

**DOCUMENT 530A  
DAYS CERTAIN  
AGREEMENT**

**THIS AGREEMENT** is dated as of \_\_\_\_\_, by and between the City of Topeka (hereinafter called Owner) and \_\_\_\_\_ (hereinafter called Contractor).

Owner and Contractor in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. Work.**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project for which the Work under the Contract Documents is to be performed is:

\_\_\_\_\_  
\_\_\_\_\_

**Article 2. Engineer.**

The project has been designed by \_\_\_\_\_  
The \_\_\_\_\_ Specify Design Engineer or City Engineer) is hereinafter designated as the Engineer and is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**Article 3. Contract Time.**

3.1. The actual Contract Time will commence on and be completed by the dates set forth on the Start Work Order, signed by Contractor and City of Topeka Project Manager. Any issuance by Owner of Stop Work Order, or Resume Work Order, or Revised Start Work Order will control Contract Time as defined herein.

3.2 The Contract Time is estimated to commence with an issuance of a Work Order by the Owner on or about \_\_\_\_\_ (month day, year), provided the Contractor complies with the required submittal times for the executed Agreement and its counterparts, and be substantially completed on or before \_\_\_\_\_ (month day, year), and completed and ready for final completion and payment in accordance with paragraph 14.13 of the General Conditions on or before \_\_\_\_\_ (month day, year). Said dates are subject to revision and will be controlled by the issuance by Owner of Stop Work Order, or Resume Work Order, or Revised Start Work Order.

3.3. Incentive-Disincentive Provision. The project will result in significant adverse impact to the traveling public in the form of increased time and cost to negotiate detours around the project location. Therefore, an incentive-disincentive provision shall be applicable to the Contract Time stipulated for substantial completion in paragraph 3.1. Substantial Completion, for the purposes of this incentive-disincentive provision is specifically defined in the Supplementary Conditions.

3.3.1. The Contractor will receive an incentive payment of \$\_\_\_\_\_ per day for each day or part thereof that the project is substantially complete prior to 12:00 mid-night on the date stipulated for substantial completion in paragraph 3.1. The incentive payments will be made up to a maximum limit of \$\_\_\_\_\_ for a maximum of \_\_\_\_\_ days prior to the date of substantial completion.

3.3.2. The Contractor will be assessed as a disincentive the per day amount stipulated in paragraph 3.3.1 above for each day or part thereof that the project is not substantially complete by 12:00 mid-night on the date stipulated for substantial completion in paragraph 3.2. The disincentive assessment will continue until the Engineer notifies the Owner of substantial completion in accordance with the provisions of paragraph 14.8 of the General Conditions. The Owner may deduct the total accrued disincentive assessment from the final payment due to the Contractor if sufficient monies are available. Otherwise, the Contractor shall pay to the Owner the total accrued disincentive assessment.

3.4. Extensions of Time. This paragraph replaces paragraph 12.2 of the General Conditions.

3.4.1. No extension of Contract Time beyond the date stipulated for substantial completion in paragraph 3.1 shall be considered for reasons including, but not limited to, variations between actual and bid quantities, availability of materials and equipment, abnormal weather conditions, addition of extra work contiguous with the project and normal coordination with the work of others.

3.4.2. If the Contractor believes that any item of Work or event has unreasonably delayed or prevented Contractor's progress and ability to substantially complete the Work within the stipulated time, Contractor may make a claim therefor in accordance with paragraph 12.1 of the General Conditions.

3.5. Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not complete and ready for final payment by the date specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal 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) Contractor shall pay Owner according to the following schedule:

<b>Contract Amount</b>	<b>Substantial Completion Liquidated Damages</b>	<b>Final Completion Liquidated Damages</b>
\$0 to \$25,000	\$150	\$150
\$25,001 to \$50,000	\$250	\$250
\$50,001 to \$100,000	\$400	\$400
\$100,001 to \$500,000	\$750	\$750
\$500,001 to \$1,000,000	\$1,250	\$750
\$1,000,001 to \$1,500,000	\$2,000	\$1,250
\$1,500,001 to \$2,000,000	\$2,500	\$1,500
\$2,000,001 to \$5,000,000	\$3,000	\$2,000
\$5,000,001 to \$10,000,000	\$5,000	\$3,000
\$10,000,001 and up	\$7,000	\$4,000

For each day that expires after the time specified in paragraph 3.2 for Substantial and Final Completion. The Owner may deduct the total accrued liquidated damages from the final payment due to the Contractor.

**Article 4. Contract Price.**

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds as per the Contractor's Bid, which is attached as an exhibit to this Agreement.

**Article 5. Payment Procedures.**

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1. Progress Payments. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer within thirty-five (35) days following the end of the period for which payment is being requested, provided the application for payment is submitted within seven (7) days following the end of the period. Periods shall end the 15th of each month. All progress payments will be based on the number of units or estimated percentage of the Work completed in accordance with paragraph 14.1 of the General Conditions.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.7 of the General Conditions.

- (1) 90% of Work completed. If the project has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer upon written request by the Contractor, Owner, may determine that as long as the character and progress of the Work remain satisfactory to them, that the retainage on account of Work completed be reduced

or eliminated. Reduction or elimination of the retainage will be at the sole discretion of the Owner.

- (2) \_\_\_\_\_% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, including timely submission of an Application for Final Payment, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.13. Contractor agrees that failure to timely submit a Final Application for Payment pursuant to paragraph 14.13(a) will result in forfeiture of any remaining amounts due.

5.3. Interest. All monies not paid when due hereunder shall not bear interest.

#### **Article 6. Contractor's Representations.**

In order to induce Owner to enter into this Agreement, Contractor represents that he fully complies with the requirements stated in paragraphs 3b. through 3g. of the Bid Form, which is attached as an exhibit to this Agreement.

#### **Article 7. Contract Documents.**

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

- 7.1. This Agreement.
- 7.2. Performance and other Bonds contained in this Project Manual.
- 7.3. Work Order.
- 7.4. General Conditions contained in this Project Manual.
- 7.5. Supplementary Conditions contained in this Project Manual, if any.
- 7.6. The City of Topeka Standard Technical Specifications for Sewers, Streets, Sidewalks and Miscellaneous Construction of the City of Topeka, Kansas, current edition, with any addenda thereto.
- 7.7. Specifications contained in this Project Manual, if any.
- 7.8. Project Drawings, bearing the following title: \_\_\_\_\_
- 7.9. Addenda \_\_\_\_\_ to \_\_\_\_\_, inclusive.

7.10. Contractor's Bid, including all attachments to Bid, which is attached as an exhibit to this Agreement.

7.11. Equal Employment Opportunity and Affirmative Action Program requirements stated in the Instructions to Bidders.

7.12. Notification of Minority and Women Business Enterprises requirements stated in the Instructions to Bidders.

7.13. Wage Rate Determination will only be inserted if wage rates are required by state or federal law (where the state or federal funding source) requires the City to enforce wage rates for project.

7.14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Change Orders and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

#### **Article 8. Suspension of Contractor.**

8.1. Contractor will be placed on Owner's "List of Suspended Contractors" for a period of time from the date of written notification by Owner if Contractor fails to perform in accordance with specific provisions stated in paragraph 8.2 of this Article 8. The period of Suspension shall be established as follows:

First Suspension - 1 year

Second Suspension - 2 years

Third Suspension - Permanent

During the period of suspension, the Contractor will not be permitted to submit a bid to Owner to perform Work either directly or indirectly or as a subcontractor.

8.2. The Contractor shall be suspended upon written notification by Owner:

8.2.1. If Contractor exceeds the Contract Times for substantial completion or final payment as indicated in paragraph 3.1, plus any extensions thereof made in accordance with Article 12 of the General Conditions, by more than ten (10) days or 15%, whichever is greater, or

8.2.2. Upon occurrence of any of the events stated in paragraph 15.2 of the General Conditions.

8.2.3. If Contractor fails to complete any outstanding "One-Year Correction Period" work, as defined in paragraph 13.12 of the General Conditions, on previously completed projects within 90 calendar days of written notification by the Owner, the Contractor will be placed on Owners "List of Suspended Contractors", as defined in

paragraph 8.1, Article 8. Suspension of Contractor, and shall remain suspended until such time as the corrective work has been certified as complete in writing by the Owner.

**Article 9. Miscellaneous.**

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are 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.

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Design Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Design Engineer on their behalf.

**CITY OF TOPEKA, KANSAS**

**CONTRACTOR LEGAL NAME**

\_\_\_\_\_  
Robert M. Perez, Ph.D., City Manager

\_\_\_\_\_  
Authorized Signer

ATTEST:

\_\_\_\_\_  
Brenda Younger, City Clerk

APPROVED AS TO FORM AND LEGALITY  
DATE \_\_\_\_\_ BY \_\_\_\_\_

C&P DIRECTOR  
\_\_\_\_\_