

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is dated as of the _____ day of _____, 20____ (“Effective Date”), by and between the City of Olathe, Kansas (“Owner”) and Howden USA Company (“Contractor”). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

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

Water and Wastewater SCADA Security Project, PN 5-C-008-21. Project work shall consist of upgrades to the Howden Equipment PLC panels and controls at Cedar Creek Wastewater Treatment Plant. Work will be outlined in the Vendor Quote attached.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Water and Wastewater SCADA Security Project, PN 5-C-008-21.

ARTICLE 3 – ENGINEER

3.01 The Owner shall assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 500 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 530 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of

requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$ 500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$ 500.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds the amount that follows, subject to adjustment under the Contract:

\$ 251,085.30

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Payment Schedule*

- A. Payments shall be made to Contractor in accordance with milestone schedule identified within Contractor's Bid contained within the Contract Documents.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate prescribed under K.S.A. 16-1901 et seq., and any amendments thereto.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the

Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, if any.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs, if any such reports and drawings are so identified.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to ____, inclusive).
 - 2. Performance & Maintenance bond (pages ____ to ____, inclusive).
 - 3. Statutory bond (pages ____ to ____, inclusive).
 - 4. Appointment of Process Agent.
 - 5. Non-collusive Affidavit of Prime Bidder.
 - 6. ARPA Contractual Agreement
 - 7. General Conditions (pages ____ to ____, inclusive).
 - 8. Supplementary Conditions (pages ____ to ____, inclusive).
 - 9. Specifications as listed in the table of contents of the Project Manual.

10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages ___ to ___, inclusive).
 - b. Bid Documents (Notice to Bidders, Instructions to Bidders, Questionnaire of Personnel Practices Bid Bond, Bid Form).
 - c. Certificates (Compliance with Personnel Practices, Good Standing to Conduct Business in Kansas, Insurance).
 - d. Federal Funds Project Documents (if applicable) (Standard General Conditions Division 100, General Specifications Division 200, Required Contract Specifications, General Wage Decision).
 - e. Submittals.

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 Successors and Assigns

- A. Owner and Contractor each represent that they are duly authorized to enter into the Contract, and binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

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

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

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

OWNER:

City of Olathe, Kansas

By: _____

Title: Mayor

Attest: _____

Title: _____

Address for giving notices:

P.O. Box 768
Olathe, KS 66051-0768

CONTRACTOR:

Howden USA Company

By: Jim Trace

Title: Environmental Sales Manager

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

Attest: _____

Title: _____

Address for giving notices:

2475 George Urban Blvd

Depew, NW 14043

Contractor's Phone Number

License No.: _____

(where applicable)

Agent for service of process:

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

Approved as to form:

City Attorney/Deputy City Attorney/
Assistant City Attorney

**CITY OF OLATHE, KANSAS
PERFORMANCE & MAINTENANCE BOND**

_____, as surety (“Surety”), and _____, as principal (“Contractor”), enter into and execute this Bond (“Performance Bond”), and bind themselves in favor of the City of Olathe, Kansas as obligee (“Owner”), in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner, (the “Penal Sum”).

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. _____ to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects in a workmanlike manner, as designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract Documents, General and Technical or Special Specifications of the Contract, Plans, and any Written Addendum’s or Change Orders, (hereinafter collectively referred to as the “Contract”), as may be necessary to ensure the timely completion of the _____ Project in the City of Olathe, Johnson County, Kansas (the “Project”);

WHEREAS, the Owner has required the Contractor to furnish this Performance and Maintenance Bond as a condition to executing the Contract with the Contractor, and has further required the Contractor to guarantee and maintain the Project work in accordance with the Contract for a period of two (2) years from the date of final payment.

It is agreed if the Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Contract, according to the true intent and meaning in each case, and the Project improvements shall be constructed in accordance with the Contract so as to endure without defect and need of repair for a period of two (2) years from the date of final payment, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents as designated, defined and described in the Contract, and in accordance with the Olathe Technical Specifications and Design Criteria Manual) and all terms and conditions, both express and implied.
- 2) If the Owner shall provide to Surety the written notice of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such notice to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.

- 3) Upon the delivery of the Owner's written notice of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
- a. **Proceed Itself.** Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Contractor will not be retained, and provided further that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment and performance bond must remain in full force and effect; or
 - b. **Tender a completing contractor acceptable to Owner.** Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated (as defined in the General Conditions of Contract) with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance and maintenance bond and a separate statutory payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can utilize those sums in making timely payment to the completing contractor; or
 - c. **Tender the Full Penal Sum.** Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract

for fulfillment and completion of the Contract and the expiration of any applicable warranties; or

- d. **Other Acts.** Take any other acts mutually agreed upon in writing by the Owner and the Surety.
- e. **IT SHALL BE NO DEFENSE TO SURETY'S OBLIGATION TO UNDERTAKE ONE OF THE PRECEDING COURSES OF ACTION THAT THE CONTRACTOR CONTENDS THAT IT IS NOT IN BREACH OR DEFAULT OF THE CONTRACT, OR THAT THE NOTICE OF BREACH OR DEFAULT WAS DEFECTIVE, OR THAT THE CONTRACTOR HAS RAISED ANY OTHER CLAIM OF DEFENSE OR OFFSET, PROVIDED ONLY THAT SURETY HAS RECEIVED THE WRITTEN NOTICE OF THE OWNER AS SPECIFIED IN PARAGRAPH 2.**

- 4) In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) re-procurement costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) The Surety provides this Performance and Maintenance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 7) All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____
Attention: _____
Street: _____
City, State, _____
ZIP: _____

CONTRACTOR

Name: _____
Attention: _____
Street: _____
City, State,
ZIP: _____

OWNER

City of Olathe, Kansas
Attn: Sabrina Parker, Project Manager
P.O. Box 768
Olathe, KS 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 8) The recitals contained in this Performance and Maintenance Bond are incorporated by reference herein and are expressly made part of this Performance and Maintenance Bond.
- 9) This Performance and Maintenance Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 10) In the event any legal action shall be filed upon this Performance and Maintenance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

STAFF NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

**CITY OF OLATHE, KANSAS
STATUTORY BOND**

_____, a _____, organized under the laws of the state of _____, and authorized to do business in the state of Kansas, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this Bond ("Statutory Bond"), and bind themselves unto the City of Olathe, Kansas and any Beneficiary of this Statutory Bond, in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and the City of Olathe as Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. _____ to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects, in a workmanlike manner, designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract, General and Technical or Special Specifications of the Contract, and any Written Addendum's or Change Orders, (the "Contract"), used or consumed in connection with or in or about the _____ Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to guarantee payment of all labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, and all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and

WHEREAS, the Owner has required the Contractor to furnish this Statutory Bond as a condition to awarding and executing the Contract with the Contractor, to guarantee the stated obligations.

NOW THEREFORE, if the Contractor and the subcontractors of the Contractor shall pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, or the making of the Project improvements described in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect;

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract and all of the terms and conditions, both express and implied, and, without limitation, specifically including the Contractor's obligation to pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project.

- 2) For purposes of this Statutory Bond, "Beneficiary" is defined as any person or entity to whom there is due any sum for labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, or whom otherwise incurred indebtedness for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and any such person or entity's assigns.

- 3) In no event is the Surety obligated hereunder for sums in excess of the Contract Sum or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner.
- 4) Upon receipt of a claim from a Beneficiary hereunder, the Surety must promptly, and in no event later than thirty (30) days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
 - a. making payment of all sums not in dispute; and
 - b. stating the basis for disputing any sums not paid.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed in connection with the Project. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) **METHOD OF NOTICE.** All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____
 Attention: _____
 Street: _____
 City, State,
 ZIP: _____

CONTRACTOR

Name: _____
 Attention: _____
 Street: _____
 City, State,
 ZIP: _____

OWNER

City of Olathe, Kansas
 Attn: Sabrina Parker, Project Manager
 P.O. Box 768
 Olathe, Kansas 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 7) The recitals contained in this Statutory Bond are expressly made part of this Statutory Bond.
- 8) This Statutory Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 9) In the event any legal action shall be filed upon this Statutory Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

NONCOLLUSIVE AFFIDAVIT OF PRIME BIDDER

STATE OF New York.

COUNTY OF Erie)

Matt Mosier , being first duly sworn, deposes and states that:

(1) He/she is representative (owner, partner, officer, representative or agent) of Howden USA Company, (company) the bidder having submitted the attached bid:

(2) He/she is fully informed of the contents of the attached bid and of all the circumstances surrounding the preparation of such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, representatives, employees, or parties interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other bidder, firm, or person to:

(a) submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted;

(b) refrain from bidding in connection with such contract;

(c) fix the price or prices in the attached bid, or the price or prices of any other bidder;

(d) fix any overhead, profit, or cost element of the bid price, or the bid prices of any other bid;

(e) secure an unlawful advantage against the City of Olathe, Kansas, or any person interested in the proposed contract.

(5) The price or prices quoted in the attached bid are fair and proper and not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties interest, including this affiant.

Matt Mosier

By Matt Mosier

Title Sales Manager

Subscribed to and sworn to before me, the undersigned, a Notary Public, this 24th day of January, 2024.

(Seal)

LYNN M. DOLEGALA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01DO4915871
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES FEB. 28, 2026

Lynn M. Dolegala
Notary Public

My Commission Expires: FEB. 28, 2026

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

STAFF NOTES:

1. A Statutory Bond is required only in connection with a Contract exceeding One Hundred Thousand dollars (\$100,000.00) in accordance with K.S.A. 60-1111 as amended.
2. **Contractor** shall be responsible for ensuring this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

APPOINTMENT OF PROCESS AGENT

KNOW ALL MEN BY THESE PRESENTS:

That pursuant to K.S.A. 16-113, as amended, _____ (“Contractor”) does hereby appoint and designate _____, a resident of the State of Kansas, as and for their process agent, and hereby consents, without power of revocation, that actions may be commenced against said Contractor in any court of competent jurisdiction in Johnson County, Kansas, which might arise out of a contractual relationship with the State of Kansas or any political or taxing subdivision or unit thereof by service of process on said Contractor, and said Contractor stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the President or any other chief official of said corporation.

IN WITNESS WHEREOF the above named Contractor has caused these presents to be executed by its president and its secretary, and authenticated by its corporate seal at _____, in said State of _____, this _____ day of _____, 20____.

CORPORATE NAME _____

By _____

President _____

SEAL

ATTEST:

Secretary

Aftermarket Proposal



From: Jessica Forbus
Direct Tel: 417-380-5756
Email: Jessica.Forbus@howden.com
Your Sales Contact: Matthew Mosier - matt.mosier@howden.com

Web: www.howden.com

To: Floyd Koder **Date:** 08/25/2023
Company: Cedar Creek WWTP - Olathe, KS **Page No:** Page 1 of 7
Ref: Cedar Creek WWTP - Olathe, KS
Quote No: HUSANS.D.AFM.012888/A
Regarding: QUO S439 Cedar Creek LCP and MCP Upgrades

Thank you for your enquiry submitted to Howden Aftermarket.

We are happy to present below quotation for Howden Retrofit Solution, based upon your requirements for improved ratings of your equipment:

Howden COVID disclaimer:

Any delays or additional cost, including but not limited to COVID site specific requirements, testing, travel circumstances, or delays caused by overall Supply Chain challenges, are not included.

Additional charges related to Service & Supervision will be invoiced at the rates indicated on the rate sheet.

!!! Please carefully review PAYMENT & DELIVERY TERMS that apply to this proposal.

As we look forward to receiving and shipping your order, agreement on terms is important to secure quick and timely processing of your order.

Line	Part No.	Product Description	Delivery time	Qty	Unit Price USD	Total Item USD
1	Spec	LCPs (3) upgrades	32 Week(s)	3.00	30,900.00	92,700.00

Howden is pleased to offer the following budget proposal for upgrading the blower control systems on the Howden (Turblex) compressors installed at Cedar Creek WWTP (Model KA5-SV-GK200, S/N: 8666-68). Howden recommends upgrading the Local Control Panels (LCP) and Master Control Panel (MCP) to our latest control standards for continued blower operation performance.

This budget proposal is based on the panel wiring diagrams from the original project (5681T) performed by Howden. This proposal assumes all other instruments and process equipment integrated with the control panels are in good operating condition.

For firm quotations, please provide pictures of the inside & outside of the panel enclosure, and a picture of the operational transmitter display located on the HMI.

Please notify Howden of any past or future changes that may have occurred regarding electrical components, process changes, system upgrades, etc...

We look forward to our continued relationship and are pleased to offer this quotation for your consideration.

Control Upgrades to the Local Control Panels (LCP):

Programmable Logic Controller (PLC):

Quantity (3) upgrading existing Allen-Bradley SLC 5/05 PLC to Allen-Bradley CompactLogix PLC includes digital and analog I/O, RTD cards as required, power supplies and circuit breakers as required, wiring as required and latest PLC functionality including Stand-by/Ready for start conditions, start sequence, variable diffuser remote/local operation, PRC-4 vane control algorithm, stop sequence, alarm and shutdowns, drive motor high current warning/alarm operation, restart blocking, auxiliary oil Pump operation if equipped, "Normal Mode," "Service Mode" or "Test Mode" control modes, automatic vane exercise, loss of signal for analog signals, loss of signal for digital signals and alarm history with date-time stamp.

Human-Machine Interface (HMI):

Quantity (3) upgrading existing Allen Bradley PanelView Plus 1250 to Allen Bradley 10.4" PanelVIEW Plus 7 (please note this is not an equal to current outdoor HMIs) includes adapter plate as required and latest Howden graphics and control screens (actual screens may vary based on individual plant process) including operation screen display, compressor transmitter display, motor transmitter display, compressor device display, ancillary devices display, Alarm/Trip display, alarm history display and configuration display.

Communications available protocol will be Ethernet based on PLC system.

Software Factory Testing is included and performed prior to shipping

Documentation includes updated electrical diagrams included for installation and O&M records, controls philosophy and updated O&M component cutsheets and complete reference tag database.

Engineering Documents for customer information will be in 10-12 weeks after acceptance of the order by Howden. Estimated shipment will be 26-32 weeks (subject to material availability) after receipt of release of engineering documents by Howden.

Additional Considerations:

Any significant wear or abnormalities identified requiring parts shall be billed. Howden will provide an estimate of additional materials required.

Electrical connections between Howden's equipment and the main power source is not included.

Communication cable to be provided and installed by the customer.

Main power supply is required by customer.

Wiring between existing skid components and skid-mounted control panel is provided by Howden.

Rewiring, if required, between remote components and/or remote control panel is provided by the customer.

Items Not Included: taxes or bonds, special programming, mapping to DCS, disposal of old components, communication cable, hardware (fittings, bolts, nuts, gaskets), additional wiring, field service and any other items not specifically listed above

2	Spec	MCP Upgrades	32 Week(s)	1.00	53,382.00	53,382.00
3		HOWDEN TO INSTALL PANEL UPGRADE ON (3) LCP AND (1) MCP FROM SLC 5/05 TO CONTROLLOGIX FOR (3) KA5SV-GK200 BLOWERS SN 8666-8668				50,050.00
4		BONDS				4,903.30

Control Upgrades to the Master Control Panel (MCP):

Programmable Logic Controller (PLC):

Quantity (1) upgrading existing Allen Bradley SLC 5/05 PLC to Allen Bradley CompactLogix PLC includes digital and analog I/O cards as required, power supplies and circuit breakers as required, wiring as required, Edge Gateway compatible with Howden Uptime, Basin tuning service required (not included) and latest PLC functionality based on individual plant process.

Human Machine Interface (HMI):

Quantity (1) upgrading existing Allen Bradley PanelView Plus 1250 to Allen Bradley 10.4" PanelVIEW Plus 7 (please note this is not an equal to current outdoor HMIs) includes adapter plate as required and latest Howden graphics and control screens (actual screens may vary based on individual plant) including process overview display, zone tuning display, blower operations display, blower timing display, MOV configuration flow display, MOV configuration pressure display, header blow-off valve display if applicable and signal fault detection display.

Communications available protocol will be Ethernet based on PLC system.

Remote Monitoring with Howden Uptime:

Quantity (1) edge gateway devices for Howden Uptime connectivity includes remote user onboarding and training, Uptime Basic subscription for one year, including: high resolution data capture, cloud aggregation and storage, Cloud-based real-time monitoring and trending dashboards, advanced anomaly detection with configurable real-time email alerts and expert equipment health and recommendation reports.

Documentation includes electrical diagrams included for installation and O&M references, controls philosophy and updated O&M cutsheets and complete reference tag database.

Software Factory Testing is included and performed prior to shipping.

Engineering Documents for customer information will be in 10-12 weeks after acceptance of the order by Howden. Estimated shipment will be 26-32 weeks (subject to material availability) after receipt of release of engineering documents by Howden.

Additional Considerations:

All downstream process control instrumentation will need to be in working order before arrival such that Howden can verify effective and stable process control with the Master Control Panel.

Any significant wear or abnormalities identified requiring parts shall be billed. Howden will provide an estimate of additional materials required.

Electrical connections between Howden's equipment and the main power source is not included.

Communication cable to be provided and installed by the customer.

Main power supply is required by customer.

Wiring between existing skid components and skid-mounted control panel is provided by Howden.

Rewiring, if required, between remote components and/or remote control panel is provided by

the customer.

Items Not Included: taxes or bonds, special programming, mapping to DCS, disposal of old components, communication cable, hardware (fittings, bolts, nuts, gaskets), additional wiring, field service and any other items not specifically listed above

Total

201,035.30

Any estimates of delivery dates are based on our current backlog of orders and may therefore differ from the achievable delivery dates at the time of the actual order being placed.

Howden will seek to consolidate shipments as much as possible.

We ask that you clearly state on your Purchase order, if and when partial delivery is desired.

Price and estimated delivery schedule is based upon material price and availability and factory loading at the time of the proposal, and may be subject to adjustment at the time of order placement and acknowledgement.

For any Service & Supervision offered, an estimation was calculated using current rate sheet as a guide. Cost is approximate and a final invoiced amount will present actual cost based on actual hours as required/requested by site personnel.

Typically, our service advisors will travel with diagnostic equipment only and will advise a mechanic/millwright with tools.

Howden standard inspection, packaging and documentation apply to content of this proposal, unless specified above. Additional requirements will be quoted upon request.

For Service & Supervision – additional Labor charge may apply to base rate, overtime rate and double time rate depending on actual hours on workday(s), weekend(s) and Howden locally observed holiday(s).

Howden will supply equipment from Howden workshops/manufacturing sites and via Howden Supply chain approved suppliers sourced worldwide, optimized to give our customers the best value option.

Non Inventory parts are non returnable; returned inventory parts are subject to restocking fee, and will not be accepted without agreement with Howden.

In the event an account has an overdue balance with Howden, Howden reserves the right to hold shipment until payments are received, and the account is current.

Terms and Conditions: This offer is made expressly subject to and conditioned upon acceptance of Seller's Standard Terms for Sale of Goods (available at: www.Howden.Com/Terms). Unless otherwise negotiated and agreed to by Seller in writing, no other terms shall apply regardless of any statement on Buyer's documents to the contrary.

Purchase Order Submission:

A purchase order or a letter of acceptance is required as written notification of acceptance of this Proposal. Please ensure that your purchase order clearly states the Proposal number and is issued to:

Howden USA Company

Emailed to: Orderdesk.USA@Howden.com

Howden minimum order value is \$500.

For any failure to pick up or direct shipment of goods within 10 Business days after written notice of availability, Howden will invoice a storage fee of \$500 per week for the duration of the storage.

For Prepay and Charge Orders, there will be a 10% charge of the net selling price applied to the order to cover the standard transportation and handling expenses to the first North American or Canadian destination.

This will be added as a separate item or an invoice will be issued separately to the Buyer. This does not apply to overseas or expedited shipments. In addition, any expenses incurred by Seller because of special delivery arrangements requested by Buyer shall be billed to Buyer. Howden does

not provide copies of freight invoices.

For Credit Card Payments a 2% surcharge will be added onto orders over \$3,000 when a credit card is the method of payment. The order value, including the surcharge, will be payable at the time of order placement and shall not be accepted at any point hereafter. Please note that your purchase order is still required as part of the new policy.

Delivery Terms: INCOTERMS 2020
EX Works - Origin

Seller is responsible for having the goods packed and made available at the Sellers's premises. The Buyer bears the full risk and cost from there to the destination, including the loading of the cargo.

Payment Terms: Progress Billing milestones are:

30% upon receipt of order
30% upon halfway of delivery
40% at readiness to ship
made payable 30 Days Net.

Warranty: Twelve (12) months from installation or eighteen (18) months after date of shipment, which ever occurs first.

Price Validity: This proposal expires in 30 days

General: This Proposal and acceptance of any Purchase Order is subject to credit approval from Coface. Pricing does not include Federal, State or Export taxes or duties.

In order to schedule a Service or Supervision to your site, your acknowledgement requesting the dispatch of a Service or Supervision technician and a copy of an approved purchase order is required.

Please note that in case the Steel Price Index changes more than +/- 3% from the time of the proposal to the time of receiving the Purchase Order from Buyer, Howden reserves the right to adjust the price accordingly.

Upon submittal of orders to Howden, Buyer acknowledges its name will be added to a confidential list of customers that purchased Howden product(s), and agrees that from time to time, Seller, in its discretion, may provide its name as a reference for these products to new customers or to contractors to demonstrate where these products have been sold.

Howden is ISO 9001:2015 Certified.

Regards,

Jessica Forbus

Howden Aftermarket



See how Howden can help you minimise unplanned downtime and maximise efficiencies in your equipment through our Uptime solution.

Tap into remote assistance:

Augmented Reality live annotation technology with real-time communications to connect remote product experts to on-site field technicians.

Get Remote Support 

From: Calvin Kelly
Direct Tel: +14173805699
Email: Calvin.Kelly@howden.com
Your Sales Contact: Matthew Mosier - matt.mosier@howden.com

To:		Date:	08/25/2023
Company:		Page No:	Page 1 of 4
Ref:	Cedar Creek WWTP - Olathe, KS		
Quote No:	HUSAJYM.AFM.001526/A		
Regarding:	SITE 439 CEDAR CREEK WWTP OLATHE KS KA5SV-GK200 8666-8668		

Thank you for your enquiry submitted to Howden Aftermarket.
 We are happy to present below quotation for Howden Service & Supervision:

!!! Please carefully review PAYMENT & DELIVERY TERMS that apply to this proposal
 As we look forward to receiving and shipping your order, agreement on terms is important to secure quick and timely processing of your order.

Line	Part No.	Product Description	Delivery time	Qty	Unit Price USD	Total Item USD
1		HOWDEN TO PREFORM PANEL UPGRADE ON (3) LCP AND (1) MCP FROM SLC 5/05 TO CONTROLLOGIX FOR (3) KA5SV-GK200 BLOWERS SN 8666-8668	0 Day(s)	1.00	50,050.00	50,050.00

Quote Contains Estimated Time, Expenses & Toolbox Fee for above Services

NOTE: This quote is based on technician working 10 hrs. MON-FRI and 8 hrs. Sat. If your site schedule differs from these hrs, additional expenses WILL occur. please contact Calvin Kelly @ 417-380-5699 Or Calvin.Kelly@Howden.com asap if your site does not work 10 hrs. MON-FRI and 8 hrs. Sat. Site internal delays will also be billed per rate sheet.

(2) 10-hour Travel Days
(14) 10-hour Work Day(s) (Mon-Fri)
(2) 8-hour Work Day(s) (Sat)
(2 8-hour Standby Day(s) (Sun)

Contact:
Floyd Koder
913-971-5142
fkoder@olatheks.org

Total 50,050.00

Any estimates of delivery dates are based on our current backlog of orders and may therefore differ from the achievable delivery dates at the time of the actual order being placed. Howden will seek to consolidate shipments as much as possible.

We ask that you clearly state on your Purchase order, if and when partial delivery is desired.

Price and estimated delivery schedule is based upon material price and availability and factory loading at the time of the proposal, and may be subject to adjustment at the time of order placement and acknowledgement.

For any Service & Supervision offered, an estimation was calculated using current rate sheet as a guide. Cost is approximate and a final invoiced amount will present actual cost based on actual hours as required/requested by site personnel.

Typically, our service advisors will travel with diagnostic equipment only and will advise a mechanic/millwright with tools.

Howden standard inspection, packaging and documentation apply to content of this proposal, unless specified above. Additional requirements will be quoted upon request.

For Service & Supervision – additional Labor charge may apply to base rate, overtime rate and double time rate depending on actual hours on workday(s), weekend(s) and Howden locally observed holiday(s).

Howden will supply equipment from Howden workshops/manufacturing sites and via Howden Supply chain approved suppliers sourced worldwide, optimized to give our customers the best value option.

Non Inventory parts are non returnable; returned inventory parts are subject to restocking fee, and will not be accepted without agreement with Howden.

In the event an account has an overdue balance with Howden, Howden reserves the right to hold shipment until payer are received, and the account is current.

Terms and Conditions: This offer is made expressly subject to and conditioned upon acceptance of Seller's Standard Terms for Sale of Goods (available at: www.Howden.Com/Terms). Unless otherwise negotiated and agreed to by Seller in writing, no other terms shall apply regardless of any statement on Buyer's documents to the contrary.

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A purchase order or a letter of acceptance is required as written notification of acceptance of this Proposal. Please ensure that your purchase order clearly states the Proposal number and is issued to:

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Emailed to: Orderdesk.USA@Howden.com

Howden minimum order value is \$500.

For any failure to pick up or direct shipment of goods within 10 Business days after written notice of availability, Howden will invoice a storage fee of \$500 per week for the duration of the storage.

For Prepay and Charge Orders, there will be a 10% charge of the net selling price applied to the order to cover the standard transportation and handling expenses to the first North American or Canadian destination.

This will be added as a separate item or an invoice will be issued separately to the Buyer. This does not apply to overseas or expedited shipments. In addition, any expenses incurred by Seller because of special delivery arrangements requested by Buyer shall be billed to Buyer. Howden does

not provide copies of freight invoices.

For Credit Card Payments a 2% surcharge will be added onto orders over \$3,000 when a credit card is the method of payment. The order value, including the surcharge, will be payable at the time of order placement and shall not be accepted at any point hereafter. Please note that your purchase order is still required as part of the new policy.

Delivery Terms:

INCOTERMS 2020
EX Works - Origin

Seller is responsible for having the goods packed and made available at the Sellers's premises. The Buyer bears the full risk and cost from there to the destination, including the loading of the cargo.

Payment Terms:

Payment Terms are Net 30 days from invoice date: Invoice will be issued for the full amount upon receipt of Order.

Warranty:

Twelve (12) months from installation or eighteen (18) months after date of shipment, which ever occurs first.

Price Validity:

This proposal expires in 15 days

General:

This Proposal and acceptance of any Purchase Order is subject to credit approval from Coface. Pricing does not include Federal, State or Export taxes or duties.

In order to schedule a Service or Supervision to your site, your acknowledgement requesting the dispatch of a Service or Supervision technician and a copy of an approved purchase order is required.

Please note that in case the Steel Price Index changes more than +/- 3% from the time of the proposal to the time of receiving the Purchase Order from Buyer, Howden reserves the right to adjust the price accordingly.

Upon submittal of orders to Howden, Buyer acknowledges its name will be added to a confidential list of customers that purchased Howden product(s), and agrees that from time to time, Seller, in its discretion, may provide its name as a reference for these products to new customers or to contractors to demonstrate where these products have been sold.

Howden is ISO 9001:2015 Certified.

Regards,

Calvin Kelly

Howden Aftermarket



See how Howden can help you minimise unplanned downtime and maximise efficiencies in your equipment through our Uptime solution.

Tap into remote assistance:

Augmented Reality live annotation technology with real-time communications to connect remote product experts to on-site field technicians.

Get Remote Support 

CITY OF OLATHE
AMERICAN RESCUE PLAN ACT (ARPA) CONTRACT ADDENDUM

In accordance with laws, regulations, and provisions related to the use of the funds received under the federal American Rescue Plan Act (“ARPA”), Contractor agrees to comply with the applicable provisions of this Addendum. The terms used have the meaning specified in the applicable statute, law, or regulation.

A. Documentation of Compliance and Eligibility, Cooperation with Audits or Reviews, Document Retention, and Other Requirements.

1. Contractor agrees that, upon City request, Contractor will document compliance with any terms and conditions set forth by the federal government (including but not limited to the Department of Treasury) related to use of ARPA funds.
2. Contractor agrees that, upon City request, Contractor will report detailed costs and provide supporting documentation to confirm eligibility for ARPA funds.
3. Contractor agrees to cooperate with any local, state, or federal review, audit, or investigation related to this Contract including but not limited to: 1) producing documents and making individuals available for interviews, and 2) allowing access by local, state, or federal agencies to audit the Contractor’s books and records related to ARPA funds.
4. Contractor hereby agrees to maintain records and financial documents related to this Contract for five (5) years after all ARPA funds used for this Contract have been expended, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

B. Assurances of Compliance with Title VI of the Civil Rights Act of 1964, 31 C.F.R. Part 22 (U.S. Department of Treasury Regulations).

1. Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin, 42 U.S.C. §§ 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.
2. *Contractor agrees to include the preceding paragraph in all subcontracts under this Contract.*

C. Equal Employment Opportunity, 2 C.F.R. Part 200 Appendix II(C).

If this Contract is a Federally Assisted Construction Contract (as defined in 41 C.F.R. 60-1.3) exceeding \$10,000, during the performance of this Contract, Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
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, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary

of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the City so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
9. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
10. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the

Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

B. Copeland “Anti-Kickback” Act, 2 C.F.R. Part 200 Appendix II(D).

For Construction Contracts in excess of \$2,000: Contractor and Subcontractors shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145; 18 U.S.C. 874) as supplemented by Department of Labor regulations (29 C.F.R. part 3). The Act provides that each Contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

C. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 2 C.F.R. Part 200 Appendix II(E).

For Contracts in excess of \$100,000 that involve employment of mechanics or laborers: Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. Rights to Inventions Made Under a Contract or Agreement, 2 C.F.R. Part 200 Appendix II(F).

If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

E. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), 2 C.F.R. Part 200 Appendix II(G).

For Contracts in excess of \$150,000: Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. Debarment and Suspension (Executive Orders 12549 and 12689), 2 C.F.R. Part 200 Appendix II(H) and U.S. Department of Treasury Local Fiscal Recovery Fund Award Terms and Conditions § 9(b)(iv).

Contractor hereby certifies they are not debarred, suspended or otherwise excluded from holding contracts involving federal funds, and is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

1. Due to its receipt of Fiscal Recovery Funds, City is a participant in a nonprocurement transaction (defined at 2 C.F.R. 180.970) that is a covered transaction pursuant to 2 C.F.R. 180.210 and 31 C.F.R. 19.210. Therefore, this Contract is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. 180.220(b)(1); 31 C.F.R. 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. 180.220(b)(2); 31 C.F.R. 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. 180.220(b)(3); 31 C.F.R. 19.220(b)(3)).
2. If this Contract is a covered transaction as set forth in the paragraph above, Contractor hereby certifies as of the date hereof that Contractor, Contractor's principals (defined at 2 C.F.R. 180.995), and the affiliates (defined at 2 C.F.R. 180.905) of both Contractor and Contractor's principals are not excluded (defined at 2 C.F.R. 180.935) and are not disqualified (defined at 2 C.F.R. 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. 19.120(a), (1) this Contract shall be void, (2) City shall not make any payments of federal financial assistance to Contractor, and (3) City shall have no obligations to Contractor under this Contract.
3. ***Contractor must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters.*** This certification is a material representation of fact relied upon by the City, and all liability arising from an erroneous representation shall be borne solely by Contractor.

4. If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to the City, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

G. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), 2 C.F.R. Part 200 Appendix II(I).

1. Contractor hereby certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor has disclosed and will disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
2. *Contractors that bid or apply for a Contract exceeding \$100,000 (including this Contract, if applicable) must file with the City the attached certification form, and must also cause any Subcontractor (at any Tier) exceeding \$100,000 to file with the Tier above it the attached certification (Attachment 1).*
3. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

H. Procurement of Recovered Materials, 2 C.F.R. Part 200 Appendix II(J), 2 C.F.R. 200.323, and 40 C.F.R. Part 247.

1. This section applies if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during the City’s preceding fiscal year exceeded \$10,000.
2. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s [Comprehensive Procurement Guideline Program website](#). Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

I. Prohibition on certain telecommunications and video surveillance services or equipment, 2 C.F.R. Part 200 Appendix II(K), 2 C.F.R. 200.216, and Public Law 115-232 Section 889.

1. Contractor is prohibited from obligating or expending loan or grant funds to: (a) procure or obtain; (b) extend or renew a contract to procure or obtain; or (c) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
2. As described in Public Law 115–232, section 889, covered telecommunications equipment is: (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

J. Domestic Preferences for Procurements, 2 C.F.R. Part 200 Appendix II(L), 2 C.F.R. 200.322.

1. For the purposes of this Section, the terms below are defined as:
 - a. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
2. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subawards including all contracts and purchase orders for work or products under this award.

K. Other Applicable Federal Statutes, Laws, and Regulations Prohibiting Discrimination.

Contractor agrees to comply with:

1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

L. Other Applicable Federal Statutes, Laws, Regulations and Provisions.

1. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
2. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and Contractor is encouraged to establish workplace safety policies to decrease accidents caused by distracted drivers.
3. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

**ATTACHMENT 1 TO CITY OF OLATHE ARPA CONTRACTUAL ADDENDUM
BYRD ANTI-LOBBYING CERTIFICATION – 31 C.F.R. PART 21**

The undersigned certifies, to the best of the undersigned’s knowledge and belief, that:

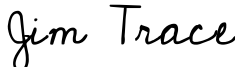
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection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

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

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

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

The Contractor, Howden USA Company, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor’s Authorized Official

Jim Trace, Environmental Sales Manager
Name and Title of Contractor’s Authorized Official

1-30-2024
Date