DOCUMENT 005200 - AGREEMENT

This Agreement is by and between the City of Cape Girardeau, Missouri (hereinafter called Owner) and KCI Construction Company, Inc. (hereinafter called 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:

The work to be done generally consists of constructing the new wastewater treatment facility that includes influent pumping, screens and screening compactors, grit removal system, a sequencing batch reactor activated sludge system, ultraviolet disinfection, sludge storage and processing system, administration building; installing approximately 4,200 lineal feet of 42-inch and 60-inch diameter sanitary sewer, and approximately 4,900 lineal feet of 54-inch and 60-inch diameter plant effluent line; decommissioning and partial demolition of the existing wastewater treatment facility; and the associated site work, mechanical and electrical work.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Wastewater Treatment Facility.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Jacobs Engineering Group Inc., who is hereinafter called Engineer and who 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 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 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 700 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 730 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 of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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) Contractor shall pay Owner $600.00 for each of the first 30 days that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment. Thereafter, the Contractor shall pay Owner $1,200.00 for each of the next 60 days that expires until the Work is completed and ready for final payment. If the Work is not completed and ready for final payment after 90 days from the time specified in paragraph 4.02, the Contractor shall pay Owner $2,000.00 for each day that expires until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE.

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the price or prices in the Bid Form;

UNIT PRICE SCHEDULE

Item	Estimated Quantity		Unit Price	Total Price
A. MOBILIZATION	Lump Sum		…….	$ 550,000.00
B. MANHOLES IN 60” SANITARY SEWER				
1. Depth 25’ – 30’ (4’ dia FRP)	1	EA	$ 30,000.00/EA	$ 30,000.00
2. Depth >35’ – 40’ (4’ dia FRP)	1	EA	$ 35,000.00/EA	$ 35,000.00
3. Depth >50’ – 55’ (8’ dia Conc – MH 1)	1	EA	$ 40,000.00/EA	$ 40,000.00
4. Cast-in-Place MH (MH 4)	1	EA	$ 25,000.00/EA	$ 25,000.00
C. MANHOLES IN 42” SANITARY SEWER				
1. Depth 20’ – 25’ (8’ dia Conc – MH 5)	1	EA	$ 35,000.00/EA	$ 35,000.00
2. Depth 10’ – 15’ (6’ dia Conc)	2	EA	$ 20,000.00/EA	$ 40,000.00
3. Depth >15’ – 20’ (6’ dia Conc)	3	EA	$ 20,000.00/EA	$ 60,000.00
4. Depth >20’ – 25’ (6’ dia Conc)	1	EA	$ 20,000.00/EA	$ 20,000.00
5. Depth 10’ – 15’ (6’ dia Conc – MH 12)	1	EA	$ 20,000.00/EA	$ 20,000.00
D. MANHOLES IN 60” EFFLUENT PIPE				
1. Depth 5’ – 10’ (4’ dia FRP)	4	EA	$ 35,000.00/EA	$ 140,000.00
2. Depth >10’ – 15’ (4’ dia FRP)	4	EA	$ 25,000.00/EA	$ 100,000.00
3. Depth >15’ – 20’ (4’ dia FRP)	1	EA	$ 30,000.00/EA	$ 30,000.00
4. Depth >20’ – 25’ (4’ dia FRP)	1	EA	$ 30,000.00/EA	$ 30,000.00
5. Depth >25’ – 30’ (4’ dia FRP)	1	EA	$ 30,000.00/EA	$ 30,000.00
6. Cast-in-Place MH (EF-JC 1)	1	EA	$ 25,000.00/EA	$ 25,000.00

E.	SANITARY SEWER						
1.	60" Pipe						
	a. Station 0+00 to MH 3	598	LF	$	600.00/LF	S	358,800.00
	b. MH 3 to MH 4 (Includes concrete encasement and rip rap at creek crossing)	415	LF	$	500.00/LF	S	207,500.00
2.	42" Pipe						
	a. MH 4 to MH 7	1,022	LF	$	200.00/LF	$	204,400.00
	b. MH 7 to Station 33+00	1,267	LF	$	130.00/LF	$	164,710.00
	c. Station 33+00 to Station 34+00	100	LF	$	350.00/LF	$	35,000.00
	d. Station 34+00 to Station 36+95	295	LF	$	150.00/LF	$	44,250.00
	e. Station 38+95 to MH 12	333	LF	$	150.00/LF	$	49,950.00
3.	Jacked 42" Pipe Under Railroad	200	LF	$	850.00/LF	$	170,000.00
4.	Abandon Manholes	11	EA	$	1,500.00/EA	$	16,500.00
F.	EFFLUENT PIPE						
1.	60" Pipe						
	a. Station 0+00 to MH 2	671	LF	$	425.00/LF	$	285,175.00
	b. MH 2 to MH 3 (Includes concrete encasement and rip rap at creek crossing)	408	LF	$	450.00/LF	$	183,600.00
	c. MH 3 to Station 33+50	2,272	LF	$	300.00/LF	$	681,600.00
	d. Station 33+50 to Station 34+50	100	LF	$	450.00/LF	$	45,000.00
	e. Station 34+50 to Station 37+66	316	LF	$	320.00/LF	$	101,120.00
	f. Station 39+66 to JC 1	345	LF	$	320.00/LF	$	110,400.00
2.	Jacked 60" Pipe Under Railroad	200	LF	$	950.00/LF	$	190,000.00
3.	54" Pipe (from JC 2 to Outfall)	619	LF	$	600.00/LF	$	371,400.00
4.	Concrete Outfall and Rip Rap at Mississippi River	Lump Sum		…….		$	20,000.00
5.	21" Sewer and Manhole Removal	2,680	LF	$	5.00/LF	$	13,400.00
G.	FORCE MAIN FROM EXISTING FACILITY						
1.	4” Pipe	707	LF	$	70.00/LF	$	49,490.00
2.	Jacked Casing Pipe (10” min, Two Places)	87	LF	$	180.00/LF	$	15,660.00
H.	ROCK EXCAVATION						
1	For Sanitary Sewer and Effluent Pipe	1,000	CY	$	250.00/CY	$	250,000.00
2.	For Structural Excavation and in Pipe Trenches)	2,200	CY	$	40.00/CY	$	88,000.00
I.	PIPE PILES						
1.	Steel Pipe Pile Shoes	2,800	EA	$	95.00/EA	$	266,000.00
2.	Steel Pipe Piles	97,000	LF	$	34.00/LF	$	3,298,000.00
J.	EQUIPMENT AT WWTF						
1.	Screw Conveyors (Section 411213.36)						
	Base Bid – SPIRAC (USA)	Lump Sum		…….		$	190,000.00
	Alternate Bid:						
	Name of Manufacturer: _____						
	Bid Amount: $_____						

2.	High-Speed Turbo Blowers (Section 431125) Base Bid – HSI Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 800,000.00
3.	Recessed Impeller Pumps (Section 432114) Base Bid – Wemco Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 90,000.00
4.	Rotary Lobe Pumps and Grinders (Section 432137) Base Bid – Vogelsang Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 80,000.00
5.	Progressing Cavity Pumps (Section 432138) Base Bid – Seepex Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 30,000.00
6.	Submersible Pumps and Mixers (Section 432130) Base Bid – Flygt Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 1,080,000.00
7.	Submersible Pre-Rotation Basin and Pumps (Section 432143) Base Bid – Wemco Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 57,000.00
8.	Automatic Backwash Strainer (Section 432734) Base Bid – Amiad Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 49,000.00
9.	Mechanical Screens and Compactors (Section 462100) Base Bid – Parkson Aquaguard Alternate Bid: Name of Manufacturer: _____ Bid Amount: $_____	Lump Sum	…….	$ 460,000.00

10. Grit Removal Equipment (Section 462300)			
Base Bid – Hydro International	Lump Sum	…….	$ 745,000.00
Alternate Bid:			
Name of Manufacturer: _____			
Bid Amount: $_____			
11. SBR Equipment (Section 465353)			
Base Bid – Sanitaire	Lump Sum	…….	$ 2,650,000.00
Alternate Bid:			
Name of Manufacturer: _____			
Bid Amount: $_____			
12. UV Disinfection Equipment (Section 446300)			
Base Bid – Trojan	Lump Sum	…….	$ 895,000.00
Alternate Bid:			
Name of Manufacturer: _____			
Bid Amount: $_____			
13. Dewatering Centrifuges (Section 467633)			
Base Bid – Andritz or Alfa Laval (Circle one)	Lump Sum	…….	$ 570,000.00
Alternate Bid:			
Name of Manufacturer: _____			
Bid Amount: $_____			
K. Sludge Drying Equipment (Section 467653.01)			
Allowance for Pre-Procured Equipment	Lump Sum	…….	$ 3,800,000.00
L. EXISTING WWTF Decommissioning, Partial Demolition And All Improvements at Facility	Lump Sum	…….	$ 250,000.00
M. SYSTEM INTEGRATION Instrumentation and Supervisory Control System Integration			
Base Bid – Cogent Inc.	Lump Sum	……	$ 1,750,000.00
Alternate Bid:			
Name of Integrator: _____			
Bid Amount: $_____			
N. NEW WWTF			
All Work at Facility	Lump Sum	……..	$ 33,748,045.00

TOTAL BASE BID (Total of A through N) **$ 55,674,000.00**

Fifty-five million six hundred seventy-four thousand dollars and 0/00.
(Total Base Bid in Words)

If Owner accepts any of the alternate equipment or system integration Bid prices, total Bid price will be based on the Owner-accepted alternate Bid prices. Bidder acknowledges that the quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.

ARTICLE 6 - PAYMENT PROCEDURES.

6.01 Submittal and Processing of Payments

A. 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.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments in accordance with Section 34.057, RSMo, on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

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 14.02 of the General Conditions.

   a. 90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

   b. 90% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate specified in Section 34.057, RSMo.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

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

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the site 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 federal, state, and local 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 contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

F. Contractor does not consider that any additional 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 Documents.

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 correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. 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.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:
1. This Agreement
2. Performance Bond
3. Payment Bond
4. General Conditions
5. Supplementary Conditions
6. Specifications as listed in the table of contents of the Project Manual
7. Drawings with each sheet bearing the following general title: Wastewater Treatment Facility, City of Cape Girardeau, Missouri
8. Addenda (numbers 1 to 3, inclusive)
9. Exhibits to this Agreement (enumerated as follows):
   a. Notice to Proceed
   b. Contractor's Bid
   c. Documentation submitted by Contractor prior to Notice of Award
10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
    a. Written Amendments
    b. Work Change Directives
    c. Change Orders

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 paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. 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, 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.

10.03 Successors and Assign

A. 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 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.

ARTICLE 11 - NON-DISCRIMINATION IN EMPLOYMENT

11.01 Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, 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, creed, color 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.

11.02 Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

A. 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, creed, color, or national origin.

B. 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 by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

C. Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

D. Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

E. In the event of the Contractor's non-compliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

F. Contractor will include the provisions of Article 11 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 No. 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 contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

CITY OF CAPE GIRARDEAU

_____
Scott Meyer, City Manager

Attest _____
Gayle L. Conrad, City Clerk

APPROVED AS TO FORM:

_____
City Counselor

Address for giving notices:

401 Independence Street

Cape Girardeau, MO 63703

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

Designated Representative:
Name: Scott Meyer
Title: City Manager
Address: 401 Independence Street
Cape Girardeau, MO 63703
Phone: (573) 339-6320
Facsimile: (573) 339-6302

CONTRACTOR: KCI Construction Company

_____

By: Douglas Jones, President

[CORPORATE SEAL]

Attest _____
Carrol Tauser, Secretary

Address for giving notices:

10315 Lake Bluff Drive

St. Louis, MO 63123

License No. 110432

Agent for service of process:

Douglas Jones

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

Designated Representative:
Name: Brent Krueger
Title: Project Manager
Address: 10315 Lake Bluff Drive
St. Louis, MO 63123
Phone: (314) 894-8888
Facsimile: (314) 894-7418