantial difference exists between the cost patterns of the

work performed under the contract and the contractor's other work;

- (ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or
- (iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.
- (d) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

Section 101.05 – Treatment of Specific Costs.

(1) Advertising.

- (a) Advertising costs are those incurred in using any advertising media when the advertiser has control over the form and content of what will appear, the media in which it will appear, or when it will appear. Advertising media include newspapers, magazines, radio, television, direct mail, trade papers, billboards, window displays, conventions, exhibits, free samples, and the like. All advertising costs except those set forth in Subsection (1)(b) of this Section are unallowable.
- (b) The only allowable advertising costs are those for:
 - (i) the recruitment of personnel;
 - (ii) the procurement of scarce items;
 - (iii) the disposal or scrap or surplus materials; and
 - (iv) the listing of a business's name and location in a classified directory.

COMMENTARY:

Advertising costs are unallowable because government sales are generated by soliciting specific offers for specific requirements - the Unified Government is not subject to impulse buying - and the advertising costs other than for those purposes set forth in Subsection (1)(b) are not allocable to Unified Government contracts.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, uncollected employee advances, and related collection and legal costs. All bad debt costs are unallowable.

COMMENTARY:

Bad debts are unallowable because these costs are not allocable to government contracts. When the nature of the work performed under a cost-reimbursement type contract requires the contractor to deal with third parties in a way which may generate bad debts, a deviation from this Subsection may be appropriate.

(3) Contingencies.

- (a) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Subsection (3)(b) of this Section.
- (b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this Subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums are allowable as an indirect charge.

COMMENTARY:

Contingency costs are unallowable because they are speculative in nature and represent a mere risk rather than an actual incurred cost. Realistic risks are recognized properly in both the selection of the type of contract used and the amount of profit or fee paid, but are not considered

to be a cost for the purpose of cost-reimbursement. In estimating future costs, reasonable amounts may be recognized as necessary to cover realistic foreseeable uncertainties, such as inflation and spoilage. However, unsupported general contingencies are not allowable.

(4) Depreciation and Use Allowances.

- (a) Depreciation and use allowances, that is, the allowance made for fully depreciated assets, are allowable to compensate contractors for the use of buildings, capital improvements, and equipment or for the provision of such facilities on a standby basis for subsequent use when such facilities are temporarily idle because of suspensions or delays not caused by the contractor, not reasonably foreseeable, and not otherwise avoidable when the contract was awarded. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.
- (b) The computation of depreciation or use allowance shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.
- (c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the Unified Government will accept any method which is accepted by the Internal Revenue Service.
- (d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used,

factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the effect of any increased maintenance or decreased efficiency.

COMMENTARY:

When it is economical for contractors to continue using fully depreciated property and equipment, they should be encouraged to do so. Failure to allow contractors to charge Unified Government contracts with costs for the use of such property and equipment could serve to encourage wasteful scrapping and disposal and the incurrence of administrative and rental costs in excess of the otherwise allowable use allowance.

(5) Entertainment.

- (a) Entertainment costs include costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.
- (b) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging costs; except that, where a net profit is generated by such services, it shall be treated as a credit as provided in Section 101.07, Applicable Credits, below. This Section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

COMMENTARY:

Entertainment costs are not allocable to Unified Government contracts, and thus are unallowable because:

- (a) like advertising, they are not necessary to obtain Unified Government contracts;
- (b) like contributions and donations, entertainment costs would constitute an improper disposition of tax revenues;
- (c) acceptance of entertainment from a contractor by a Unified Government employee may be unethical and might constitute an apparent conflict of interest under Article

XII of the Unified Government Procurement Code, Ethics in Public Contracting;
and

- (d) from a public policy point of view, it would be unacceptable to use Unified Government money to pay for a contractor's entertainment or gifts. Reasonable costs of business conferences and activities designed to maintain employee morale are not considered entertainment costs within the meaning of this Subsection.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of, or failure to comply with, federal, State, and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the Procurement Officer. To the extent that worker's compensation is considered by State law to constitute a fine or penalty, it shall not be an unallowable cost under this Subsection.

COMMENTARY:

Fines and penalties are unallowable because incurrence of the costs is not a reasonably necessary cost of doing business. Furthermore, allowing these costs would be contrary to good public policy.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

COMMENTARY:

Contributions and donations are unallowable because allowing these costs would amount to an improper disposition of tax revenues by making a payment from the Unified Government treasury to an institution or activity selected by a single private taxpayer, without the consent of the taxpaying public or its elected representatives. Therefore, allowing these costs would be contrary to good public policy. An exception is provided for the bona fide purchase of supplies or services rendered by nonprofit, volunteer organizations.

(8) Interest Costs.

- (a) Interest is generally an unallowable cost for purposes of determining the original contract price. Compensation for any interest expense incurred in connection with work originally contemplated under the contract will be deemed to be included in the fee or profit negotiated on the contract.
- (b) Imputed interest on a contractor's expenditures made to pay allowable costs which are allocable to the performance of work required by change orders, suspension of work, or other acts of the Unified Government requiring additional work over and above that required by the original contract (hereinafter called "Additional Work") shall be an allowable cost. Imputed interest is an allowable cost in relation to such Additional Work in a negotiated settlement, if one can be agreed upon or to the extent that it is determined administratively or judicially that the Unified Government is liable for such Additional Work. Such imputed interest shall be computed on expenditures from the date or dates on which the contractor made expenditures for the performance of such Additional Work until the date of payment therefor by the Unified Government. The rate of interest shall be the prevailing prime rate charged by banks in this Unified Government as determined by the Unified Government Auditor, at the time or times the contractor made such expenditures for Additional Work. Imputed interest on the costs of Additional Work shall not be allowable to the extent that it is otherwise recovered as profit, fee, or as interest on contractor claims pursuant to Section 29-480, Interest, of the Unified Government Procurement Code.

COMMENTARY:

(1) Interest cost is unallowable because dividends are unallowable. The payment of both interest and dividends is necessary to raise capital to finance contract performance (dividends for equity capital; interest for borrowed capital). Dividends are properly considered a distribution of profit and thus are not allowed as charges against contracts. To allow interest but not dividends would be an unfair bias in favor of borrowed capital over equity capital. Thus fairness dictates that interest not be allowed as costs charged against contracts. However, both interest and dividends are deemed to be included in the fee or profit negotiated on the contract.

(2) However, when the contractor is directed to perform additional work over and above that required by the original contract, and for which the Unified Government is liable, the costs of financing such additional work should be reimbursed. Thus Subsection (8)(b) provides for the recognition of imputed interest on expenditures for allowable costs allocable to the performance of such additional work. If provision for such expenditures is made in a settlement, imputed interest should be included. In addition, if the liability of the Unified Government for such work is established administratively or judicially, imputed interest on such expenditures is an allowable cost. Such an allowance recognizes the real cost of financing such additional work without differentiating unfairly between borrowed and equity capital. It should also be noted that by limiting the base to which imputed interest is applied to expenditures for allowable costs allocable to additional work, the computation of such interest is not unduly complicated. In addition, imputed interest should not be recovered to the extent it is otherwise recovered as profit or fee.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

COMMENTARY:

Losses incurred on other contracts or jobs of any nature are unallowable because each contract is a separate agreement and the allowable costs must stand by themselves on their own merits as reasonable, necessary, and allocable to the performance of each contract.

(10) Material Costs.

- (a) Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to Subsection (10)(b) and Subsection (10)(c) of this Section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses, and reasonable overages.
- (b) Material costs shall include adjustments for all available discounts, refunds,

rebates, and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

- (c) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with this Exhibit), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the Procurement Officer, the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions, and the price is established either:
 - (i) by the established catalogue price, as defined in as defined in Section 29-1 of the Unified Government Procurement Code; or
 - (ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

- (a) Except as limited in Subsection (11)(b) of this Section, all allocable taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.
- (b) The following costs are unallowable:
 - (i) federal and State income taxes and federal excess profit taxes;
 - (ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;
 - (iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the Procurement Officer; and

- (iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.
- (c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.
- (d) Direct government charges for services, such as water, or capital improvements, such as sidewalks, are not considered taxes and are allowable costs.

COMMENTARY:

Income taxes are levied on taxable income, which is total income less costs. As such, income taxes are considered to be a distribution of profit and are not allowable as a cost. To allow income taxes as a cost would have the inequitable result of paying higher prices to highly profitable contractors and lower prices to contractors who make little or no profit - and higher prices to a single contractor in a highly profitable year and lower prices in an unprofitable year. Further, the higher prices paid by treating income taxes as an allowable cost would result in higher income and higher income taxes, which in turn would generate higher allowable costs and give rise to still higher prices, and so on to infinity; thus, treating income taxes as an allowable cost simply is impracticable.

Section 101.06 – Costs Requiring Prior Approval to be Allowable as Direct Costs.

(1) General. The costs described in Subsections (2) through (5) of this Section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the Procurement Officer. In other situations, the allowability of these costs shall be determined in accordance with general standards set out in these cost principles.

COMMENTARY:

Some discretionary expenditures, incurred without the benefit of competitive pressure under cost-reimbursement type contracts, can give rise to very serious and difficult questions of reasonableness and allocability. Thus specific advance approval by the Procurement Officer is

required in order for these costs to be allowed.

(2) Pre-Contract Costs. Pre-contract costs are those incurred in anticipation of and prior to, the effective date of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

COMMENTARY:

Normally, only costs incurred under a cost-reimbursement contract for actions taken within the contract period are allowable. Costs incurred for actions prior to or after the period covered by the contract may be considered to be legally not allocable to the contract. In order to extend the contract period to cover actions taken prior to the date of contract execution, a special provision setting forth the limits of this extension is required.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs in accordance with these cost principles regulations. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

COMMENTARY:

When bids and proposals are used for market development purposes, the cost of preparing these bids and proposals are closely related to advertising costs.

(4) Insurance.

(a) Ordinary and necessary insurance costs are normally allowable as indirect costs. Direct insurance costs are the cost of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is

specifically required for the performance of the contract.

- (c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs incident to the contract are allowable as indirect costs in accordance with these cost principles regulations except that costs incurred in litigation by or against the Unified Government are unallowable.

COMMENTARY:

Costs of litigating claims generally are unallowable because they are properly allocable to the claim and not to the performance of the contract. Further, allowing costs incurred in the litigation of unsuccessful claims would encourage needless litigation, which is contrary to public policy. These costs may be awarded to successful claimants only at the discretion of the court or the administrative board which hears the claim. This does not preclude the allowance of reasonable indirect costs for legal counsel, incurred on a regular basis whether provided by employees or outside counsel.

Section 101.07 – Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The Unified Government shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

Section 101.08 – Advance Agreements.

(1) Purpose. Both the Unified Government and the contractor should seek to avoid disputes

and litigation arising from potential problems by providing in the terms of the solicitation and the contract the treatment to be accorded special or unusual costs which are expected to be incurred.

(2) Form Required. Advance agreements may be negotiated either before or after contract award, depending upon when the parties realize the cost may be incurred, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these cost principles regulations unless a determination has been made pursuant to Section 101.10, Authority to Deviate from Cost Principles, below.

Section 101.09 – Use of Federal Cost Principles.

(1) Cost Negotiations. In dealing with contractors operating according to federal costs principles, such as Defense Acquisition Regulations, Section 15, or Federal Procurement Regulations, Part 1-15, the Procurement Officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Subsection (2) of this Section.

(2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Exhibit. All requirements set forth in federal assistance instruments applicable to contracts let by the Unified Government under a federal assistance program must be satisfied. Therefore, to the extent that the cost principles which are specified in the assistance instrument conflict with the cost principles herein contained, the former shall control.

Section 101.10 – Authority to Deviate from Cost Principles.

When the best interest of the Unified Government would be served by a deviation, the Procurement Officer may deviate from the cost principles set forth in these regulations; provided that a written determination shall be made by such officer specifying the reasons for the deviation. A copy of such determination shall be filed promptly with the Purchasing Director and such determination shall be effective only upon approval by the Purchasing Director and upon incorporation into the contract. However, all costs must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles to be reimbursed, and a deviation shall not contravene this principle.

MBE/WBE Good Faith Outreach Manual and Forms

UNIFIED GOVERNMENT GOOD FAITH OUTREACH MANUAL



UNIFIED GOVERNMENT GOOD FAITH OUTREACH PROGRAM

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I. Program Summary

The Good Faith Outreach Program is a component of the Unified Government Supplier Diversity Program and applies to City-funded construction contracts in excess of \$250,000. When Federal or State funding sources impose additional requirements, those requirements as defined in the contract documents replace the requirements of this program.

The Unified Government is committed to maximizing subcontracting opportunities for certified M/WBE firms. Bidders should be fully informed of Good Faith Outreach Program as set forth in this document.

This program is subject to policies and requirements established by the Unified Government Supplier Diversity Program. Bidders are advised to be fully informed of the requirements set forth in this document. Failure to comply with the City's Supplier Diversity Program may cause a bid to be rejected as non-responsive.

Terms and conditions of the Good Faith Outreach Program apply to City-funded construction projects in excess of \$250,000. At the City's sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation. When State and/or Federal funding sources require affirmative action goals, those goals as defined in the contract documents replace requirements of the Supplier Diversity Program.

II. GOOD FAITH OUTREACH OVERVIEW

This program requires bidders to make subcontracting opportunities available to a broad base of qualified subcontractors and to achieve a minimum level of M/WBE subcontractor participation as identified for eligible projects. To be eligible for award, the apparent low bidder must meet or exceed the M/WBE project goals or submit documentation of their good faith outreach efforts within two (2) working days following the close of business on the day bids are opened. Should it become necessary to evaluate the efforts of bidders beyond the apparent low bidder, each additional firm shall receive five (5) working days for submittal of documentation commencing on the date of notification. Notification can be verbal or in writing. Failure to submit required documentation within this time frame will cause a bid to be rejected as non-responsive.

For assistance or further information about the *Good Faith Outreach Program*, contact the Supplier Diversity Program Manager at 913-573-5439.

III. Definitions Applicable to the Good Faith Outreach Program

- A. Bidder means a business enterprise that submits a bid on a construction contract that is offered for competitive bidding by the Unified Government.
- B. Good Faith Outreach Efforts: Affirmative steps taken by a bidder prior to bid opening to ensure maximum effort to recruit subcontractors, including Minority Business Enterprises (MBEs) and Woman Owned Enterprises (WBEs), as sources of supplies, construction, and other services whenever possible. Required steps for documenting outreach efforts are outlined in Paragraph V of this document.
- C. Minority business enterprise or MBE means a business enterprise that is owned and controlled by one or more minority individuals and that is certified as a minority business enterprise by one of the entities set forth in Article XI of the Unified Government Code of Ordinances.

- D. Subcontract: Agreement between a prime contractor and an individual, firm, or corporation for performance of particular portion(s) of work for which a prime contractor has obligated itself.
- E. Subcontractor: An individual, firm, or corporation having a direct contract with a prime contractor for performance of portion(s) of work to be constructed under the contract, including furnishing of labor, materials or equipment.
- F. Woman-owned business enterprise or WBE means a business enterprise that is owned and controlled by one or more women and that is certified as a woman-owned business enterprise by one of the entities set forth in in Article XI of the Unified Government Code of Ordinances.

IV. Good Faith Outreach Indicators

Documentation of a bidder’s outreach efforts will be reviewed by Unified Government according to the indicators listed below to verify that bidder made subcontracting opportunities available to a broad base of qualified subcontractors, negotiated in good faith with interested subcontractors, and did not reject any bid for unlawful discriminatory reasons.

Failure to submit Good Faith Efforts will render a bid non-responsive and will result in its rejection. Indicators are judged on a pass/fail basis, i.e., either full or zero credit can be achieved for compliance with each item as set forth below:

Good Faith Outreach Indicator	
1.	Attended pre-bid meetings scheduled by the Unified Government
2.	Contacted and followed up with eligible M/WBE business in the applicable trades that were known to the contractor, or available on State, County, or other maintained lists, to submit a quote at least 10 days before the bid date and notified them of the nature and scope of the work to be performed
3.	Made construction plans, specifications, and requirements available for review by prospective M/WBE businesses, or provided these documents to them at least 10 days before the bids are due
4.	Initiated and documented correspondences with M/WBE trade, community, or contractor organizations that provide assistance in recruiting M/WBE subcontractors or suppliers
5.	Broke down or combined elements of work into economically feasible units to further facilitate M/WBE participation
6.	Advised M/WBE subcontractors and suppliers in obtaining bonds, lines of credit, or insurance
7.	Negotiated in good faith with interested M/WBE subcontractors/suppliers and did not reject them as unqualified without sound reasons based on their capabilities
8.	Placed ads soliciting M/WBE subcontractors/suppliers in a publication targeting M/WBE subcontractors/suppliers not less than 10 days prior to bid

V. Documentation of Good Faith Outreach Efforts

1.	Attended pre-bid meetings scheduled by the Unified Government
----	--

Bidder attended pre-bid meeting scheduled by the Unified Government to inform all bidders of requirements for subject project. A sign in sheet will be distributed at all pre-bid meetings. It is the bidder's responsibility to sign in on the list.

Required documentation: The project manager will have record of the pre-bid sign in sheet..

2.	Contacted and followed up with eligible M/WBE subcontractors and suppliers certified in the applicable trades
----	--

Bidder contacted certified M/WBE business in the trades present on the project. The M/WBE businesses must be certified in the trade on which they are being asked to submit quotes.

Required documentation: A completed call log, copies of emails/faxes, certified mail receipts, or any other documents illustrating communications to M/WBE businesses. These documents must show evidence of receipt by the M/WBE subcontractor/supplier.

3.	Made the construction plans, specifications, and requirements available for review by prospective M/WBE subcontractors and suppliers
----	---

Bidder provided interested M/WBE subcontractors and suppliers with access to plans, specifications, and requirements for subject project.

Required documentation: Contents of advertisements or written notices to subcontractors should demonstrate compliance with this indicator.

4.	Initiated and documented correspondences with M/WBE trade, community or business organizations
----	---

Not less than ten (10) calendar days prior to bid submittal, bidder requested assistance from agencies which recruit and place M/WBE subcontractors or suppliers. A list of such agencies is available from the Unified Government. Other organizations which promote M/WBE subcontractor or supplier activities may also be contacted.

Required documentation: Submit copy of each fax, letter, or email sent to outreach agencies requesting assistance in recruiting subcontractors. Faxed copies must include fax transmittal confirmation slip showing date and time of transmission. Mailed letters must include copies of metered envelopes or certified mail receipts. All communications must include the Unified Government project name, name of bidder, and contact person's name and phone number.

5.	Broke down or combined elements of work to further facilitate M/WBE participation
----	--

Bidder must demonstrate that reasonable efforts were taken to subdivide portions of work to increase opportunities for M/WBE participation.

Required documentation: Documented communications between prime and subcontractors or suppliers demonstrating that individual scopes of work were modified to facilitate M/WBE participation

6.	Advised M/WBE subcontractors and suppliers in obtaining bonds, lines of credit, or insurance
----	---

Bidder made efforts to advise and assist interested subcontractors in obtaining bonds, credit lines, and insurance required for subject project.

Required documentation: Contents of advertisements (Indicator 8) or written notices to subcontractors (Indicator 2) will determine compliance with this objective.

7.	Negotiated in good faith with interested M/WBE subcontractors and suppliers.
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Bidder acted in good faith with interested subcontractors and has rejected no bid other than for legitimate business reasons.

Required documentation: Submit: a) Copies of all subcontractor bids or quotes received; and b) Summary sheet organized by work type listing subcontractor company names with bid amounts for each work type. Identify selected subcontractor for each work type. If bidder elects to use own forces to perform a work type, include bid to show own costs for the work. Copies of bids or quotes from subcontractors and suppliers must also be included if those bids are used toward achievement of the M/WBE utilization goal and the business must also be listed on the Contractor Utilization Plan.

8.	Placed ads soliciting subcontractors/suppliers in a publication targeting M/WBE subcontractors/suppliers not less than 10 days prior to bid
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Not less than ten (10) calendar days prior to bid submittal, bidder conducted an advertising campaign designed to reach all segments of the Kansas City metropolitan business community by advertising in either newspapers, trade association publications, special interest publications, trade journals, community papers, or other media. Advertisement must be specific to the project, not generic, and may not be a place holder advertisement provided by the publication. Advertisement must be worded to ensure it does not exclude or limit number of potential respondents and must include:

- Unified Government project name and number;
- Name of bidder;
- Areas of work available for subcontracting;
- Contact person's name and phone number;
- Information on availability of plans and specifications;
- Bidder's policy concerning assistance to subcontractors in obtaining bonds and credit lines and/or insurance

Required documentation: Submit copies of advertisements and proof of publication dates.

Affidavit of Intended Utilization

Processing Instructions: Submit this form with your bid. MBE/WBE Goals must be met or evidence of Good Faith Efforts must be submitted with bid. Use additional forms as necessary to list all MBE/WBEs proposed.

Bidder know as _____ hereby states his intent that on the _____ project, Project # _____, Bidder intends to use the following subcontractors and suppliers to achieve the M/WBE goals established for this project:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$,as %:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$,as %:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$,as %:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$,as %:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$,as %:

Project Goals: MBE% _____ WBE% _____
 Intended Utilization: MBE% _____ WBE% _____

The M/WBE goals established for this project will or will not be met by the participation shown in this affidavit.

Submitted By: _____

Date: _____

Contractor Utilization Plan

Processing Instructions: This form is due within 2 days of bid opening or proposal due date. MBE/WBE Goals must be met or evidence of Good Faith Efforts must be submitted with bid. Use additional forms as necessary to list all MBE/WBEs proposed.

Bidder know as _____ hereby states his intent that on the _____ project, Project # _____, Bidder intends to use the following subcontractors and suppliers to achieve the M/WBE goals established for this project:

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$ _____, as %:		

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$ _____, as %:		

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$ _____, as %:		

Firm Name:	Address:	
Contact:	Phone:	Fax:
Trade:	LBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Certification Agency:
Total value of subcontract, in dollars:\$ _____, as %:		

Project Goals: MBE% _____ WBE% _____
 Intended Utilization: MBE% _____ WBE% _____

The M/WBE goals established for this project will or will not be met by the participation shown in this affidavit.

Submitted By: _____

Date: _____

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

My Commission Expires _____

Notary Public

Letter of Intent to Subcontract

Processing Instructions: This form is due within 2 days of bid opening or proposal due date. A Letter of Intent to Subcontract must be submitted for each M/WBE subcontractor listed on the Contractor Utilization Plan. MBE/WBE Goals must be met or evidence of Good Faith Efforts must be submitted with bid.

Bidder know as _____ hereby states his intent that on the
Prime Contractor
_____ project, Project # _____, bidder intends to
enter a contractual agreement with _____, who will
M/WBE Subcontractor

provide the following goods / services in connection with the above referenced project:

Scope of Work: _____

Total value of subcontract: \$ _____

Percentage of total contract: % _____

Subcontractor:

I intend to work on the above named project, perform the indicated scope of work, and receive the indicated compensation contingent upon award of the contract to the aforementioned Prime Contractor.

Signature: Sub Contractor

Print Name

Title Date

Prime Contractor:

I intend to utilize the above-named M/WBE subcontractor on the referenced project for the scope of work indicated contingent upon award of the contract to my firm.

Signature: Prime Contractor

Print Name

Title Date

OTHER FORMS

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

B I D FORM

To: The Unified Government of Wyandotte County/Kansas City, Kansas

Proposal of _____
(hereinafter called "Bidder") organized and existing under the laws of the State of

_____, doing business as _____

1. In compliance with the Invitation for Bids, the undersigned Bidder hereby proposes to furnish all material, tools, labor, and equipment and to perform all Work necessary to construct and complete the Project known as:

Project Name: Bid B41164, Wyandotte County Park Trail
Project ID: PRJ2077

in strict accordance with the Contract Documents, within the time set forth herein, and at the prices stated herein.

2. By submission of this Bid, each Bidder certifies, and in the case of a joint Bid each party thereto certifies, as to his own organization, that:
 - A. The price submitted is independently arrived at without collusion.
 - B. The bidder has not knowingly influenced and promises that it will not knowingly influence a Unified Government employee or former Unified Government employee to breach any of the ethical standards set forth in Article 12 (Ethics in Public Contracting) of the Unified Government's Procurement Code.
 - C. The Bidder has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in Section 29-635 of the Procurement Code.
 - D. The Bidder represents that it has not retained and will not retain a person to solicit or secure a Unified Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
3. Bidder hereby agrees to complete all Work and to fully complete the Project within ninety (90) days from the date specified in the Notice to Proceed.

4. Bidder acknowledges receipt of the following Amendment(s):

5. Bidder agrees to furnish all materials, labor, tools, equipment and perform all the Work described in the Contract Documents for the following prices:

(Listed on attached table)

Respectfully submitted,

By _____
Signature

Date

SEAL

Title

Bidder's form of business is:

Attest _____
(Corporations only)

_____ An INDIVIDUAL,
residing in the State of _____

Business Address

_____ A PARTNERSHIP,
organized in the State of _____

License Number (if applicable)

_____ A CORPORATION,
incorporated in the State of _____

BID BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____,
(Name of Contractor)

as Principal, and _____,
(Name of Surety Company)

a corporation duly organized under the laws of the State of _____, and authorized to do business in Kansas as Surety, are held and firmly bound unto the Unified Government of Wyandotte County/Kansas City, Kansas for the sum of _____

Dollars (\$_____), for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for:

Project Name: Bid B41164, Wyandotte County Park Trail
Project ID: PRJ2077

NOW, THEREFORE, if the Unified Government shall accept the bid of the Principal, and the Principal shall enter into a Contract with the Unified Government in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Unified Government the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Unified Government may in good faith contract with another party to perform work covered by said bid and such larger amount for which the Unified Government may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _ day of _____, 20____.

CONTRACTOR:

SURETY:

(Name of Contractor)

(Name of Surety)

(Seal)

(Seal)

By _____

By _____

(Name)

(Name)

(Title)

Attorney in Fact

(Witness)

(Witness)

Approved:

(Chief Counsel)

**LABOR AND MATERIAL
PAYMENT BOND**

*Note to Clerk of the District Court, Wyandotte County, Kansas:
Please enter date filed and furnish case number.*

Case No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT WE,

(Name of Contractor)

as Principal, and

(Name of Surety Company)

a corporation duly organized under the laws of the State of _____, and authorized to do business in Kansas, as Surety, are held and firmly bound unto the State of Kansas, as Obligee hereinafter called State, for the use and benefit of claimants as hereinafter defined, in the amount of _____

Dollars (\$ _____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 20____, entered into a contract with Unified Government of Wyandotte County/Kansas City, Kansas, for

Project Name: Bid B41164, Wyandotte County Park Trail
Project I.D.: PRJ2077

in accordance with drawings and specifications prepared by **Alfred Benesch & Company**, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, if the said Principal or the sub-contractor or sub-contractors of said Principal shall pay all indebtedness incurred for supplies, materials, or labor furnished, or equipment used or consumed in connection with or in or about the construction or making of the above-described improvements, this obligation shall be void; otherwise, it shall remain in full force and effect.

Signed and sealed this _____ day of _____, 20____.

CONTRACTOR:

SURETY:

(Name of Contractor)

(Name of Surety)

(Seal)

(Seal)

By _____

By _____

(Name)

(Name)

(Title)

Attorney in Fact

(Witness)

(Witness)

Approved:

(Assistant U.G. Attorney)

PERFORMANCE BOND

Filing of this bond with the Clerk of the District Court is not a contract requirement

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT WE,

(Name of Contractor)

as Principal referred to herein as Contractor, and

(Name of Surety Company)

a corporation duly organized under the laws of the State of _____, and authorized to do business in Kansas, as Surety, are held and firmly bound unto the Unified Government of Wyandotte County/Kansas City, Kansas, as Obligee, in the amount of _____

Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20____, entered into a contract with the Unified Government of Wyandotte County/Kansas City, Kansas for

**Project Name: Bid B41164, Wyandotte County Park Trail
Project I.D.: PRJ2077**

in accordance with drawings and specifications prepared by **Alfred Benesch & Company**, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the Unified Government and its obligation is not affected by any such alteration or extension provided the same is within the scope of the Contract. Whenever Contractor shall be, and is declared by Unified Government to be in default under the Contract, the Unified Government having performed Unified Government's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions; or

- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Unified Government and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Unified Government, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completions arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean total amount payable by Unified Government to Contractor under the Contract and any amendments thereto, less the amount properly paid by Unified Government to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Unified Government or successors of the Unified Government.

Signed and sealed this _____ day of _____, 20__

CONTRACTOR:

SURETY:

(Name of Contractor)

(Name of Surety)

(Seal)

(Seal)

By _____

By _____

(Name)

(Name)

(Title)

Attorney in Fact

(Witness)

(Witness)

Approved:

(Assistant U.G. Attorney)

**UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS
APPOINTMENT OF PROCESS AGENT FORM**

_____, as CONTRACTOR, having entered into written agreement, dated _____, 20____, for construction of certain public work described as

Project Name: Bid B41164, Wyandotte County Park Trail
Project ID: PRJ2077

does hereby appoint _____,

whose address is _____,

Kansas, as process agent, in compliance with the requisites of Section 16-113, General Statutes of Kansas as amended, 1980.

Duly executed this _____ day of _____, 20_____.

Contractor _____

By _____

Title _____

Processing instructions:

1. *A Contractor who is doing business as an individual, a partnership, or an unincorporated association and who is not a resident of the State of Kansas shall execute this document.*
2. *Contractor shall file one copy of this document with the Clerk of the District Court of Wyandotte County, and one copy with the City's contracting agency.*
3. *Pursuant to paragraph 15 of the Instructions to Bidders a contract will not be executed until this form is completed and filed.*

FOREIGN CORPORATION RESIDENT AGENT DESIGNATION

Contractor is a corporation, and is not incorporated in the State of Kansas. Contractor must be authorized to do business in the State of Kansas in accordance with K.S.A. 17-7302 *et seq.* Contractor designates below a resident agent in the State of Kansas as required by K.S.A. 17-7925 and 17-7302, and as specified elsewhere herein.

Resident Agent

Name and Address

Processing instructions:

- 1. A Contractor who is a corporation and is not incorporated in the State of Kansas shall execute this document.*
- 2. Contractor shall file one copy of this document with the City's contracting agency.*
- 3. Pursuant to paragraph 15 of the Instructions to Bidders a contract will not be executed until this form is completed and filed.*

RELATIONS BETWEEN CONTRACTOR AND LABOR

The Contractor shall make a good faith effort to employ local labor within the Kansas City, Kansas Area insofar as it is available, for all work, except key positions. For purposes of this subparagraph, "local labor" is defined as resident of the Kansas City, Kansas Area for three (3) months next preceding the letting of this contract. "Key Position" is defined as superintendent, foreman, or timekeeper. If local labor is not available in sufficient quantities within the Kansas City, Kansas Area to prosecute and complete the work sufficiently, the Contractor may recruit labor from outside the area, only after he or she has satisfied the Engineer that a good faith attempt has been made to recruit local labor and only with the permission of the Engineer. It shall be understood that in the event of a reduction in labor force, preference will automatically be given to local residents of the Kansas City, Kansas Area.

COPELAND ANTI-KICKBACK ACT

The contractor and all subcontractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

TECHNICAL PROVISIONS

TECHNICAL PROVISIONS

A separate volume titled "Technical Provisions and Standard Drawings for Roads and Sewers", prepared by the Engineering Division, Public Works Department, Kansas City, Kansas contains technical provisions applicable to this job and are hereby included by reference. The latest edition of the Technical Provisions can be found at the Wyandotte County Website -www.wycokck.org- under Departments pull down menu under Public Works. The revision posted at the time of the pre-bid conference shall apply.

**DRAWINGS
(SEPARATE)**