

Allen Park Belleville Brownstown Twp. Dearborn Heights Ecorse Lincoln Park	<h1 style="color: blue;">Downriver Utility Wastewater Authority</h1> <p style="color: blue;">25605 Northline Road • Taylor, Michigan 48180</p>	River Rouge Riverview Romulus Southgate Taylor Van Buren Twp. Wyandotte
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ADDENDUM 1 TO: REQUEST FOR PROPOSALS

November 5, 2019

**PROGRESSIVE DESIGN/BUILD SERVICES FOR A
THERMAL BIOSOLIDS DRYING SYSTEM AT THE
DOWNRIVER WASTEWATER TREATMENT FACILITY**

All changes, additions and/or clarifications detailed in this Addendum are hereby incorporated into the Documents for the above stated project, and modify the original document. Bidder shall acknowledge receipt of Addendum prior to proposal submission.

The major revision to this project and RFP is the separation of the dryer equipment procurement from the DB Entity to DUWA. The DB Entity will incorporate the DUWA selected dryer equipment into the project design, installation, commissioning and testing.

Proposal Due Date: Extended to Tuesday **December 31, 2019 at 3:00 pm EST.**

Section 2.3 Request for Clarification:

Requests for Clarification must be submitted prior to 2pm on December 13, 2019. An addendum will be provided in writing by December 20, 2019.

Section 2.4 Pre-Proposal Meeting:

Meetings will be conducted on December 11 and 12, time slots will be assigned based on availability.

Table 2.8.1: Procurement Schedule Milestones and Dates

Milestone	Date
Addendum 1	November 5, 2019
Optional Pre-Proposal Meetings (tentative)	Dec 11/12, 2019
Requests for Clarification Deadline	Dec 13, 2019
Deadline for RFP Submittal	Dec 31, 2019
Interviews	Jan 21/22
DUWA Board Approval of Selected DB Entity	Feb 2020
Negotiations	Feb/Mar, 2020
Issue NTP	Mar 2020

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Replace Section 5.1 Project Overview with:

The project consists of Progressive Design/Build Services for the design, installation, commissioning and performance testing of a Thermal Biosolids Drying System, as well as one (additional) dewatering centrifuge. The thermal drying system equipment will be selected and procured by DUWA. The integrated design and installation of the dryer equipment shall be provided by the DB entity as detailed below. All other materials and equipment shall be recommended, designed, furnished and installed by the DB entity.

Replace first paragraph of Section 5.2 -The Project Delivery Overview and Schedule, with:

The procurement of the Project is occurring with two overlapping RFPs. The first RFP is the procurement of the Thermal Biosolids Drying System equipment through a separate RFP. DUWA will select the equipment vendor and procure the dryer equipment. This second RFP is the procurement of the progressive Design-Build entity.

Replace, Table 5.2.1 – Project Schedule:

The schedule below is provided to convey the goal of expediting completion. The DB entity shall prepare a project schedule with their proposal which will become the basis of the contract schedule and define the required completion and warranty dates.

Selection of the Technology Equipment Supplier (Dryer Manufacturer) will be completed prior to execution of the contract with the DB Entity.

Negotiations, Contract Development and Issue NTP	March 16, 2020
DB Entity – Prepare, Submit and Approval – Applicable Permits	TBD
Submit 30% Design	May 2020
DUWA Review Comments with Approval/Release Critical Equipment (30 days after receipt of 30% design)	June 2020
Submit 60% Design	July 2020
EGLE Part 41 – Comments (8 weeks)	Sept 2020
Open Book GMP Proposal	Aug 2020
DUWA Board Approves Final Negotiated GMP Scope and Fee **Following receipt of EGLE 60% comments	Sept 2020
100% Design Submission	Oct 2020
EGLE Part 41 Permit	Dec 2020
Construction NTP	Jan 2020
Construction Substantially Complete	Sept 2021
Start-Up and Commissioning	Nov 2021
Preliminary 30-day Acceptance Test	Dec 2021
Final Completion - Deliver warranties, O&Ms, record drawings	Jan 2022
Two Year Warranty Period w/ 30-day Stress Test	Jan 2024

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Replace Section 5.3 with: Dryer Technology Supplier Coordination

DUWA is selecting a Dryer Technology Supplier to provide the dryer equipment package. The equipment procurement will be contracted directly with DUWA and the DB Entity will be responsible for design integration, submittal coordination, equipment receipt, installation, commissioning and testing.

The following manufacturers are interested in preparing proposals and can be contacted to discuss their equipment:

Komeline Sanderson
Contact: Brian Komeline
Phone: 908-234-1000 X317
Email: btkomline@komline.com

Hubert Technology, Inc
Contact: Chip Pless
Phone: 704 990 2046
Email: chip@hhusa.net

Kruger, Veolia Water Technologies
Sudhakar Viswanathan
Phone: 919-800-9221
Email: sudhakar.viswanathan@veolia.com

BCR Environmental Corporation
Contact: Rick Treleven
Phone: (904) 819-9170 Ext. 207
Email: RTreleven@bcrinc.com

Replace Section 5.8 Scope of Work – Phase 1, Task 3 Critical Equipment Procurement, with:

The critical dryer system equipment will be selected by DUWA and integrated into the PROJECT design by the DB Entity. This task will include schedule analysis, identification of critical schedule dates and early approval and release for fabrication (by DUWA) prior to approval of Phase II.

The DB Entity will analyze the project schedule and identify any other long lead, schedule critical equipment. This task will include schedule analysis and justification for the need to include early procurement of other critical equipment in this Phase I task. It is anticipated that the centrifuge equipment will need to be analyzed for Phase I procurement.

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Replace Section 5.11 with:

5.11 Scope of Work - Phase III – Warranty Period and Additional Stress Test

DUWA will require a two (2) year warranty period upon substantial completion of Phase II for the Work. The DBE’s warranty will exclude the obligations of the Equipment Supplier and the performance test requirements for the biosolids dryer. DUWA will provide the DBE with notice of the date and the time for the Phase III performance test and the DBE may elect to provide a representative to be on-site during the test.

Stress Test Performance Requirements (within 30 day period):

1. 10 days at Daily Average
2. 7 continuous days at Max Month Capacity
3. 7 continuous days at Full Capacity

Design Criteria	Daily Avg.	Max. Month	Capacity
Wet Mass Processed, WTPD	140.0	156.0	175.0
Dewatered Cake Solids, %TS	28.5	26.0	26.0
Cake Bin Storage Fill, % of Level	85.0	85.0	85.0
Cake Bin Solids Retention Time, hrs.	8.1	7.3	6.4
Feedstock Loading Rate, lb TS/hr	3,630	3,380	3,790
Dryer Operation Uptime, % hrs/dy	91.5%	100%	100.0%
Inlet Drying Temperature, deg F	See Note *	<525	550
Outlet Dry Solids Temperature, deg F	95 - 115	< 120	<100
Dried Solids Content, %DS	90.0 – 92.0	> 92.0	92.0
Drying Evap. Demand, lb H2O/hr	8,830	9,370	11,000

** Inlet temperature safely operating in range of 330 to 500 deg F for thermal oil and up to 280 deg F for hot water.*

Replace Section 5.12.1 Budget and Allocation of Specified Costs:

5.12.1 Budget and Allocation of Specified Costs

The budget for the total PROJECT is \$18,273,366 plus contingencies and third party costs. The anticipated cost of the DB Entity scope is \$11,773,366, with DUWA procuring the Dryer Equipment directly under separate contract at a budget target of \$6,500,000.

The DB Entity shall provide a review of DUWA’s Project Budget (provided below) and include a brief analysis of the costs, risks and unknowns in Section 7 of their technical proposal.

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Dryer Equipment Package	Budget
Thermal Dryers (2) and Thermal Oil Heaters System	\$ 6,500,000
Design-Build Entity	Budget
Design & Permitting	\$ 638,485
Site Work & Construction Mobilization	\$ 986,750
Temporary Dewatering During Construction (3 BFPs for 10 months)	\$ 478,500
Construction Management	\$ 522,395
Administrative and P&P Bonds	\$ 133,500
Insurances - Builder's Risk & Liability	\$ 232,175
Dewatering Bldg. Equipment Demolition & Disposal	\$ 2,234,400
New Piping for Cake Bypass Conveyance	\$ 185,250
Feed Solids Strainers to Centrifuges	\$ 375,315
High-Solids Centrifuge (3rd Unit)	\$ 520,000
Centrifuge Feed Pumps, Grinders & Polymer System	\$ 91,100
Cake Feed Bin, Extraction Shafts & Pumps to Dryers	\$ 920,000
Commissioning & Start-Up	\$ 290,220
Critical Spare Parts	\$ 160,241
Buildings & Yard Piping Construction	\$ 1,799,365
Civil Construction [Structural & Concrete Pads]	\$ 522,395
Electrical & Instrumentation Controls	\$ 1,683,275
Design Build Budget	\$ 11,773,366
DUWA Other Project Costs	Budget
DUWA Project & Process Equipment Management (CPM)	\$ 622,500
Total Project Budget	\$ 18,895,866
Contingency	\$ 2,143,000
Total Estimated Costs	\$ 21,038,866

Replace Statement in Section 5.12.2 Funding:

DUWA recently was selected to apply for the Water Infrastructure Finance and Innovation Act (WIFIA), for this and several other projects.

Section 6.3 Technical Proposal

Replace, Proposal Section 7: Local Presence – Delete requirement and related scoring.
 With: Proposal Section 7: Project Budget Review and Analysis.

Delete Section 6.4.3 Indicative Cost Estimate for Phase 2.

Section 7.4 Interviews, Add the following interview topic:

- Presentation of Project Cost Estimate and analysis of \$18,273,366 budget

Replace Attachment C – Design-Build Contract – Revised version attached.

SAMPLE
PROGRESSIVE DESIGN-BUILD CONTRACT

PROJECT: THERMAL BIOSOLIDS
DRYING SYSTEM

LOCATED IN:

Wyandotte, MI

EFFECTIVE DATE: _____

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- Exhibit B: Project Description and Scope of Work
- Exhibit C: Insurance Requirements
- Exhibit D: DBE Warranty Form
- Exhibit E: As-Builts

Progressive Design Build Agreement

This Progressive Design Build Agreement (this “Agreement”) is entered into as of _____, (“Effective Date”) by and between: Downriver Utility Wastewater Authority, Inc., (“DUWA”) and XXXXXX., the “Design Build Entity” or “DBE.” DUWA and the DBE may be referred to in this Contract collectively as the “Parties” or singularly as a “Party.”

In exchange for the mutual covenants and obligations contained herein, DUWA and the DBE agree as set forth below.

1. General

1.1 **Engagement.** DUWA hereby engages the DBE and the DBE hereby agrees to faithfully and diligently perform the Work in accordance with the terms and conditions contained in this Agreement and the Contract Documents. The Agreement shall be administered by DUWA and the DBE shall perform the work at the direction of DUWA and its Project Representative.

1.2 **Definitions.** The terms, words and phrases used in this Agreement and the Contract Documents shall have the meanings given them in the General Conditions included as Exhibit A.

1.3 **Project Description.** The project is the: **Thermal Biosolids Dryer System Project** (the "Project").

1.4 **System Operator and System Manager.** Veolia Water North America – Central, LLC (“Veolia”) has a contractual relationship with DUWA to operate and maintain the Downriver Wastewater Treatment Facility (“Facility”). OHM Advisors (“OHM”) is the manager of the Downriver Wastewater Treatment System (“System”) and is responsible for managing and supervising the day-to-day operations of DUWA. Both Veolia and DUWA will provide input on the Project, however, only DUWA’s Representative will be authorized to make decisions on DUWA’s behalf for the Project.

1.5 **Thermal Biosolids Drying Equipment Supplier.** OHM, on behalf of DUWA, will issue a separate Request for Proposal (“RFP”) for the procurement of a Thermal Dryer Equipment Supplier (“Equipment Supplier”). DUWA will select the Equipment Supplier and the DBE will contract separately with the Equipment Supplier to purchase the thermal dryer equipment. Any contract between DBE and the Equipment Supplier shall incorporate and require the Equipment Supplier to be bound by the terms of this Agreement and the applicable Contract Documents, and shall name DUWA as a third-party beneficiary. DBE shall provide copies of any contract entered into with Equipment Supplier to DUWA for review and comment prior to the execution of the contract. DUWA’s review of any such contract shall not constitute approval of the contract or any specific terms within the contract.

1.6 Relationship of Parties.

1.6.1 **DUWA and DBE.** The DBE is an independent contractor and not an agent, fiduciary, partner, member, subsidiary, of or otherwise affiliated with DUWA. Nothing

contained in this Agreement shall be deemed to constitute any Party a partner, agent, or legal representative of any other Party or to create a joint venture, partnership, agency, or any relationship between the Parties (unless such a relationship existed between certain Parties prior to the execution of this Agreement, in which case such relationship shall not be deemed to extend to the other Parties). The obligations of DUWA, on the one hand, and the DBE, on the other hand, hereunder are neither collective nor joint in nature.

1.6.2 **DBE and Third Parties.** Nothing contained in this Agreement gives the DBE or any third party any claim or right of action against DUWA that does not otherwise exist without regard to this Agreement.

1.7 **DUWA's Representative.** DUWA's Project Representative who will be the point of contact for DBE and is authorized to make decisions on DUWA's behalf regarding the Services is **Lambrina Tercala, Project Manager, OHM.**

1.8 **DBE's Representative.** The DBE's representative who is authorized to make decisions on the DBE's behalf regarding the Services is **TBD, Project Director.**

1.9 **Acknowledgement.** DBE acknowledges it has carefully examined and understands this Agreement and the Contract Documents; has investigated the nature, locality and site of the Project and the conditions and difficulties under which the Construction Work is to be performed, and enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of DUWA, OHM or Veolia, or any of their respective officers, agents, servants, or employees.

1.10 **Water Infrastructure Finance and Innovation Act.** All or portions of the Project may be funded by a loan provided under the Water Infrastructure Finance and Innovation Act ("WIFIA" or the "Act"). As such, this Agreement is subject to the requirements of the Act, 33 U.S.C. 3901 et seq., as amended and the implementing regulations at 40 CFR 35.10000 et seq.

2. **Contract Documents.**

2.1 This Agreement, together with the documents referenced below form the Contract Documents. The Contract Documents form the entire agreement between DUWA and DBE and are incorporated into the Agreement by reference as though fully set forth herein. If a conflict exists between the provisions of the Contract Documents, the provision in the Contract Document first listed below shall govern:

- a. Change Orders and Construction Change Directives
- b. Addenda, including but not limited to any addenda, modifications or amendments to this Agreement
- c. This Agreement and the incorporated Exhibits listed below
 - i. Exhibit A: General Conditions
 - ii. Exhibit B: Project Description and Scope of Work
 - iii. Exhibit C: Insurance Requirements
 - iv. Exhibit D: DBE Warranty Form

- v. Exhibit E: As-Builts
- d. Construction Documents
- e. The DBE's GMP Proposal
- f. The Request for Proposal
- g. The DBE's Response to the RFP

All prior agreements with respect to the matters contained in this Agreement are superseded hereby and each Party confirms that it is not relying on any representations or warranties of the other Party except as specifically set forth in this Agreement. The Contract Documents are intended to be fully complementary. The DBE shall carefully review all the Contract Documents for any conflicts or ambiguities and will promptly notify DUWA in writing through a request for clarification or information if it notices any conflict between or among Contract Documents. The DBE and DUWA will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to DUWA's acceptance of the GMP proposal.

2.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

3. Progressive Design-Build Services

3.1 **Phased Services.** DBE shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. The Project shall be implemented in three (3) phases.

3.2 **Phase 1 Services.** DUWA has selected the DBE on the basis of the DBE's statement of qualifications and mutually agreed pricing for the performance of the design concept, preliminary engineering, geotechnical investigations and detailed designs to a 60% completion level, as well as preparation of a proposed Guaranteed Maximum Price ("GMP") and schedule for the completion of design, construction and post-construction Phase 2 tasks, including performance testing, startup commissioning and operator training and support. The level of completion required for Phase 1 Services is defined in Exhibit B to this Agreement and the Contract Documents. The DBE acknowledges and accepts that it is responsible for all work reasonably required for the delivery of the 60% designs and proposed schedule and GMP, whether or not explicitly stipulated in the Agreement.

3.3 **Phase 2 Services.** In the event that the Parties have agreed upon the GMP and DUWA has issued a Notice to Proceed with Phase 2, DBE shall perform the Phase 2 services, all as further described in Exhibit B, Scope of Work (as updated or amended). DBE's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in Exhibit B to this Agreement and -Contract Documents.

3.4 Phase 3 Services. Upon Substantial Completion of the Project, the DBE will issue to DUWA a two (2) year warranty for the Work completed by the DBE in a form substantially similar to the DBE Warranty Form included as Exhibit D to be effective on the date of Substantial Completion.

~~DUWA will require a two (2) year warranty period upon Substantial Completion of Phase 2. Within the warranty period, DUWA will require a 30 day stress test to be completed, with timing of the test to be determined at the discretion of DUWA. Stress testing requirements are set forth in the Scope of Work included as Exhibit B.~~

3.4.3.5 GMP Proposal. Although preliminary cost estimates shall be provided continually by the DBE to the DUWA throughout the design development process, at the 60% design level, the DBE shall submit a GMP proposal to DUWA which shall include, at a minimum, the following:

- a) A proposed GMP, which shall be the sum of:
 - 1) DBE's Phase 2 Fixed Fee; and
 - 2) The estimated Cost of the Work, which shall be defined on an open-book basis, including only those costs reasonably and actually incurred by the DBE in the proper performance of the Work), inclusive of any DBE's Contingency, (as defined).

b) The 60% design documents, which are set forth in detail and are attached to the proposal;

c) A list of the assumptions and clarifications made by DBE in the preparation of the GMP proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the 60% design submission;

d) The Substantial Completion Date upon which the proposed GMP is based, and a schedule upon which the Substantial Completion Date is based; and

e) A schedule of unit prices and other substantiating documentation.

f) the GMP proposal shall remain in effect for a minimum of 60 calendar days from the date submitted, subject to the terms of the "off ramp" in Section 3.7.

3.5.3.6 Review and Adjustment to GMP. Upon receipt of DBE's GMP proposal for Phase 2, DUWA may: (a) accept the GMP and issue a Notice to Proceed with Phase 2 services, or (b) enter into a negotiation with DBE on the scope, GMP, and schedule, for Phase 2 services to achieve a mutually acceptable basis on which to proceed, or (c) reject DBE's proposal for Phase 2 and either: (i) cancel the Project, (ii) proceed with another design build entity, or (iii) exercise the "off ramp" provisions of Section 3.7. If the Parties agree upon the GMP and DUWA issues a Notice to Proceed with Phase 2, DBE shall perform the Phase 2 services, all as further described in the GMP proposal and Exhibit B, Scope of Work, as amended or revised.

3.63.7 Off Ramp.

a. If the parties enter into negotiations under Section 3.6(b) and are unable to reach an agreement on the DBE's GMP for Phase 2 within a period of twenty one (21) days, as may be extended by the mutual agreement of the parties, then the proposed GMP shall be deemed withdrawn and of no effect. In such event, DUWA and DBE shall meet and confer as to how the Project will proceed, with DUWA having the following options:

(i) DUWA may declare Phase 1 Services completed and authorize DBE to continue, as an extension of Phase 1, to complete a unified set of plans and specifications for use by DUWA to solicit competitive bids for construction of the Project and completion of DBE's responsibilities as the Engineer of Record, including the provision of engineering services during construction; or

(ii) DUWA may terminate the relationship with DBE and proceed to exercise its available options to perform the final design and construction with parties other than DBE.

b. If DUWA fails to exercise either of its options under Section 3.7(a) above within a reasonable period of time, DBE may give written notice to DUWA that it considers this Agreement completed. If DUWA fails to exercise either of the options under Section 3.7(a) within fifteen (15) days of receipt of DBE's notice, then this Agreement shall be deemed completed.

c. If DUWA terminates the relationship with DBE under Section 3.7(a), or if this Agreement is deemed completed under Section 3.7(b), then DBE shall have no further liability or obligations to DUWA under this Agreement, except for the submission to DUWA of all work product in accordance with Section 3.7(d), and DBE shall not have a claim for compensation for services anticipated in Phase 2.

d. If DUWA terminates this Agreement, DBE shall supply DUWA with copies of all design and construction documents, including all drawings, calculations and engineering documents ("Work Product") related to the design through the completion of the DBE's portion of the Work. DUWA shall also have the right to contract directly with any of DBE's sub-consultants for design-related services on this Project, and DBE shall take such steps as are reasonably necessary to enable DUWA to implement such relationships. DBE shall provide in any design sub-consultancy agreements that DUWA shall have the right to negotiate directly with such sub-consultants for the continuation of their services with respect to the Project, and that any provisions with respect to copyright or the ownership of instruments of service confirm such right of DUWA.

3.73.8 Completion. Once DBE has received a Notice to Proceed with Phase 2, DBE shall perform all design and construction services, and provide all material, equipment, tools, labor, manuals, start-up, commissioning and testing services for the Project necessary to complete the Work described and reasonably inferable from the Contract Documents.

4 Contract Time and Schedule.

4.1 **Phase 1 Work.** The DBE will commence the Phase 1 Work after execution of this Agreement and upon receipt of a written Phase 1 Notice to Proceed and shall complete the Phase 1 Work prior to the Milestone dates set forth in Section 4.3(a) unless otherwise duly amended by a written and executed Change Order or Construction Change Directive.

4.2 **Phase 2 Work.** The DBE will commence the Phase 2 Work upon receipt of a written Phase 2 Notice to Proceed and shall complete the Phase 2 Work prior to the Milestone dates set forth in Section 4.3(b).

4.3 Milestone Completion Dates.

a. Phase 1 Services shall be completed on or before the following milestone deadlines:

- Submittal of GMP: ~~July 1, 2020~~TBD

b. Phase 2 Services shall be completed before the following milestone deadlines:

- Substantial Completion: ~~July 1, 2021~~TBD
- Final Completion: ~~November 30, 2021~~TBD

c. Interim milestones shall be achieved in accordance with Exhibit B and the schedule approved by DUWA upon acceptance of the GMP and issuance of the Phase 2 Notice to Proceed.

d. All of the dates set forth in this Section 4.3 shall be subject to adjustment only in accordance with the General Conditions.

4.4 **Time is of the Essence.** Time is of the essence in the performance of this Work. DBE shall make whatever adjustments in working hours, manpower, equipment, etc. deemed necessary to complete the Work, at DBE's expense, in accordance with the terms of the Agreement and the specific schedule requirements hereof.

4.5 **Delay.** Delays caused solely by DUWA shall entitle the DBE to an extension of the Project schedule, but there shall be no adjustment in the DBE's compensation unless such delay is both unreasonable under the circumstances and beyond the contemplation of the parties as of the Effective Date of this Agreement.

4.6 **Liquidated Damages.** DBE understands that if Substantial Completion as set forth in the Milestones set forth in section 4.3(b) is not achieved by the specified dates that DUWA will suffer damages which are difficult to determine and accurately specify. DBE agrees that if Substantial Completion is not attained on the date set forth in Section 4.3(b), that Design Builder will be assessed Two-Thousand Dollars (\$2,000) as liquidated damages for each day Substantial Completion is delayed.

4.7 **Force Majeure.** Delays caused as a result of Force Majeure shall temporarily excuse nonperformance of obligations during the period of time the Force Majeure prevents performance, other than payment obligations; provided that DUWA may suspend payment with respect to the time period of the Force Majeure if DBE is unable to provide Service. The Party invoking Force Majeure shall notify the other Party as soon as reasonably possible of the Force Majeure, and shall specify the particulars thereof (including the expected duration thereof) and what actions have or will be undertaken to correct the Force Majeure. The Parties shall exercise reasonable good faith efforts to remove the cause or mitigate the effect of the Force Majeure. The DBE shall resume performance of the obligations under this Agreement immediately upon passing of the Force Majeure event.

4.8 **Normal Working Hours.** DUWA will determine the normal working hours for the Project.

5 Contract Price.

5.1 **Phase 1 Contract Price.** Subject to the performance by the DBE of its obligations hereunder, the DUWA agrees to pay the DBE for the performance of the Phase 1 Work a not to exceed amount of _____. The Contract Price includes all applicable federal and/or state sales, use, franchise, excise, assessments and other taxes which may now or hereafter be levied. Payments of the Contract Price will be allocated and disbursed on the basis of percentage completion of the major Tasks and in the amounts set forth below:

Phase 1: \$X,XXX,XXX Fixed Fee

- Task 1: Permitting
- Task 2: 30% Design
- Task 3: ~~Thermal Dryer Equipment and Centrifuge~~ Critical Equipment Procurement
- Task 4: 60% Design
- Task 5: Development of a Guaranteed Maximum Price for Phase II

5.2 **Phase 2 Contract Price.** For the Phase 2 work, DUWA shall pay DBE an agreed upon Phase 2 Contract Price as set forth in the GMP if accepted by DUWA.

5.3 **Procedure for Payment.** Subject to the conditions in this Section 5 and elsewhere in the Contract Documents, DUWA shall make payment within sixty (60) days after receipt of each properly submitted, accurate and approved Application for Payment (invoice) in accordance with the provisions of the General Conditions.

5.4 **Insurance and Bonds.** On or before the date specified in the Notice to Proceed, DBE shall provide financial security for the performance of its obligations under this contract through one or more payment and performance bonds that guarantee the DBE's timely performance of its obligations under this Agreement for the benefit of DUWA. The DBE shall secure such bonds from a company holding Certificates of Authority as acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in the Department of Treasury Circular 570. The DBE shall provide the insurance and bonds required in Exhibit C attached hereto and made a part hereof. The DBE acknowledges that it has read and understands

the insurance and bonding requirements set forth in Exhibit C and agrees that it shall comply with the terms and conditions thereof at no additional cost to DUWA.

5.5 Record Keeping and Financial Controls. DBE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and in such accounts as may be necessary for DUWA's utility accounting purposes. During the performance of the Work and for a period of three (3) years after Final Payment, DUWA and DUWA's accountants shall be afforded access from time to time, upon reasonable notice, to DBE's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which DBE shall preserve for a period of three (3) years after Final Payment. During the performance of the Work, "reasonable notice" to review, examine and audit DBE's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work shall be three business days' written notice.

5.6 Invoice documentation. The DBE agrees to provide such supporting documentation for each invoice as DUWA may reasonably require. DBE, if requested by DUWA, will provide an executed statutory form of conditional lien waiver and release with each invoice.

5.7 Retainage. Each and any invoice will be subject to a ten percent (10%) retainage by DUWA. The cumulative retainage invoice shall be paid upon completion and acceptance of the Work by DUWA and the City.

5.8 Payment to Subcontractors. DBE will pay amounts due to its subcontractors (if any) no later than fifteen (15) Business Days after receipt of payment from DUWA. DBE shall certify to DUWA in writing at the time of submittal of each invoice that all sub-subcontractors, subcontractors and suppliers have been paid for work and material from previous progress payments received, less any retainage, prior to receipt of any further progress payments. This provision in no way creates any contractual relationship between any sub-subcontractor, subcontractor or supplier and DUWA or any liability on DUWA for DBE's failure to make timely payments to them.

5.9 Final Payment Conditions. As a condition precedent to DUWA's final payment under this Agreement, DBE shall furnish certifications, satisfactory to DUWA, that state that no liens of any kind, including, but not limited to, mechanics' liens or other claims arising directly or indirectly out of any act or omission of such DBE or any of its subcontractors, sub-subcontractors or suppliers, have been made or attached against the Work or upon any property owned by DUWA. DUWA, at any time, without notice, may pay and discharge liens, claims, and encumbrances filed by the DBE's sub-subcontractors or suppliers and deduct the amount paid, together with costs and attorneys' fees, from compensation due to the DBE hereunder.

5.10 Final Payment Acceptance. The acceptance by DBE of the final payment under this Agreement shall constitute and operate as a release to DUWA for all claims and liability to the DBE, its representatives, subcontractors, sub-subcontractors, supplies and assigns for any additional compensation or payment relating to any and all things done or furnished to the services rendered by the DBE, except for claims then pending of which notice has been provided in writing

to DUWA. However, final payment shall in no way relieve the DBE of liability for its obligations or for faulty or defective work discovered after final payment.

5.11 **Disputes.** If DUWA disagrees with any portion of a billing, DUWA will notify the DBE within ten (10) Business Days of the disagreement, and the applicable Parties will attempt to resolve the disagreement using the methods set forth in the General Terms and Conditions. DUWA's payment of any amounts will not constitute a waiver of any disagreement with an invoice.

6 Ownership

6.1 **Work Product.** All drawings, specifications and other documents and electronic data furnished by DBE to DUWA under this Agreement ("Work Product") are deemed to belong to DUWA, and DUWA shall retain the ownership and property interests therein, including the copyrights thereto, in perpetuity. To the extent not inconsistent with DUWA's unrestricted use of the Work Product for the Project, Work, or Facility, DBE shall retain its rights in its pre-existing standard drawing details, designs, specifications, databases, computer software, proprietary information, documents, templates, and any other property owned by DBE on the date of this Agreement or developed outside of this Agreement.

6.2 **Project Ownership.** All of the Project equipment, materials and facilities that are designed and constructed by DBE will be the property of DUWA. DBE may not treat itself as the owner of the Project or any of the capital improvements thereof for federal tax or any other purpose and will not be entitled to borrow against, or mortgage or otherwise encumber any interest in the Project.

7 Notices.

All notices required pursuant to this Agreement shall be in writing and shall be deemed duly given when actually received by the recipient specified below. Any such notice may be sent by recognized courier service, mail, or electronic mail and will be addressed to the recipients as set forth below:

If to DUWA:
Rick Sollars, Chairman
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:
OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

James G. Fausone
Fausone Bohn, LLP
41700 W. Six Mile Road, Ste. 101
Northville, MI 48168
jfausone@fb-firm.com

If to DBE :
Name
Address
Contact Information

8 Miscellaneous Provisions.

8.1 **Entire Agreement.** This Agreement and the attached Exhibits contain the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither DUWA nor DUWA's agents have made any representations except those expressly set forth herein, and no rights or remedies shall be acquired by the DBE by implication or otherwise unless expressly set forth herein.

8.2 **Interpretation.** All the terms and provisions of this Agreement shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions were used in each separate term and provision. The headings in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of the Agreement or in any way affect the same. As used herein, the singular shall include the plural, and the plural include the signature. Unless the context otherwise expressly requires, the words "herein", "hereof", and "hereunder" and other words of similar import refer to the Agreement as a whole and not to any particular Article, Section or other subdivision.

8.3 **Amendments.** Except for Change Orders, no amendment or modification of this Agreement shall be binding unless in writing and duly executed by all Parties.

8.4 **Waiver.** No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party (or Parties) so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

8.5 **Remedies Cumulative.** The remedies reserved for DUWA herein shall be cumulative and additional to any other or further remedies provided in law or equity. Any waiver by DUWA of any provision of this Agreement shall not constitute a waiver of any other provisions of the Agreement.

8.6 **Assignment.** The DBE shall not assign all or any part of the Agreement, nor any Work, nor any payments due or to become due hereunder, without first obtaining consent in writing

from DUWA, which consent may be withheld in DUWA's sole and absolute discretions.

8.7 **Severability.** If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction (or arbitral tribunal), the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof, and the Parties shall substitute such invalid provision(s) with valid ones, which in their economic effect come so close to the invalid provisions that it can be reasonably assumed that the Parties would have executed this Agreement including those new provisions.

8.8 **Survival.** The provisions of Sections ____ of this Agreement shall survive the expiration or termination of this Agreement.

8.9 **Confidentiality and Nondisclosure.** DBE shall not disclose information regarding this Agreement or the Work, except for information that is required for the purposes of the performance of Work or in the public domain, to any person. Noncompliance by the DBE or others under the control or direction of the DBE with this obligation shall be sufficient cause for DUWA to immediately terminate this Agreement for cause without prior written notice and shall entitle DUWA to injunctive and other relief from a court of competent jurisdiction.

8.10 **Setoff.** DUWA is authorized to deduct any sums owed it by DBE (whether or not the debt arises out of this Agreement) from the payments due DBE under this Agreement. DUWA may also withhold payment from DBE in an amount sufficient to protect DUWA from any claims of third parties or any liens which arise as a result of DBE's or its subcontractors' and sub-subcontractors' performance of the Work.

8.11 **Execution.** The DBE represents that the individual signing the Agreement on behalf of the DBE has the authority to sign and bind the DBE. Duplicate copies of this agreement shall be signed by DUWA and the DBE with each party retaining one original document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**DOWNRIVER UTILITY WASTEWATER
AUTHORITY**

DESIGN BUILD ENTITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT B: PROJECT DESCRIPTION AND SCOPE OF WORK

This scope of work has been separated into the following five tasks:

- Task 1: Permitting
- Task 2: 30% Design
- Task 3: Critical Equipment Procurement
- Task 4: 60% Design
- Task 5: Development of a Guaranteed Maximum Price for Phase II/III

The details for each task are further detailed below.

Task 1 – Permitting

The DBE will be responsible for identification, submission, approval and payment of all applicable permits necessary to meet local, state and federal requirements including but not limited to:

- Michigan Department of Environment, Great Lakes, and Energy - Part 41- Permit
- Updates (if applicable) to existing NPDES Permit - NO. MI0021156
- City of Wyandotte - Building Permits or Business License Requirements

It is anticipated that the 30% Basis of Design will be provided to EGLE and review comments will be provided within 8 weeks of the 60% design submission. Additional review time can be addressed by General Conditions section 7.4 (Delays and Extensions of Time).

Task 2 - Basis of Design Development - 30% Design

The Basis of Design will outline key design requirements and features of the Dryer Project, together with a preliminary schedule and cost estimate. It will also be used in the various permit applications, as required for approval of the project.

During this task, the DBE will complete preliminary engineering of the Facility Improvements. Initially, a draft Basis of Design report will be submitted for review and comment by DUWA, OHM and Veolia. Once all comments are incorporated, the report will be submitted to Regulatory Agencies, as required. It is anticipated that this task will require two meetings with the stakeholders.

The DBE shall be responsible for developing the Basis of Design Report (BODR) in coordination with DUWA. The Basis of Design will include the following:

1. Preliminary project drawings and specifications completed to approximately 30% completion (see list below)
2. List of anticipated permits and regulatory requirements
3. Building code compliance overview with Structural Engineer Assessment
**Note Section 5.7.3 Assessment Report and Recommendations.
4. Material Sampling
5. Wastewater flow and loading projections
6. Governing mass balances
7. Process design and major equipment sizing
8. Odor and dust control analysis
9. Description of scope of upgrades for engineering disciplines
10. A list of major equipment for conveyance, mechanical process, HVAC, electrical
11. Estimated annual operational cost of the new facilities including all new equipment, chemicals, labor, electricity, gas and other utilities.
*It is anticipated that the existing polymer system will be sufficient for the additional centrifuge.
12. Operational requirements/support during construction, startup and testing.
13. Construction staging requirements and tie-ins to existing infrastructure
14. Preliminary cost estimate
15. Preliminary construction schedule List of Basis of Design Drawings

Civil

- Cover sheet
- Index of Drawings
- Legend, abbreviations and general notes
- Existing conditions and demolition plan
- Site layout plan
- Foundation plans
- Floor plans
- Wall sections

Mechanical Process

- Process Legend and General Notes
- Process Piping Schedules
- Process Flow Diagram
- General Arrangement plans showing major equipment and process piping
- Hydraulic profile
- Major interconnecting process piping outside dewatering building
- Process Equipment Schedule

Instrumentation and Electrical

- Piping and Instrumentation Drawings of Major Equipment and Chemical systems

- SCADA System Architecture
- Electrical Single Line Drawing
- Electrical Site Plan

The DBE will submit the Basis of Design Report to DUWA for review and comment. Comments on the draft Basis of Design report will be incorporated into a final Basis of Design Report and the detailed design drawings.

Task 3 - Critical Equipment Procurement - Dryer System & Critical Equipment Selection

The critical dryer system equipment will be selected by DUWA and integrated into the PROJECT design by the DB Entity. This task will include schedule analysis, identification of critical schedule dates and early approval and release for fabrication (by DUWA) prior to approval of Phase II. The critical dryer system equipment will be selected by DUWA and integrated into the PROJECT design by the DBE. This task will include schedule analysis, identification of critical schedule dates and early execution of a Purchase Order for submittals and fabrication prior to approval of Phase II.

The DBE will analyze the project schedule and identify any other long lead, schedule critical equipment. This task will include schedule analysis and justification for the need to include early procurement of other critical equipment in this Phase I task. It is anticipated that the centrifuge equipment will need to be analyzed for Phase I procurement.

Task 4 - Detailed Design - 60% Design

After acceptance of the final BODR, DBE's Engineer shall prepare the following Technical Exhibits:

- Drawings in accordance to the Drawing List included within the BODR
- Technical Specifications
- Final design calculations

The Technical Exhibits shall show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for the DBE, and shall be consistent with the final BODR. The DBE's Engineer shall provide in writing to DUWA the descriptions of any deviations in the Technical Exhibits from the final Basis of Design Report.

The DBE's Engineer shall take the Technical Exhibits to a point of 60% design completion of the final design. Technical Exhibits at the 60% level will, as appropriate, contain final site investigations; final project layout and features; detailed design of project features; detailed drawings and specifications; design calculations (civil, electrical, mechanical, structural); and

quality management reviews. The 60% design drawings shall generally include the general, civil, mechanical, structural, electrical, and instrumentation drawings. The control strategy will also be updated from the Basis of Design Report as required.

The DBE will be responsible for communication and submission of necessary engineering requirements to Michigan Department of Environment, Great Lakes and Energy (EGLE) and other state agencies for preliminary approvals within this task. The GMP proposal shall include all fees, completion of design costs and any remaining requirements for the DBE to acquire necessary state permits.

The DBE's Engineer shall develop the 60% Technical Exhibits, and furnish three paper copies and an electronic copy in both original file formats (i.e., MSWord; AutoCAD; etc.) and Adobe PDF format. These documents will serve as the GMP design documents.

Task 5 - Development of a Guaranteed Maximum Price (GMP) for Phase II

Once DUWA has reviewed and commented on the Detailed Design, the DBE will prepare and finalize the GMP Proposal. The purpose of the GMP Proposal is to delineate a firm and detailed Basis of Design, scope of work, price and schedule to complete the design and permitting, construction documents and subsequent construction and start-up of the facility. The GMP Proposal will be an "open book" proposal. An Open Book Proposal is developed in a collaborative and transparent manner where any and all line items and costs that sum up to the GMP will be provided by the delivery team at the necessary level of detail and are open to scrutiny and discussion by the stakeholders. The GMP Proposal will include the following:

- List of required permits and status
- Construction Documents (plans and specifications) developed to approximately 60% completion
- Construction schedule
- Construction sequencing plan
- Detailed fixed-price cost proposal including a risk register and schedule of values
- The risk register shall quantify the value and likelihood of the remaining project risks as the basis for the DBE's "contingency" in the phase II GMP.
- List of specific performance requirements
- Design review protocol
- Acceptance testing protocol

The DBE will establish a GMP utilizing a rigorous process including evaluation of the RFP, available as-builts, site visits, and detailed conceptual design meetings to establish initial site plans and project requirements. The DBE will conduct outreach for work they intend to

subcontract and engage the vendor community to solicit bid proposals for the project. The specialty subcontractor scopes will include receiving three alternate options. The GMP will be established utilizing detailed costs rather than budgets or allowances where feasible. The GMP delivery will be a completely open book process, sharing the entirety of the DBE's cost data. The elements of the GMP will include:

- General conditions
- Thermal Dryer Equipment Quote
- Centrifuge Equipment Quote
- Ancillary Equipment Quotes
- Demolition Cost
- Earthwork
- Structural concrete
- Rebar
- Miscellaneous Metals
- Underground piping
- Above ground piping
- Electrical
- Instrumentation & Controls
- SCADA Programming and System Integration
- Process equipment installation and commissioning
- Factory Acceptance Testing
- Initial 30 Day Acceptance Test
- Veolia O&M staff training
- All subcontractor and partner quotes
- Warranty Period 30 Day Stress Test (Phase III)

Scope of Work – Phase II

Phase II includes completion of the design documents and any remaining permitting, construction management, equipment procurement, subcontractor procurement, construction, engineering services during construction, startup, testing, commission, training, and as-builts.

Including but not limited to the following:

- 90% (Essentially Complete) Design Package & Review, with updated PROJECT Schedule.
- 100% Design Package.
- Temporary dewatering.
- Demolish and dispose of the belt filter presses.

- Furnish and install the new centrifuge.
- Furnish and install the dryers and ancillary equipment.
- Construction phase engineering services such as integration of the centrifuge and dryer control panels into the existing DWTF SCADA system.
- All necessary conveyance system(s) to deliver sludge to the new dewatering centrifuge, and from all of the centrifuges to the dryer system
- All necessary conveyance system(s) between components of the new dryer system.
- All necessary conveyance system(s) from the new dryer system to truck loadout.
- Concrete foundations, pads, tanks, structural components, walkways, stairs, platforms, stacks, handrail, grating and covers,
- Equipment installation, piping to and from the dryer system, interconnecting piping, manual isolation valves, anchor bolts, epoxy/adhesive for anchors.
- Calibration or auxiliary gas cylinders.
- Chemical addition systems, such as polymer
- Motor control center, motor starters, adjustable frequency drives, main disconnects, breakers, or power supply.
- Field wiring, interconnecting wiring, conduit, wiring terminations at equipment, local equipment disconnects, local equipment control panels, junction boxes, and wiring terminations at control panels.
- All miscellaneous electrical and mechanical hardware.
- All required modifications to the existing building structure, electrical, plumbing or HVAC systems.
- Punch-List documentation and resolution.
- PLC 5 Replacements
- Final inspection
- Update the PROJECT Schedule on a weekly basis.
- Start-Up and Commissioning.
- Issue 2 year Warranty, Operations & Maintenance (O&M) Manuals, and record drawings(1) EA - 30 Day Acceptance Test Period
- PROJECT Close-out

Scope of Work - Phase III – Warranty Period and Additional Stress Test

DUWA will require a two (2) year warranty period upon substantial completion of Phase II, ~~which includes an acceptance test of the entire system for a 30 day period. DUWA may also require an additional 30 day stress test to be provided during the two (2) year warranty period with timing to be determined at the discretion of DUWA for the Work. The DBE's warranty will exclude the obligations of the Equipment Supplier and the performance test requirements for the biosolids dryer. DUWA will provide the DBE with notice of the date and the time for the Phase III~~

~~performance test and The DBE shall may elect to provide a representative to be on-site during the test. include the cost of one representative to be on-site to witness and document the system performance during this test period.~~

~~The additional performance/stress test may be conducted during the glycol season under which the DWTP will be receiving significant deicing fluid into the plant.~~

~~Stress Test Performance Requirements (within 30 day period):~~

- ~~1. 10 days at Daily Average~~
- ~~2. 7 continuous days at Max Month Capacity~~
- ~~3. 7 continuous days at Full Capacity~~

Design Criteria	Daily Avg.	Max. Month	Capacity
Wet Mass Processed, WTPD	140.0	156.0	175.0
Dewatered Cake Solids, %TS	28.5	26.0	26.0
Cake Bin Storage Fill, % of Level	85.0	85.0	85.0
Cake Bin Solids Retention Time, hrs.	8.1	7.3	6.4
Feedstock Loading Rate, lb TS/hr	3,630	3,380	3,790
Dryer Operation Uptime, % hrs/dy	91.5%	100%	100.0%
Inlet Drying Temperature, deg F	See Note *	<525	550
Outlet Dry Solids Temperature, deg F	95-115	<120	<100
Dried Solids Content, %DS	90.0-92.0	>92.0	92.0
Drying Evap. Demand, lb H2O/hr	8,830	9,370	11,000

~~* Inlet temperature safely operating in range of 330 to 500 deg F for thermal oil and up to 280 deg F for hot water.~~

EXHIBIT C

INSURANCE AND BOND REQUIREMENTS

DBE shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Work hereunder by the DBE, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the DBE's bid.

A. MINIMUM INSURANCE COVERAGE

1. Without in any way limiting DBE's liability hereunder, DBE shall maintain the following minimum limits of insurance at its own expense during the performance of the Work, with insurance companies rated A-VII or higher by A.M. Best's, to cover the risk of losses associated with this Agreement:

<u>Coverage</u>	<u>Limits</u>
(i) Workers Compensation	Statutory; including requirements of the Labor Code of the State of Michigan and Employers Liability insurance
(ii) Employers Liability	\$1,000,000 each accident \$1,000,000 each employee \$1,000,000 policy limit
(iii) Commercial General Liability written on ISO CG 00 01 coverage form or its equivalent. No limiting or exclusionary endorsements material to the DBE's obligations in the Agreement may be attached. Coverage shall include a) contractual liability; b) explosion, collapse & underground perils (XCU); c) third-party over action coverage; d) Riggers Liability endorsement for the use of cranes, booms or other rigging equipment, if applicable; and e) amendment of the aircraft exclusion to include coverage for the use of commercial UAVs (drones), if applicable.	\$5,000,000 each occurrence for property damage and bodily injury (PD/BI) \$5,000,000 general aggregate \$5,000,000 products/completed operations aggregate
(iv) Automobile Liability – covering all owned, hired and non-owned autos (Policy shall be endorsed with MCS-90)	\$2,000,000 combined single limits – each accident
(v) Umbrella/Excess Liability providing coverage at least as broad as the underlying policy(ies)	May be utilized to meet limits outlined above

(vi) Property	DBE shall be solely responsible for protecting and insuring all property owned or leased or used by the DBE in conjunction with the Work during the term of this Agreement
(vii) Professional Liability (Errors & Omissions), if applicable to the Work – Coverage shall not exclude Technology Errors & Omissions coverage if the DBE will have access to any Veolia Systems (including but not limited to any Veolia-owned or managed IT asset (server or application) wherever it is hosted (the public cloud, Veolia’s AWS instance, Veolia’s data center, etc.)	\$2,000,000 each claim \$2,000,000 annual aggregate
(viii) DBE’s Pollution Liability, if applicable to the Work	\$5,000,000 each claim \$5,000,000 annual aggregate
(ix) Valuable Papers Coverage, if applicable to the Work	Replacement cost covering “All Risk Perils” for damage to all drawings, specifications, plans, computations, sketches, test data, survey results, photographs, renderings, or other paper or reproductions

2. DBE’s pollution liability policy in (viii) above shall provide coverage for:
 - a. Bodily injury, sickness, disease, sustained by any person, including death;
 - b. Property damage, including physical injury to or destruction of third-party tangible property including the resulting loss of use thereof;
 - c. Cleanup costs, and the loss of use of third-party tangible property that has not been physically injured or destroyed including diminution of value and natural resources damages;
 - d. Defense costs, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims;
 - e. Contractual liability coverage, e.g., coverage for liability assumed by the DBE under this Agreement; and
 - f. The full scope of DBE’s operations as described within the scope of work for this Contact.

3. The pollution liability coverage may not contain restrictions for:
 - a. Insured versus insured actions (however, exclusions for claims made between insured within the same economic family are acceptable);
 - b. Completed operations in any coverage part of the policy for either the insured or additional insured;
 - c. Damage to third-party property that cannot be used or is less useful because of

- operations of the DBE; or
d. Work performed by the DBE.

4. In the event that the state where the Work is to be provided allows an employer to opt out of Workers Compensation coverage, the DBE shall nevertheless obtain a Workers Compensation policy complying in all respects with this provision.

5. Prior to providing any Work under this Agreement, the DBE will provide DUWA with an ACORD certificate of insurance evidencing that the above described coverage are in full force and effect. DBE will include DUWA, its parent companies, subsidiaries, affiliates, and each of their officers, directors, employees, agents, representatives and Client (if applicable), (collectively "DUWA's Additional Insured") as additional insured with respect to coverage (iii), (iv), and (viii), (and (v) if applicable) above. All policies shall be primary and non-contributory, provide a full waiver of the insurer's right of subrogation in favor of DUWA Additional Insured and/or any sub-Contractor with respect to claims that are covered or should have been covered by valid and collectible insurance provided hereunder and said waiver will extend to any deductibles, co-insurance or retentions. DBE will not permit cancellation or non-renewal of its insurance coverage to be provided hereunder without thirty (30) days' written notice to DUWA.

6. All policies shall be issued on occurrence-based forms, except for coverage (vii) and (viii), which may be issued on a claims-made form. All claims-made policies will at least be retroactive to the earlier of the date of this Agreement or the commencement of the DBE's services in relation to the Work, and shall be maintained for three (3) years after the expiration or termination of this Agreement.

7. These insurance requirements will not be construed in any matter as waiving, restricting or limiting DUWA's rights or DBE's obligations under this Agreement. DUWA does not represent that coverage or limits herein will be adequate to protect DBE. DBE remains responsible for any liability not paid by insurance including deductibles and retentions.

B. ADDITIONAL INSURANCE

1. **Builders' Risk Insurance.** DBE shall procure a builders risk insurance policy for the full replacement value of the Project. DBE shall purchase and maintain during the life of the Project included below at the Base insurance against loss to the Work sufficient to replace the Work. Such coverage shall be written on an "all risk" causes of loss builders risk coverage form at replacement cost and without a co-insurance penalty and as follows:

a. Not limited to the following, policy perils shall include: theft, vandalism, malicious mischief, testing and startup, earth movement, terrorism (certified and non-certified), delay in completion or start up, mold, fungus, collapse, earth movement, flood, civil authority, windstorm, building ordinance and demolition.

b. Not limited to the following, the policy shall cover: underground work, foundations, sidewalks and paving, landscaping, falsework, temporary buildings, trailers, laydown areas, supplies, materials, machinery, equipment, fixtures, debris removal,

property in transit, property stored offsite, business interruption costs, extra expense costs and soft costs including but not limited to reasonable compensation for professional fees and general conditions.

c. Losses to the Work shall be replaced by the DBE at no expense to DUWA. Any deductible or sub-limited deductible shall not exceed \$50,000.

d. The insurer shall waive all rights of subrogation against DUWA.

e. Coverage including permission for temporary occupancy shall be maintained until final acceptance by DUWA and final payment has been made.

f. The policy shall allow for partial utilization of the Work by DUWA and Veolia.

g. The policy shall be maintained in effect until final payment is made unless otherwise agreed to in writing by DUWA with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

Losses shall be adjusted by and made payable to DBE as fiduciary for the Builders Risk Insured. DBE shall pay its subcontractors their just shares of insurance proceeds received by DBE and shall cause such subcontractors to make payments to their sub-subcontractors in similar manner.

2. Certificates of insurance shall be either emailed in pdf format to: Lambrina.tercala@ohm-advisors.com or mailed to the following postal address:

To DUWA: Rick Sollars, Chairman
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:

OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

C. PAYMENT AND PERFORMANCE BONDS

1. The DBE shall furnish to DUWA and keep in force during the term of the Agreement performance and labor and material payment bonds, guaranteeing that the DBE will perform its obligations under the Agreement and will pay for all labor and materials furnished for the Work. Such bonds shall be issued in a form and by a Surety reasonably acceptable to DUWA, shall be submitted to DUWA for approval as to form, shall name DUWA as obligee, and shall be

in an amount equal to at least 100% of the Contract Price (as the same may be adjusted from time to time pursuant to the Agreement). The DBE shall deliver the executed, approved bonds to DUWA prior to the execution of the Agreement. Neither the DBE nor any Sub-Contractor may begin the Work until the required bonds are delivered to DUWA.

2. The costs of all bonds furnished hereunder shall be included in the Contract Price.

3. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the DBE shall promptly furnish a copy of the bonds to DUWA or shall permit a copy to be made.

4. If any Surety hereunder makes any assignment for the benefit of creditors, or commits any act of bankruptcy, or is declared bankrupt, or files a voluntary petition for bankruptcy or in the reasonable opinion of DUWA is insolvent, the Design-Builder shall immediately furnish and maintain another Surety satisfactory to DUWA.

D. GENERAL TERMS REGARDING INSURANCE AND BONDS

1. If DUWA is damaged by the failure of the DBE to purchase or maintain any insurance or bond required by the Agreement then the DBE shall pay all costs incurred by DUWA, including but not limited to reasonable attorney's fees.

2. Any insured loss under the required policies of property insurance will be adjusted with DUWA and will be made payable to DUWA as trustee for the insured. DUWA shall deposit in a separate account, and shall distribute monies received, based on any agreement that the parties in interest may reach. If no other distribution agreement is reached, the damaged Work shall be replaced or repaired, the monies received shall be used for that purpose and the Work involved and resulting costs shall be covered by Change Order. DUWA as trustee shall have the power to adjust and settle any loss with the insurers unless a party in interest objects in writing within fifteen (15) days following the occurrence of loss to DUWA's exercise of this power. If an objection is made, DUWA, as trustee, shall settle with the insurers pursuant to any agreement that the parties in interest may reach.

3. If by the terms of the insurance a mandatory deductible is required, the DBE shall be responsible for the deductible amount in the event of a paid claim. The DBE shall also be responsible for any co-insurance penalties.

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EXHIBIT D: DBE WARRANTY FORM

Owner Name and Address (“Owner”):

Design Build Entity Name and Address (“DBE”):

Work:

RECITALS:

A. The Progressive Design Build Agreement (“PDB Agreement”) entered into between Owner and DBE required the DBE to issue a two (2) year warranty covering the Work.

B. In accordance with the requirements of the PDB Agreement, DBE and Owner enter into this Warranty Agreement, effective beginning on the date of Substantial Completion of the Project.

WARRANTY AGREEMENT:

I. Warranty

A. DBE hereby warrants that the Work shall be: (a) new, of good quality, and free from latent and patent defects in material, design, and workmanship; (b) in strict accordance with the principal contract and the contract documents, including the plans and specifications; and (c) free of any third party claim.

B. DBE’s warranty shall be effective for a period of two years beginning on the date of Substantial Completion of the Project (the “Term”).

C. DBE agrees to provide all labor, materials, and equipment necessary to promptly repair or replace any and all deficient or defective Work, or Work that fails to fulfill any of the requirements of the Contract Documents without expense to Owner (including any additional re-inspection fees) (the “Warranty Services”). DBE will, within five (5) days after receipt of written notice of any defect, provide on-site troubleshooting services, and within ten (10) days after receipt of written notice, commence repair or replacement of the defect. DBE will be responsible for the repair of any damage to the DWTF that is caused by DBE or DBE’s employees, agents, and contractors, during repair or replacement of any defect. DBE will be responsible for 1) any additional costs incurred by Owner to handle, store, transport, or dispose of biosolids a result of defective Work; and 2) any fines or penalties incurred by Owner to the extent that such costs, fines, or penalties are incurred as a result of a defect in the Work or DBE’s failure to timely repair or replace any defective Work.

D. In the event of DBE's failure to comply with the this warranty, DBE authorizes Owner to proceed have the defect repaired and made good at DBE's expense, and DBE will pay the cost for the repair or replacement within thirty (30) calendar days of submission of application for payment including reasonable and customary evidence of such costs. DBE acknowledges and agrees that Owner has an express right to enforce this Warranty Agreement or to proceed to have the defect repaired or replaced at DBE's sole expense should DBE fail to timely do so.

E. The Warranty Services shall not apply to: 1) damage due to improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage; or 2) the performance obligations of the Equipment Supplier.

F. The warranty provided in this Agreement shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by the Procurement Contract and by Applicable Law.

I. General

A. Any notice required or permitted to be given by either Party to the other under the Warranty Agreement shall be in writing and signed by the authorized representatives of the Party and addressed to the other as follows:

If to OWNER:

Rick Sollars, Chairman
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:

OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

James G. Fausone
Fausone Bohn, LLP
41700 W. Six Mile Road, Ste. 101
Northville, MI 48168
jfausone@fb-firm.com

If to SUPPLIER:

Name
Address
Contact Information

Notices may be delivered by hand, or by prepaid registered mail or by facsimile and shall be deemed to have been served: (i) if by hand, at time of delivery; (ii) if by prepaid registered post, three (3) business days after mailing; (iii) if by facsimile, on the date printed on the facsimile transmission report produced by the sender's machine.

B. No waiver by either Party of any breach of the Warranty Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision. If either Party delays, neglects or chooses not to enforce its right under the Warranty Agreement, it shall not affect its right to do so at a later date.

C. If any provision of the Warranty Agreement is held by any court of competent authority to be invalid or unenforceable in whole or in part such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of the other provisions of the Warranty Agreement will not be affected but shall remain in full force and effect.

D. Capitalized terms in this agreement that are not defined in this agreement shall have the meaning set forth in the PDB Agreement.

OWNER

DESIGN BUILD ENTITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT E AS-BUILTS

Below is a list of Facility-related as-built drawings.

1. 1953 Set of As Built Drawings – 146 drawings
2. 1967 Set of As Built Drawings – 186 drawings
3. 2001 Set of As Built Drawings – 52 drawings
4. 2008 Set of As Built Drawings – 66 drawings