

**WICHITA STATE UNIVERSITY
REQUEST FOR PROPOSAL (RFP)**

RFP Number: B0001818

RFP Issuance Date: Monday, October 2nd, 2023

Mandatory On-Site Visit: Wednesday, October 11th, 2023 at 10:00am CST

RFP Question Deadline: Friday, October 13th, 2023 by 5:00pm CST

RFP Closing Date: Monday, October 23rd, 2023 at 2:00pm CST

Procurement Officer: Robby Murray
316-978-5185
robby.murray@wichita.edu
Wichita State University
Office of Purchasing
1845 Fairmount, Campus Box 38
Wichita, KS 67260-0038

Item / Service: **Water Treatment Services (Cooling Towers, Boilers, Closed Loops and Chilled Water Systems) – Multiple Locations**

Agency: **Wichita State University (“WSU”)**

Agency Location: 1845 Fairmount, Campus Box 38
Wichita, KS 67260-0038

Period of Contract: Date of signed contract through September 30th, 2024
With options to renew automatically for three (4) additional one (1) year renewal periods

Guarantee: No Monetary Guarantee Required

RFP Scope: WSU is issuing this Request for Proposal (“RFP”) to solicit proposals (“Proposals”) from qualified water treatment suppliers (“Bidders”) to provide **Water Treatment Services (Cooling Towers, Boilers, Closed Loops and Chilled Water Systems) for the following service locations:**

- **Central Energy Power Plant - 3911 E Wu Shock Dr.**
- **John Bardo Center – 1800 Innovation Blvd.**
- **Shocker Hall – 2020 Perimeter Rd.**
- **Koch Arena – 21st and Hillside**
- **Beech Wind Tunnel Cooling Tower – 1935 N. Research Pl.**
- **NIAR ETL – 3800 S. Oliver**

Procurement Type: Sealed Bid (See Section 2.1)

READ THIS RFP CAREFULLY AND CHECK FOR UPDATES

This RFP (Number B0001818) was posted to WSU Office of Purchasing Internet website and may be downloaded at: www.wichita.edu/purchasing.

It shall be the Bidder's responsibility to monitor this website on a regular basis for any changes or addenda.

Please view the file posted on WSU Bid Solicitations Page:

https://www.wichita.edu/services/purchasing/Bid_Documents/BidDocuments.php, **Boilerplate of Request for Quotation: Terms and Conditions/Bidding Instructions** for a sample of WSU's standard terms and conditions to a Request for Quotation. Such terms and conditions are subject to change depending on the size, nature, and requirements of each project.

SECTION I CONDITIONS TO BID

- 1.1. Bid Specifications.** Bidder must be able to meet all bid specifications set forth in this RFP as well as the minimum qualification and performance specifications set forth in **Attachment 5: Minimum Qualifications and Performance Specifications**.
- 1.2. Bid Proposal.** Bidder's Proposal must include fully completed RFP attachments, except that Bidder may complete **Attachment 7: Bidder Signature Sheet** by referencing separately attached documents or information.
- 1.3. Proposal Reference Number:** The RFP Number identified on the first page of this RFP (the "RFP Cover Page") has been assigned to this RFP and MUST be shown on all correspondence or other documents associated with this RFP, including any Proposal, and MUST be referred to in all verbal communications. Any communication or submission that does not reference the RFP Number may be rejected or not considered by WSU, in WSU's sole discretion.
- 1.4. Communication with WSU During RFP Process:** All inquiries, written or verbal, shall be directed only to the Procurement Officer at the contact information identified on the RFP Cover Page. No communication is to be had with any other WSU employee regarding this RFP except: (1) in the course of RFP negotiations; (2) during RFP site inspections or visits; (3) at the time of negotiation and signing of any contractual documents resulting from the Proposal; and (4) as otherwise specified in this RFP. Violations of this provision by Bidder or WSU personnel may result in the rejection of the Proposal.
- 1.5. Exceptions:** By submission of a Proposal, Bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal that must be marked as: "Exceptions". **If the Bidder will not or cannot comply with any of the terms and conditions contained within this RFP, it will be the Bidder's responsibility to make specific mention of conflicting terms in a separate section of the Proposal as set forth above; otherwise, the terms and conditions of this document will prevail.**

1.6. **No Bid Revisions:** No additional revisions to Proposals shall be made after the Closing Date unless requested by WSU.

1.7. **Cost of Preparing Proposal:** The cost of developing and submitting the Proposal is entirely the responsibility of the Bidder. This includes costs incurred by Bidder to determine the nature of the engagement, Bidder's preparation and submission of their Proposal, the negotiation of the resulting Contract and/or terms and conditions, and other costs associated with this RFP or post-award efforts to enter into a Contract.

1.8. **Contract Formation:** No contract shall be considered to have been entered into by WSU until all statutorily required signatures and certifications have been rendered, funds for the contract have been encumbered, and a Contract is deemed formed or executed as set forth in Section 3.3 (Award) of this RFP.

1.9. **Proposals Open to the Public:**

1.9.1. **Proposals as WSU Property:** All Proposals become the property of WSU upon submission. With few exceptions, the Kansas Open Records Act (K.S.A. 45-215, *et seq.*) requires all information contained in Proposals to become open for public review once a Contract is formed or all Proposals are rejected. Please note: Bidders will **NOT** be notified prior to release of any documents submitted in response to this RFP.

1.9.2. **Submission of Proprietary Information:** Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and provided as separate from the main Proposal. Pricing information is not considered proprietary, and the Bidder's entire Proposal will not be considered proprietary. All information requested to be handled as "Proprietary" shall be submitted electronically, separately from the main Proposal, and clearly identified in the subject line of the email or DropBox submission. The Bidder shall provide detailed written documentation justifying why this material should be considered proprietary. WSU reserves the right to accept, amend, or deny such requests for maintaining information as proprietary in accordance with Kansas law. WSU does not guarantee protection of any information which is not submitted as required.

1.10. **Federal, State, and Local Taxes - Governmental Entity:** Unless otherwise specified, the Proposal price shall include all applicable federal, state, and local taxes. The successful Bidder is solely responsible for, and shall pay, all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this RFP. WSU does not agree to reimburse or pay Bidder for any taxes assessed unless itemized in Bidder's bid. **WSU is exempt from state sales or use taxes and federal excise taxes for direct purchases made in Kansas. These taxes should not be included in the Bidder's price quotations.**

1.11. **Tax Clearance:** WSU strongly supports the State of Kansas Tax Clearance Process. Bidders submitting Proposals which exceed twenty-five thousand dollars (\$25,000.00) shall include a copy of a Tax Clearance Certification Form with their submittal as set forth in **Attachment 1: Tax**

Clearance Information. Failure to provide this information may be cause for rejection of Bidder's Proposal.

1.12. Debarment of Bidders: Pursuant to K.S.A. 75-37,103, a Bidder may be debarred from consideration for award of contracts for a period of up to three (3) years for any of the reasons set forth in K.S.A. 75-37,103(b).

1.13. Immigration Reform: The Bidder agrees, if awarded a Contract, it shall comply with the Immigration and Reform Control Act of 1986 (IRCA; 8 C.F.R. Ch. 1, Subch. B, Pt. 245a), as may be amended from time to time. As a condition of this Proposal, Bidder must certify, by completing and submitting **Attachment 2: Certification Regarding Immigration Reform & Control**, that Bidder has complied with all federal and state laws relating to immigration and reform.

1.14. Sexual Harassment and Retaliation Prohibited: In accordance with Kansas Executive Order 18-04, upon selection for a Contract, Bidder will be expected to receive and read of a copy of Executive Order 18-04, and, further, will agree to comply with all applicable provisions of this Executive Order, and all applicable state and federal laws, including but not limited to all laws prohibiting sexual harassment. WSU's policies prohibiting sexual harassment, discrimination, and retaliation provide for confidentiality and anonymous reporting. To view these policies or to make a report of sexual harassment, discrimination, or retaliation, please visit https://www.wichita.edu/about/policy/ch_03/ch3_06.php.

SECTION II

PROCUREMENT TYPE, PROCESS, SELECTION, AND AWARD

2.1. Procurement Type: WSU's competitive procurement types include: (1) Sealed Bid; (2) Negotiated Bid; and (3) Simplified Acquisitions. The type of procurement for this RFP is noted on the RFP Cover Page.

2.1.1. A Sealed Bid process includes: (1) a solicitation to bid; (2) publication of solicitation; (3) Proposals submitted under seal by Bidders and the Proposals are not opened or reviewed until the Closing Date; (4) Proposals are reviewed by WSU after the Closing Date and are generally evaluated without discussion without the Bidders; and (5) WSU awards the work to the "Responsible Bidder" whose Proposal is determined to be the most advantageous to WSU based on the neutral criteria established by WSU.

2.1.2. A Negotiated Bid is a more flexible bidding procedure that includes the receipt of Proposals and permits negotiations between WSU and Bidders. This process usually affords the Bidders an opportunity to revise their Proposal before award of a Contract to account for changes in scope of services or goods, timelines, or value-added changes to a project. "Negotiation" includes discussion, persuasion, and alteration of initial assumptions and positions, and give-and-take may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. "Best and final offers" are frequently required under the Negotiated Bid procurement.

2.1.3. Simplified Acquisitions is the most flexible form of procurement. Simplified Acquisitions can only occur if the procurement expenditure does not exceed the WSU established threshold. A Simplified Acquisition affords WSU the ability to call upon qualified vendors, contractors, and individuals for a quote and to negotiate a final agreement.

2.2. RFP Committee Selection: Final evaluation and selection will be made by designated representatives of WSU who have been designated as potentially utilizing the goods and/or services solicited in this RFP, referred to collectively as the Procurement Negotiation Committee (PNC).

2.3. Appearance Before Committee: The PNC may award to the low Bidder without question or negotiation. The PNC reserves the right to request information from Bidders as needed. If information is requested, the PNC is not required to request the information of all Bidders. The PNC may require, as a condition of bidding, that Bidders be required to appear before the PNC to explain the Bidder's understanding and approach to the RFP and/or to respond to questions from the PNC concerning the Proposal. Meetings with and appearances before the PNC are not subject to the Kansas Open Meetings Act. Bidders are prohibited from electronically recording these meetings.

2.4. Pre-Proposal On-Site Visit: A mandatory Pre-Proposal on-site visit has been scheduled for Wednesday, October 11th, 2023, at 9:00am CST. The on-site visit will begin in the Lobby of

Gaddis Physical Plant. The companies will then be taken on a tour of both on-campus and off-campus locations. Due to space limitations, Companies should attend with no more than two representatives. Any questions requesting clarification of the RFP that arise as a result of the pre-proposal on-site visit, must be submitted in WRITING in accordance with section 2.5 of this RFP].

2.5. Pre-proposal Conference Attendance. Due to space limitations, Contractors should attend with no more than two representatives. All questions requesting clarification of the RFP to be addressed at the pre-proposal conference must be submitted in writing to the Procurement Officer and received by the Procurement Officer prior to the close of business on the Pre-Conference Question Deadline stated in Article III. Impromptu questions will be permitted, and spontaneous unofficial answers provided, however bidders should clearly understand that the only official answer or position of WSU will be in writing through an addendum issued after the pre-proposal meeting. Additional questions may be submitted by bidder after the pre-proposal conference as long as those questions are submitted no later than the Post-Conference Question Deadline stated in Article III. Failure to submit questions for clarification on time may result in those questions not being considered. Failure to notify the Procurement Officer of any conflicts or ambiguities in the Request may result in items being resolved in the best interest of WSU. Any modification to this RFP as a result of the pre-proposal conference, as well as written answers to written questions, shall be made in writing by addendum and mailed to all Contractors who received the original request from the Office of Purchasing. Only written communications are binding.

2.6. Pre-Proposal Questions: Questions requesting clarification of the RFP, if allowed, must be submitted in WRITING to the Procurement Officer by email prior the RFP Question Deadline indicated on the RFP Cover Page. Failure to notify the Procurement Officer of any conflicts or ambiguities in the RFP may result in items being resolved in the best interest of WSU. Any modification to this RFP as a result of Pre-Proposal Questions shall be made in writing by addendum and sent electronically to all Bidders who received the original request. Only written communications are binding.

2.7. Acceptance or Rejection: WSU reserves the right to accept or reject any or all Proposals or part of a Proposal; to waive any informalities or technicalities; clarify any ambiguities in this RFP; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a Proposal.

2.8. Selection Criteria: Award shall be made in the best interest of WSU as determined by the PNC. WSU reserves the right to make an award based on any of the following factors and is not required to make the determination based solely on cost. Consideration will be given, but is not limited, to each of the following criteria:

1. Proposal cost [NOTE: Bidders are not to inflate prices in the initial Proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations];
2. Any poor performance experienced by WSU with Bidder within the five (5) year period prior to Proposal;



3. Documented experience in providing the same products / services to third parties that are solicited in this RFP;
4. Product, service, and performance;
5. Equipment owned by Bidder to be used in providing requested services;
6. Qualified staff and/or subcontractors;
7. Adequacy and completeness of Proposal;
8. Compliance with the terms and conditions of the RFP; and
9. Response format as required by this RFP;
10. Bidder's anticipated ability to meet RFP requirements.

2.8 Proposal Disclosures:

2.8.1 In the event this is a Sealed Bid, at the time of closing, only the names of those who submitted Proposals shall be made public information. No price information will be released. Bid tab results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from the Office of Purchasing. Bid results can be obtained by sending a written request, referencing the Solicitation name and number to the following:

Wichita State University
Office of Purchasing
1845 Fairmount St, Campus Box 38
Wichita, KS 67260-0038
purchasing.office@wichita.edu

2.8.2 Copies of individual Proposals may be obtained under the Kansas Open Records Act (KORA), K.S.A. 45-215, *et seq.*, by submitting an Open Records Request at <https://openrecords.wichita.edu>. Once your request is received, you will be provided an estimate of the cost. Upon receipt of that amount, the documents will be transmitted to you electronically, except that no information in any Proposal file shall be released until a Contract has been executed or all Proposals have been rejected.

2.9 Retention of Proposals: WSU reserves the right to destroy all Proposals if the RFP is withdrawn, the RFP does not result in an agreed Contract, or in accordance with Kansas law. Late Proposals will not be considered a valid Proposal and shall not be retained unless deemed necessary by WSU.

2.10 Award: An RFP is not considered to be "awarded" until a Contract is executed between WSU and the Contractor. A Contract may be formed upon a Bidder's formal acceptance of WSU's notice of award where it is made clear that no other contractual document shall be presented subsequently for signature.

2.11 Notice of Award: Generally, WSU will notify all Bidders of an award made contingent on a fully executed Contract between the Contractor and WSU. Only WSU is authorized to issue

news releases relating to this RFP, its evaluation, award, and/or performance of the Contract, unless express written permission is obtained by WSU.

SECTION III PROPOSAL INSTRUCTIONS AND REQUIREMENTS

3.1 Proposal Form & Certifications

Bidders must submit a Proposal that complies with the requirements set forth in **Attachment 3: Proposal Requirements**. Bidders can include additional information with their Proposal including, but not limited to, photos, renderings, plans, designs, quotes, and references with its Proposal except that all such additional information shall be properly marked to include the Bidder's name and RFP Number and shall make every effort to number all pages.

Bidders must fully complete and submit with its Proposal all certifications and forms attached or referenced in this RFP.

3.2 Preparation of Proposal:

A Proposal shall not be considered for award if the price in the Proposal was not arrived at independently and without collusion, consultation, communication, or agreement as to any matter related to price with any other Bidder, competitor, or public officer/employee.

3.3 Submission of Proposals:

3.3.1 Proposals must be sent / delivered so that it is received by WSU no later than the RFP Closing Date indicated on the RFP Cover Page.

3.3.2 WSU prefers that all Proposals be submitted electronically. When submitting electronically:

- One (1) electronic version of the Bidder's Proposal, including literature and other supporting documents, shall be sent by email or secured electronic DropBox to the Procurement Officer at the email on the RFP Cover Page.
- All emails or communications transmitting Proposals shall contain, for identification, the title, the RFP Number, and the Subject of the RFP.
- The Bidder shall email the Proposal attachments or may email instructions for downloading all Proposal documents by Dropbox.
- An Adobe PDF document type is preferred, but Microsoft Word, Excel, JPEG, and other formats will be accepted.
- Bidders will be contacted if additional information is needed.

3.3.3 Bidders who are unable to submit their Proposal electronically must deliver their Proposal by hand delivery to the Procurement Officer Address identified on the RFP Cover Page. Hand delivered Proposals must be in a sealed envelope, and

clearly marked for delivery to the Office of Purchasing, and indicate the assigned RFP number as show on the first page of this RFP.

- 3.3.4** Proposals received prior to the Closing Date shall be kept secured and sealed until closing if they are properly identified as instructed above. WSU shall not be responsible for the premature opening of a Proposal or for the rejection of a Proposal that was not received prior to the Closing Date because it was not properly identified.
- 3.3.5** Late Proposals will not be considered a valid Proposal and will not receive consideration.
- 3.4 Acknowledgment of Addenda:** All Bidders shall acknowledge receipt of any addenda to this RFP. Failure to acknowledge receipt of any addenda may render the Proposal to be non-responsive. Changes to this RFP shall be issued only by the Office of Purchasing in writing.
- 3.5 Modification of Proposals:** A Bidder may modify a Proposal electronically by email or by DropBox transmission at any time prior to the closing date and time for receipt of proposals.
- 3.6 Withdrawal of Proposals:** A Proposal may be withdrawn on written request submitted electronically in email from the Bidder to the Procurement Officer at the Office of Purchasing prior to the RFP Closing Date.
- 3.7 Parties to Contract:** Proposals shall be submitted in manner that allows WSU controlled affiliated corporations to enter into similar agreements subject to the same or substantially similar terms and conditions. WSU controlled affiliated corporations include: Wichita State University Intercollegiate Athletic Association, Inc., Wichita State University Union Corporation, Wichita State University Innovation Alliance, Inc., and WSIA Investments Corporation.

SECTION IV GENERAL CONTRACT PROVISIONS

The provisions of this section list all general contract provisions that shall govern the resulting services and/or goods solicited in this RFP. These provisions shall be deemed binding on the Bidder if a Bidder's Proposal is accepted by WSU and WSU and Bidder (referred to in this Section as "Contractor") enter into a Contract or deem a Contract to be formed (referred to in this Section as "Contractor").

4.1 Contract Documents: The successful Bidder ("Contractor") may be required to enter into a separate written Contract with WSU. Unless expressly omitted in the Contract, this RFP and any amendments, and the WSU DA 146a - Contractual Provisions Attachment, located at <https://www.wichita.edu/administration/generalcounsel/DA-146a.php> are deemed binding on Contractor and hereby incorporated by reference into the Contract. The Proposal and any Proposal amendments may be incorporated into the Contract at the discretion of WSU. The successful Bidder ("Contractor") is agreeing to provide the Chemical Water Treatment Services subject to the WSU Terms and Conditions of Purchases – Services and Goods, which are available for download at (<https://wichita.edu/administration/generalcounsel/terms-conditions-information.php>).

4.2 Order of Precedence: In the event of a conflict in terms of language among the Contract documents listed below (as applicable), the following order of precedence shall govern:

1. Wichita State University Modified Form DA-146a;
2. Executed Contract between the parties;
3. This RFP including any and all addenda; and
4. Bidder's Proposal submitted in response to this RFP, as finalized.

4.3 Term and Termination: The term of the Contract and any clauses regarding termination of such Contract will be set forth in the subsequent Contract awarded.

4.4 Independent Contractor:

- 4.4.1 Both parties, in the performance of a Contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever. As such, Bidder and its employees and agents shall have no right to participate in any employee benefit plan, program or arrangement provided to WSU employees, including, but not limited to, workers compensation benefits, unemployment benefits, health and accident insurance, life insurance, sick leave, and/or vacation.
- 4.4.2 The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by any Contract.

4.4.3 The Contractor is not subject to the direction, control, or supervision of WSU with respect to how it is to perform its duties. The Contractor is solely responsible for the control and supervision of its employees, agents, and contractors that are assigned to provide services to WSU.

4.5 Industry Standards: If not otherwise provided, materials or work called for in the Contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

4.6 Contractor Qualifications and Abilities: Submission of Contractor's bid will be considered presumptive evidence that the Contractor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the Proposal for all contingencies. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the Contract. Later claims for labor, work, materials, and equipment required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to WSU.

4.7 Staff Qualifications: The Contractor shall warrant that all persons assigned by it to the performance of any Contract shall be employees of the Contractor (or specified subcontractor if authorized) and shall be fully qualified to perform the work required, including passing all required background checks and meeting all work authorization and export compliance requirements. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work under the Contract, if subcontractors are authorized. Failure of the Contractor to provide qualified staffing at the level required by the Proposal specifications may result in termination of the Contract and/or damages.

4.8 Payments: WSU shall not be responsible for, and does not agree to be charged, any payments for costs or items not listed in the Bidder's Proposal.

4.9 Conflict of Interest: The Contractor shall not knowingly employ, during the period of the Contract or any extensions to it, any professional personnel who are also in the employ of WSU and who are providing services involving the Contract or services similar in nature to the scope of the Contract to WSU. Furthermore, the Contractor shall not knowingly employ, during the period of the Contract or any extensions to it, any WSU employee who has participated in the making of the Contract until at least two (2) years after termination of employment with WSU.

4.10 Confidentiality: The Contractor may have access to private or confidential data maintained by WSU to the extent necessary to carry out its responsibilities under the Contract. Contractor must comply with all the requirements of the Kansas Open Records Act (KORA) in providing services under the Contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data

furnished by WSU promptly at the request of WSU in whatever form it is maintained by Contractor. On the termination or expiration of the Contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by WSU, will destroy or render it unreadable.

4.11 Nondiscrimination and Workplace Safety: The Contractor agrees to abide by all federal, state, and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules, and regulations may result in termination of the Contract.

4.12 Environmental Protection: The Contractor shall abide by all federal, state, and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of the Contract.

4.13 Insurance: The successful Bidder shall present, upon request, an affidavit or certificate demonstrating insurance coverages consistent with any requirements set forth in **Attachment 6**.

4.14 Hold Harmless: WSU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to WSU property. The Contractor shall do nothing to prejudice WSU's right to recover against third parties for any loss, destruction, or damage to WSU property.

4.15 Care of WSU Property: The Contractor shall be responsible for the proper care and custody of any WSU-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of the Contract, and Contractor will reimburse WSU for such property's loss or damage caused by Contractor, normal wear and tear excepted.

4.16 Prohibition of Gratuities: Neither the Contractor nor any person, firm, or corporation employed by the Contractor in the performance of the Contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any WSU employee at any time.

4.17 Retention of Records: Unless WSU specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records, and other evidence involving transactions related to the Contract for a period of five (5) years from the date of the expiration or termination of the Contract. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

4.18 Examination of Records: The Contractor agrees that authorized federal and state representatives, including but not limited to, WSU personnel; independent auditors acting on behalf of WSU and/or state or federal agencies shall have access to and the right to examine

records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to WSU.

4.19 Federal, State, and Local Taxes: WSU makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

4.20 Antitrust: If the Contractor elects not to proceed, the Contractor assigns to WSU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by WSU pursuant to the Contract.

4.21 Anti-Kickback: When WSU has reasonable grounds to believe that a violation of the Anti-Kickback Act of 1986 (41 U.S.C. 87, *et seq.*, as amended) may have occurred, WSU shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting department or agency of the United States or the Department of Justice. WSU shall cooperate fully with any Federal agency investigating a possible violation of the Anti-Kickback Act of 1986. The Contracting Officer may (1) offset the amount of kickback against any monies owed by the United States under the prime contract and/or (2) direct that the Prime Contractor withhold from sums owed a Contractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (1) of this clause be paid over to the United States Government unless the Government has already offset those monies under subdivision (2) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld. WSU agrees to incorporate the substance of this clause, including this subparagraph in all subcontracts which exceed one hundred thousand dollars (\$100,000.00).

4.22 Modification: The Contract shall be modified only by the written agreement of the parties. No alteration or variation of the terms and conditions of the Contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

4.23 Assignment: The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under the Contract without the prior written consent of WSU. The Contract may terminate in the event of its assignment, conveyance, encumbrance, or other transfer by the Contractor without the prior written consent of WSU.

4.24 Third Party Beneficiaries: The Contract is not intended to and shall not be construed as providing an enforceable right to any third party.

4.25 Captions: The captions or headings in the Contract are for reference only and do not define, describe, extend, or limit the scope or intent of the Contract.

4.26 Severability: If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition,

or application, and the remainder of the Contract shall not be affected and each provision of the Contract shall be enforced to the fullest extent permitted by law.

4.27 Integration: The Contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. The Contract between the parties shall be independent of and have no effect on any other contracts of either party.

4.28 Criminal or Civil Offense of An Individual or Entity That Controls A Company or Organization or Will Perform Work Under The Contract: Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed in the Proposal and during the term of the Contract. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For purposes of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls twenty-five percent (25%) or more of its equity, or otherwise controls its management or policies. Any conviction for a felony criminal offense, or an adverse judgment in a civil case, that involves the actual or threatened harm to the health or safety of an individual must be disclosed. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

4.29 Injunctions: Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of WSU, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

4.30 Acceptance: No contract provision or use of items by WSU shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

4.31 Breach: Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

4.32 Statutes: Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then on the application of either party the Contract shall be amended to make such insertion or correction.

4.33 Special Contract Provisions Specific to Scope of Work: In addition to the General Contract Provisions set forth in this Section IV, Contractor shall agree to the special contract provisions set forth in **Attachment 4: Additional Contract Provisions.**

ATTACHMENT 1: TAX CLEARANCE INFORMATION

WSU strongly supports the State of Kansas Tax Clearance Process. Bidders submitting Proposals that exceed twenty-five thousand dollars (\$25,000.00) over the term of the contract shall include a copy of a Tax Clearance Certification Form with their submittal. Failure to provide this information may be cause for rejection of a Bidder's bid or proposal.

A "Tax Clearance" is a comprehensive tax account review to determine and ensure that the account is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR) Director of Taxation. Information pertaining to a Tax Clearance is subject to changes(s), which may arise as a result of a State Tax Audit, Federal Revenue Agent Report, or other lawful adjustment(s).

To obtain a Tax Clearance Certificate, you must:

- Go to <https://www.kdor.ks.gov/apps/taxclearance/Default.aspx> to request a Tax Clearance Certificate
- Return to the website the following working day to see if KBOR will issue the certificate
- If issued an official certificate, print it and attach it to your Proposal
- If denied a certificate, engage KDOR in a discussion about why a certificate was not issued

Bidders (and their subcontractors) are expected to submit a current Tax Clearance Certificate with every Proposal.

Please Note: Individual and business applications are available. For applications entered prior to 5:00 PM Monday through Friday, results typically will be available the following business day. Tax clearance results may be denied if the request includes incomplete or incorrect information.

Please Note: You will need to sign back into the KDOR website to view and print the official tax clearance certificate.

A copy of the Certification of Tax Clearance form received from the Kansas Department of Revenue should be sent along with your Proposal to:

Wichita State University
Purchasing Office
1845 Fairmount Street, Campus Box 038
Wichita, KS 67260-0012

Failure to provide this information may be cause for rejection of Bidder's bid or proposal.

Information about Tax Registration can be found at the following website:
<http://www.ksrevenue.org/forms-btreg.html>

The WSU Purchasing Office reserves the right to confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award.

In the event that a current tax certificate is unavailable, the WSU Purchasing Office reserves the right to notify a Bidder (one that has submitted a timely event response) that they have to provide a current Tax Clearance Certificate within ten (10) calendar days, or WSU may proceed with an award to the next lowest responsive Bidder, whichever is determined by the Purchasing Director to be in the best interest of WSU and the State.

**ATTACHMENT 2:
CERTIFICATION REGARDING
IMMIGRATION REFORM & CONTROL**

Any Bidder that is awarded a subsequent contract (“Contractor”) is expected to comply with the Immigration and Reform Control Act of 1986 (IRCA; 8 C.F.R. Ch. 1, Subch. B, Pt. 245a), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-subcontractor. The usual method of verification is through the Employment Verification (I-9) Form. With the submission of this bid, the Contractor hereby certifies without exception that Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State’s option, may subject the contract to termination and any applicable damages.

Contractor certifies that, should it be awarded a contract by the State, Contractor will comply with all applicable federal and state laws, standards, orders, and regulations affecting a person’s participation and eligibility in any program or activity undertaken by the Contractor pursuant to the Contract. Contractor further certifies that it will remain in compliance throughout the term of the contract.

At the State’s request, Contractor is expected to produce to the State any documentation or other such evidence to verify Contractor’s compliance with any provision, duty, certification, or the like under the contract.

Contractor agrees to include this Certification in contracts between itself and any subcontractors in connection with the services performed under the Contract.

Signature

Date

Title of Contractor

ATTACHMENT 3: PROPOSAL REQUIREMENTS

Proposals should set forth, in detail, Bidder's plans to meet each of the requirements set forth in this RFP and specifically in this **Attachment 3: Proposal Requirements**. The proposal will be evaluated in light of the material and the substantiating evidence presented in the proposal, not on the basis of what may be inferred.

- 3.1 Company Overview and Qualifications.** Provide a narrative description of your firm, its capacity to provide these services, and the Bidder's experience in the services or goods at issue in this Bid. Provide a description of the Bidder's qualifications and experience in performing the requested or similar services, including [resumes/summaries] of personnel assigned to the project stating their [education and] work experience. Bidder should establish in its Proposal that it is an established firm recognized for its capacity to perform and capable of mobilizing sufficient personnel to meet deadlines specified by WSU.
- 3.2 Successful Projects / Services.** Provide a list of past successful projects that align with the expectations set forth in this RFP in the State of Kansas. Such information may be marked as "Proprietary" if it is not open to the public.
- 3.3 Key Personnel.** Provide a list of personnel to be used to perform the services identified in this RFP and include their qualifications, education, accomplishments, and any other relevant information demonstrating level of experience.
- 3.4 Fees for Goods or Services.** Provide an explanation and detailed breakdown of Bidder's fee proposal and any other expenses that are charged for the requested services and/or goods, including reimbursable expenses. Bidder's fees are assumed to include the firm's cost of doing business such as overhead, management, postage, shipping, telephone, internet, fax, photocopying, research, and general office expenses, unless expressly set out as an additional fee.
- 3.5 Refunded, Credited or Discounted Fees.** Describe any circumstances where WSU would receive a refund, credit, or discount of the proposed fees.
- 3.6 Equal Opportunity Employment.** Describe how you will accommodate state and federal laws and policy provisions issued by the Kansas Board of Regents and WSU relating to Affirmative Action and Equal Opportunity Employment, including your firm's efforts to recruit and contract with disadvantaged groups and/or businesses (minority, women, veteran, and small business).
- 3.7 Additional Tasks.** Identify any additional tasks the Bidder considers necessary to provide the services and/or goods solicited in this RFP and explain any recommended deviation from the tasks identified in **Attachment 5: Minimum Qualifications and Performance Specifications** that Bidder believes are necessary.

3.8 References. Provide three (3) references that have used Bidder to complete the same or similar services within the last three (3) years. Specify a contact person with a telephone number, and email address.

**ATTACHMENT 4:
ADDITIONAL CONTRACT PROVISIONS SPECIFIC TO THIS RFP**

In the event of an award, Bidder agrees to accept, subject to exception as set forth in Bidder's Proposal, the following additional contractual terms that are specific to this RFP:

4.1 Experience: All bidders must have a minimum of three (3) years active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified. Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed. If Bidder cannot meet this requirement, provide a written explanation as to why. Inability to meet this requirement is not necessarily grounds for disqualification and such determination will be made within the sole discretion of WSU.

4.2 Schedule of Service: All on-site services shall be performed between the normal business hours (8:00 am to 4:30 pm), Monday – Friday. Work outside these hours may be allowed but shall be coordinated and approved by the appropriate Lab Director. Water Treatment Services are not required on official WSU holidays, as listed below.

- New Year's Day
- Martin Luther King Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day and day after
- Christmas Day

The preceding Friday is observed when the legal holiday falls on Saturday; the following Monday is observed when the holiday falls on Sunday.

4.3 Indefinite Quantity Contract: This Request is for indefinite quantity contract between a vendor and WSU to furnish an undetermined quantity of a good or service in a fixed period of time.

4.4 Price: Prices shall remain firm throughout the contract period. Prices quotes are to be net delivered, including all trade, quantity and volume discounts. Any price reductions available during the contract period shall be offered to the University. Failure to provide available price reductions may result in termination of the contract.

4.5 Payment Terms: Unless otherwise agreed to in writing by WSU and Bidder, pursuant to the Kansas Prompt Payment Act (K.S.A. 75-6403(b)), all payment terms are Net 30 days from the date the goods or services are delivered and finally accepted by WSU. If the 30th day falls on a

weekend, legal holiday, or WSU holiday, WSU shall have until the next business day to make payment.

4.6 Bidder Contracts: Bidder shall include an editable Word version copy of any proposed terms and conditions applicable to this purchase.

4.7 On-Site Inspection: Failure to adequately inspect the premises shall not relieve the successful vendor from furnishing without additional cost to WSU any materials, equipment, supplies or labor that may be required to carry out the intent of this Request. Submission of a bid shall be construed as evidence that the vendor has made necessary examination, inspection, and investigation. Failure to properly inspect the site may result in rejection of the vendor's bid.

4.8 Materials and Workmanship: Bidders shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

4.9 Shipping; Deliveries: Unless otherwise agreed to in writing by WSU and Bidder, all proposals shall include all packing, handling, and shipping charges FOB Destination, freight prepaid and allowed. The destination shall be WSU's receiving dock. All orders shall be shipped within seven (7) business days of receipt of a purchase order. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, Bidder shall immediately notify WSU of the revised delivery date or partial delivery date. WSU reserves the right to cancel the order and receive a return of any prepaid fees if the updated delivery time is unsatisfactory.

4.10 Warranty and Acceptance: By submitting a bid, Bidders expressly warrant that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished or adopted by WSU, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of WSU's acceptance of or payment for such equipment, supplies, and/or services.

No equipment, supplies, and/or services received by WSU shall be deemed accepted until the University has had a reasonable opportunity to inspect said equipment, supplies, and/or services. All equipment, supplies, and/or services which do not comply with specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which right to any warranty of the Bidder upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

4.11 Equipment: All offered equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid.

4.12 Implied Requirements: All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the

specifications, shall be included. Other products required to make the described software functional shall be identified in the vendor's response.

4.13 Technical Literature: All bids shall include specifications and technical literature sufficient to allow WSU to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature, it must be supported by additional documentation and included with the bid. Proposals without sufficient technical documentation may be rejected.

4.14 Upgrades: Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

4.15 Invoices: Each purchase order must be individually invoiced. Invoices shall be forwarded to the using department and must include the following:

- Date of invoice;
- Date of completion of work;
- Purchase Order number and Contract number;
- Itemization of all applicable charges; and
- Net amount due.

4.16 Contract Contacts: WSU and Bidder shall, upon award, provide each other with contact names and information to enable efficient communication between both parties.

4.17 Materials and Disposal of Trash and Toxic Substances: All equipment and materials used for the "Water Treatment Chemical Services" shall be provided by the Bidder. All equipment must be capable of providing high quality, Water Treatment Services. Bidder agrees to dispose of any and all trash at the premises. Bidder agrees to dispose of any and all toxic or hazardous substances used in accordance with federal, state, and local statutes and regulations and further agrees to indemnify, defend, and hold WSU harmless from any liability, claim, loss, or damage resulting there from.

4.18 Notification: Bidder shall notify the office or assigned individual of any irregularities noticed while performing services, such as, electrical switches or plugs, leaks, intermittent operation, damage, suspected irregularities, damage to WSU-furnished supplies etc.

4.19 Overall Expectations: Bidder shall undertake Water Treatment Chemical Services without causing interruption in service and keep and provide traceable records of the work completed. "The Bidder shall impress upon employees the idea that the specifications are only a guide. If extra effort is required in any area at any time, it is expected without argument or extra charge.

4.20 Probationary Period: The first six (6) months of the contract executed between the successful Bidder and WSU will be a probationary period for the Bidder. This period will be used by WSU to determine that the Bidder intends to and is capable of completely fulfilling the

obligations of this contract. Notwithstanding any other termination provisions in the contract, WSU may terminate the contract at any time during the probationary period for any reason at their sole discretion.

4.21 Drugs: The illegal use, possession, dispensation, distribution, manufacture, or sale of a controlled substance or illegal drug by an employee of the Bidder or approved subcontractor while performing services for WSU or on WSU premises is prohibited, as is the use or possession of alcohol. Any violation of this prohibition provides cause for immediate termination of the contract. No smoking is allowed in the facility. Any smoking must take place outside the building in the designated areas.

4.22 Safety Data Sheets (SDS): It is the Bidder's responsibility to comply with all applicable state and federal safety regulations. Safety Data Sheets (SDS) will be furnished to WSU upon request for any chemicals used, and any such chemicals are to be stored and disposed in the proper manner as required by law.

4.23 Safety: Safety of everyone within the lab is paramount to WSU. It is important that the Bidder know and understand the potential hazards that may exist within the test labs. The test labs replicate extreme environmental conditions of high and low temperatures, high force and pressure, RF energy, high currents, and voltages. Coming in close proximity or contact with some of this equipment may result in serious injury including death. When on the premises, it is important that the Bidder and all of its employees or agents stay within the designated areas and aisle walkways and in no way shall be unescorted through the lab areas. The Bidder will be given a safety briefing and clear definition of the equipment to be calibrated and the ability to do so safely. It is incumbent upon the Bidder to assure that employees are informed of the potential hazards and the restricted areas. At any time, there is a question regarding safety, the Bidder is to contact lab personnel for resolution.

4.24 Photography: There shall be no photography inside the buildings or items around the building. Any data taken on personal phones is not allowed and may be subject to criminal or federal prosecution.

4.25 Proprietary and ITAR Data: All data and information about programs, clients, scheduling that may have been provided, seen, or overheard including what equipment is being calibrated is proprietary data with some or all of the information classified under US Military and/or Department of Commerce regulations.

4.26 Non-Disclosure Agreement and Confidentiality: Proposals must include an executed Mutual Non-Disclosure Agreement ("NDA"), signed by Bidder's duly authorized representative. The NDA is attached to this RFP as Attachment 9. Proposals received without an NDA will not be considered. Bidders acknowledge and agree that any information provided to it as part of this RFP that meets the definition of PROPRIETARY INFORMATION therein shall be treated in accordance with the terms of the executed NDA. Each individual providing services under this Bid, or any related contracts or work orders will be required to sign a confidentiality agreement at least as restrictive as the one attached and before they are granted access to WSU premises.

4.27 SUBCONTRACTORS: No subcontractors are to be used in any portion of Bidder's services. Use of subcontractors will disqualify a potential Contractor.

4.28 Default on Delivery: Any Contractor who defaults on delivery as defined in this RFP may, be barred from bidding on any subsequent RFP for a period to be determined.

4.29 Documentation: Examples of documentation delivered by the manufacturer with purchase of items shall be included. Contractor must be able to deliver additional copies (beyond the response set) of documentation on an immediate basis for use in the evaluation process. Within the section, Contractors may use any format. Include detailed, standard, published literature describing each equipment item and feature offered.

If asked, Contractor shall deliver additional copies of response documentation immediately. Within the section, Contractors may use any format. Include detailed, standard, published literature describing each item and feature offered.

4.30 Certification of Specifications Compliance: By submission of a bid and the signatures affixed thereto, the Bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request.

4.31 Certification of Materials Submitted: The response to this RFP, together with the specifications set forth herein and all data submitted by the Bidder to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful Bidder and WSU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

4.32 Restrictions on Use: Bidder's employees shall be instructed that state property and state employee property is not available for use in any way unless prior approval is obtained. Additionally, no person or employee family members shall be allowed on the property who is not directly involved in performance of the Chemical Treatment services.

**ATTACHMENT 5:
MINIMUM QUALIFICATIONS AND PERFORMANCE SPECIFICATIONS**

5.1 STATEMENT OF WORK: Wichita State University herein (WSU) has a goal to contract for a complete service-oriented water treatment program. The contract will be awarded to the Bidder who best satisfies all of the water treatment needs set forth in this RFP at optimum cost performance.

5.2 OVERVIEW: The water treatment program will include steam boiler systems, cooling towers, building hot water closed loops systems, and all chilled water. In addition, the water treatment program will include all chemical products, any required equipment, and professional consulting services to:

- A. Improve program safety and reduce program risk/liability.
- B. Reduce fuel and electrical consumption through improved heat transfer efficiency. This is accomplished by minimizing scale, corrosion, fouling, and microbiological growth, which create deposits on heat transfer surfaces.
- C. Minimize repair and maintenance costs associated with replacement and cleaning of equipment due to scale, corrosion, fouling, or microbiological activity.
- D. Provide professional, knowledgeable, and involved sales/service personnel to ensure program success.
- E. Accurately monitor program results and communicate appropriate recommendations with quantifiable business-oriented justifications.
- F. Thoroughly train maintenance personnel on the implementation and control of the program.

5.3 NON-CONFORMANCE TO CONTRACT CONDITIONS: Any and all items or services may be tested and/or inspected for compliance with specifications. Items, which are not in conformance with specifications, may be rejected and returned at Bidder's expense. Failure to meet program goals may result in termination of contract with as little as 30 days' notice.

5.4 LEGISLATION CHANGES: In the event any governmental restrictions are imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered in this proposal prior to their delivery; it shall be the responsibility of the successful Bidder to notify WSU at once indicating in writing the specific regulation which requires an alteration. WSU reserves the right to accept or reject any such alteration.

5.5 GOVERNMENT REGULATIONS: All chemicals proposed for use at WSU facilities shall be verified as acceptable for use in the State of Kansas and must be approved by WSU. Chemicals

used for water treatment must comply with all Environmental Protection Agency (EPA), and Department of Transportation (DOT) requirements, including packaging and labeling. The submitting Bidder shall include Material Safety Data Sheets (MSDSs) and product bulletins/fact sheets with initial proposal for review.

WSU intends all steam produced be acceptable for use around food materials, thereby, requiring FDA approval for all boiler treatment chemicals, including oxygen scavengers, scale and corrosion inhibitors, and steam/condensate treatments. All discharges into the sewerage system from cooling tower bleed-off, boiler blowdown, or system draining must meet all standards of the local municipality, the State of Kansas, and any Federal regulations that apply.

5.6 PROGRAM GOALS: The water treatment program will provide scale and corrosion protection for condenser water systems, cooling towers, chillers and chilled water systems, steam boilers, deaerator, steam/condensate lines, and closed hot water loops, while maximizing program safety, efficiency, and performance.

5.7 BIDDER'S COMMITMENT: Bidder's chemical program and consulting services are to produce clean heat transfer surfaces which are substantially free of scale, sludge, deposits, corrosion, pitting, and biological growth when treatment is administered in accordance with, Bidder's directions and recommendations.

5.8 EQUIPMENT INSPECTION: The Bidder shall provide a written statement of the condition of all equipment made available for inspection. All equipment will be made available for inspection within three (3) months of award of contract.

5.9 MATERIAL COMPATIBILITY: The Bidder shall ensure that the chemicals used in the water treatment program shall have no detrimental effect on the metallic or non-metallic materials in the equipment being treated when used in accordance with Bidder's instructions. WSU will be responsible to inform the Bidder of all the materials contained in the system. The proposed chemical products must also be completely compatible with the existing chemical treatment program.

5.10 MONITORING AND CONTROL: The Bidder will provide a comprehensive chemical testing program with written instructions and test procedures for all control tests. The Bidder will provide a summary chart with frequency and time of day for each test. If any testing is required in between Bidder visits the Bidder must provide training to WSU staff, if requested. If an alternate schedule is needed the Bidder can make these recommendations. WSU requires Bidders to inspect all equipment at least monthly.

5.11 FEED AND CONTROL EQUIPMENT: The existing control equipment will be used, if possible, but may require Bidder to install Bidder's control equipment, to monitor and control where needed.

5.12 ANNUAL BUSINESS REVIEW: The Bidder must present a yearly review of the treatment program and a final review ninety (90) days prior to the expiration of the contract or current

12-month contract term. Bidder's representative shall meet at these times with the designated representatives of WSU Facilities Services to discuss all treatment programs, their effectiveness, and future objectives.

5.13 IDLE SYSTEMS: Bidder representatives shall be responsible for recommending treatment dosages and methods for protecting idle systems.

5.14 SPECIAL STUDIES: Bidder shall conduct corrosion studies, coupon/dip-slides, in critical systems at least quarterly to ensure program performance. Bidder should outline what other studies it might recommend.

5.15 WATER CONSERVATION: The Bidder shall make-an-effort to maximize cycles of concentration in both boilers and cooling towers to minimize water, energy, and chemical consumption.

5.16 REPRESENTATIVE EXPERIENCE: Bidder shall appoint two (2) members to represent their company in dealings with WSU. Both Bidder representatives shall be full-time employees of the company and be completely familiar with the Campus systems. Only these individuals will represent the Bidder regarding services. At least one member of the team must live in the Wichita metro area.

5.17 SERVICE LEVEL AND RESPONSE TIME: A Bidder representative shall, at a minimum, visit the site monthly. The Bidder representatives must be available for calls on specific problems should they occur. The Bidder representatives shall be available to WSU on 24-hour notice, and under emergency circumstances, should be able to visit WSU sites within four (4) hours after being notified.

5.18 QUALITY: A company's commitment to quality is an indication of its ability to satisfy customer needs. A Bidder's dedication to quality means fewer problems and less risk for our facility. As such, all Bidder-manufacturing facilities and Labs must be ISO 9000 or ISO 9001 certified. The certification must be submitted in the RFP. Bidders do not need to be an employee of chemical manufacturer. However, all Bidders are to provide your company's improvement process, quality education and training in chemical handling and blending. Include an outline of the quality education and training that your company's employees receive and how many have received it supporting literature or pamphlets may be included. Include a copy of the servicing plants ISO certification.

5.19 PROGRAM ADMINISTRATION: Organization is key to a well-run water treatment program. In order to have quick access to all technical and safety information regarding the water treatment program, WSU will require that the Bidder provide an Administration Notebook. At the very least, this notebook must contain an outline of the chemical program, all chemical control test procedures, Log Sheets, Product Bulletins, Material Safety Data Sheets, Feed and Control Equipment Specifications and Service Reports. Please provide a two- (2) page summary of how your company administers and manages a water treatment program. Include a sample

of your Administration Notebook and its contents. Notebook may be provided in electronic format.

5.20 EFFICIENCY MONITORING: Since one of the major goals of any water treatment program is improved heat transfer efficiency through clean heat transfer surfaces, WSU requires that water treatment Bidders have the capability of on-site computer analysis of energy efficiency. Boiler efficiency, overall chiller efficiency, condenser efficiency, and evaporator efficiency must be performed on a regular basis. Please submit a two-page summary of your company's capability in this area along with sample computer outputs for all applicable computer efficiency studies.

5.21 HEALTH AND SAFETY: The Bidder must provide Material Safety Data Sheets to ensure a safe work environment for WSU staff and to comply with all state and federal laws concerning the handling of hazardous materials. WSU will require that a Material Safety Data Sheet accompany all first-time orders and that the Bidder operate an in house 24-hour, 7 day per week emergency phone number which can be called for emergency information regarding chemical spills and/or accidents involving your products. Sub-contracting this service is not acceptable. Provide a two- page summary of your Material Safety Data Sheet program; include emergency phone number(s) and a sample copy of your company's Material Safety Data Sheet for a BIOCIDES you might use at our site.

All Bidder representatives MUST BE Safety Trained and Certified in all aspects of chemical handling associated with water treatment as required by law, government regulation, and industry standard. Documentation must be provided to certify Bidder representative training completion date, and follow-up on-going training.

5.22 TROUBLESHOOTING CAPABILITIES: The Bidder must have laboratory facilities capable of performing a wide array of analytical work to facilitate monitoring, control, and troubleshooting of WSU systems. The Bidder shall provide all laboratory services. Subcontracted work or the use of independent laboratories is not allowed unless specifically authorized in writing by WSU staff. Laboratory services which shall be available include corrosion coupon analysis, water analysis, deposit analysis, microbiological analysis, ion exchange resin analysis, analex cartridge analysis, fuel oil analysis, and metallurgical analysis. Include a sample analytical report for a corrosion coupon analysis, a deposit analysis and a microbiological from a local customer (no need to disclose customer name but location should be evident) as evidence of your company's laboratory capabilities.

5.23 ON-SITE MICROBIOLOGICAL TESTING: WSU is very concerned with microbiological control in the cooling systems. Therefore, WSU requires the Bidder to have the capability of determining organism levels within 30 minutes of taking a water sample. This test will be used by WSU staff to adjust biocide feed so that system cleanliness is maintained without having to overfeed biocide. Please submit instructions for such a test that you would use.

5.24 EQUIPMENT INSPECTION: Thorough equipment inspection is important in determining the effectiveness of a water treatment program as well as potential operational problems for a given system. Therefore, the Bidder must have the capability of inspecting the boilers and

chillers using fiber optics equipment and must provide the results and feedback from the inspection to WSU staff.

5.25 MAKE UP WATER ANALYSIS (CITY WATER): WSU will recommend getting your own city water analysis because the quality of city water varies a lot across campus.

Cost Proposal

Wichita State University herein (WSU) has a goal to contract for a complete service-oriented water treatment program. The contract will be awarded to the Bidder who best satisfies all of our water treatment needs at optimum cost performance.

Bidders should prepare costs sheets as per the specifications and label as such in your response. Prices for each location should be priced separately for each building.

Pricing should include a price per drum and an annual price inclusive of all chemicals for all equipment/billed in twelve (12) equal monthly payments. Include list of all chemicals used, including test chemicals in total amount.

If Bidder has an enhanced program available, please describe how they add value and would be usefulness for WSU and give separate pricing for consideration.

Include a Dilution Rate of chemicals for all equipment. If there are no meters on equipment, Bidder will need to calculate a formula for usage.

Using Sodium Hydrochloride is excluded from this RFP or contract.

Chemical Services Only for the Equipment for the following locations:

- **Central Energy Power Plant - 3911 E Wu Shock Dr.**
 - **Chill Water Make-up Close Loop for 1 year 98,512 gallons**
 - **Boiler Make-Up for 1 year 786,783 gallons**
 - **Cooling Tower Make-Up approx. 12,000,000 gallons for 2 towers per year**
 - **Boilers and Cooling Towers typically run 12 months out of the year.**
 - **Boilers number of hours of operation**
 - **1 boiler runs 24/7/365**
 - **2 boilers run 3 months a year**
 - **Cooling towers number of hours of operation: Summer-24; Spring-15; Winter-5-10; and anytime the outside temperature is above 45 degrees.**
 - **Bottom Boiler blown down twice a day for 10 seconds, surface boiler automatically blown down by TDS meter**
 - **Estimated percent condensate return to the steam boilers is 90%**
 - **Fully functional deaerator.**

➤ **John Bardo Center – 1800 Innovation Blvd.**

○ **Cooling Tower**

- Holds approx. 1700 gallons each, typically runs 10 months per year.
- Chillers are 274 Tons
- **AAON LZA-274-E-3-FHD0E-0000 Serial 201601-BBCV00009**
- **AAON LZA-274-E-3-FHD0E-0000 Serial 201601-BBCV00010**
- Cooling towers are run anytime outside temp is above 50 and typically run 12 months out of the year.

➤ **Shocker Hall – 2020 Perimeter Rd.**

○ **Cooling Tower**

- Manufacturer: Baltimore Aircoil Company
- Size: 270 nominal tons
- Holds approximately 3500 gallons, typically runs 9 months per year.

○ **Boilers**

- Domestic Hot Water (*quantity 2*)
Manufacturer: Lochinvar
BTU: 1,706,000
Type: Hot water system
- Holds approximately 1,706,000 gallons, typically runs 12 months per year.

○ **Heating (*quantity 3*)**

- Manufacturer: Crest
BTU: 1,500,000
Type: Hot water system
- Holds approximately 1,500,000 gallons, typically runs 6 months per year.

➤ **Koch Arena – 21st and Hillside**

○ **Chilled Water Loop**

- Holds approximately 12,000 gallons, typically runs 10 months per year.

○ **Boilers**

- Manufacturer: Hurst
- Model: S4X-150-15 serial: S750-15-56
- Model: S4X-150-15 serial: S750-15-57
- Holds approximately 2000 gallons, typically runs 24/7/365 (12) months per year.

- **Beech Wind Tunnel Cooling Tower - 1935 N. Research Pl.**
 - Baltimore Air Coil M:3648A S:U038634301MAD BELT: 6B144
 - Tonnage capacity 7,000MBH
 - Holds approximately 1000 gallons, typically runs 12 months per year.

- **NIAR ETL – 3800 S. Oliver**
 - **Cooling Tower**
 - Holds approximately 826 gallons closed loop side, 547 gallons open loop side (+/- 20%)
 - Manufacturer: EVAPCO
 - Model Number: AT 19-78
 - Cooling towers are run 24/7 and typically run 12 months out of the year.

**ATTACHMENT 6:
TAX DOCUMENTATION AND INSURANCE**

All suppliers new to WSU are required to submit a completed tax ID form to the Office of Purchasing as confirmation of their business identity. This information is used to build supplier profiles in the three databases that support encumbrances from our electronic requisitioning system. A scanned image of your tax ID form will be included in the profiles. Please submit documentation with your proposal.

NOTE: Insurance requirements are dependent on the type of particular project being bid. Bidder's may inquire with the Office of Purchasing for more information on insurance requirements.

All Bidders will submit proof of the following required insurance to WSU with their proposal:

1. **Comprehensive General Liability Insurance.** Bidder shall maintain comprehensive general liability insurance with limits not less than one million dollars (\$1,000,000.00) for each occurrence involving bodily injury and property damage, a general aggregate of two million dollars (\$2,000,000.00) and products-completed operation aggregate of one million dollars (\$1,000,000.00). Such coverage must include premises operations broad form property damage, completed operations, independent contractors, and contractual and products liability.
2. **Comprehensive Automobile Liability Insurance.** Bidder shall maintain comprehensive automobile liability insurance with limits not less than five hundred thousand dollars (\$500,000.00) for bodily injury and property damage combined, and must cover all owned, non-owned or hired vehicles of Bidder.
3. **Worker's Compensation Insurance.** Bidder shall maintain one hundred thousand dollars (\$100,000.00) in employer liability coverage and worker's compensation insurance as required by Kansas law.
4. **Property Insurance.** Bidder shall maintain insurance in an amount of not less than five hundred thousand dollars (\$500,000.00) to cover all sums, which Bidder will legally be liable to pay be reason of liability for damages to or destruction of WSU property, including the loss of use thereof.
5. **Employees Liability.** Bidder shall maintain employer's liability insurance with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

All insurance shall be maintained at bidder's sole expense. Insurance and bonds must be with a company or companies qualified to do business in Kansas or in the state where the Services are being performed, as acceptable to WSU, and written on the standard approved certification

forms. Bidder must furnish a certificate showing that such insurance upon execution of any Contract and no less than annually thereafter.

All liability insurance policies will name WSU as additional insured with respect to claims, demands, suits, judgments, costs, charges, and expenses arising out of, or in connection with, any loss, damage, or injury resulting from the negligence or other fault of Bidder, its agent, representatives, and employees.

**ATTACHMENT 7:
BIDDER SIGNATURE SHEET**

INSTRUCTIONS TO BIDDER: Please respond to all questions below. If you intend to rely on any marketing materials or separately submitted proposal document in response to any of the below questions, please reference such materials in response to the relevant question and provide that material along with your responses. Mark any information that is proprietary or business trade secrets as "CONFIDENTIAL."

1. RFP Name:			
2. Bidder Legal Name:			
3. FEIN Number:			
4. Any Other Relevant Name under which Bidder Operates:			
5. Bidder Parent Company, if any:		Corporation <input type="checkbox"/>	
		Limited Liability Company <input type="checkbox"/>	
		Not for Profit <input type="checkbox"/>	
		Other <input type="checkbox"/> Describe:	
6. Identify Corporate Structure:			
7. Address:			
8. Main Telephone Number:			
9. Contact Person if Awarded Bid:	Name:		
	Title:		
	Phone Number:		
	E-Mail:		
10. Do you certify that this Proposal meets the Minimum Qualifications & Performance Specifications set forth in Attachment 5? If no, provide written explanation and attach.			Yes <input type="checkbox"/> No <input type="checkbox"/>
11. Do you acknowledge that you have received all Attachments referenced in this RFP and have, as of the time of submission, reviewed the Purchasing Website for any supplemental terms or amendments?			Yes <input type="checkbox"/> No <input type="checkbox"/>
12. If awarded a Contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.			
Address:			
City, State, Zip			
Phone Number:			

By my signature below, I hereby certify that this Proposal is being submitted on behalf of the person, company, organization or entity identified above, that I have the authority to submit this Proposal and all certifications, is in accordance with the RFP specifications set forth herein and is a complete and accurate statement of skills, qualifications, service guarantees and costs. I further hereby certify that I do not have and am unaware that Bidder has any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one which a reasonable person would think would compromise the open competitive bid process.

Name of Authorized Official: _____ **Title:** _____

Signature: _____ **Date:** _____

ATTACHMENT 8: FEDERAL FLOWDOWN TERMS AND CONDITIONS

Please Note: The provisions in this attachment are required by the federal government to be included in RFPs for projects which involve federal awards. If the project does not involve federal grants, awards, or programs, some or all of these provisions may not apply.

Wichita State University has entered into an Agreement with either the U.S. Government or another entity who has itself entered into an Agreement with the U.S. Government. That Agreement requires that certain federal contract provisions be made a part of subsequent purchase orders, RFPs, and/or contracts issued by WSU related to furthering the performance or deliverables required under the original Agreement (“Flowdown Terms and Conditions”). Bidders agree to comply with all applicable Flowdown Terms and Conditions and agree to include the same requirements in any agreements or contracts with lower-tier subcontractors, as applicable. The following Flowdown Terms and Conditions are applicable to this RFP:

- 1. EQUAL OPPORTUNITY.** During the performance of this Contract, the Contractor agrees as follows: (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information. (4) The Contractor will send to each labor union or representative of workers with which it 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 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by 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. (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The Contractor will include the provisions of paragraphs (1) through (8) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: 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, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. 41 C.F.R. § 60-1.4(a)

2. **DEBARMENT AND SUSPENSION.** A contract award (see, 2 C.F.R. § 180.220) shall not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor, by executing this Contract, certifies that it is not presently suspended, debarred, proposed for debarment, or otherwise excluded by the federal government, and that should the Contractor become suspended, debarred, proposed for debarment, or otherwise excluded by the federal government, the Contractor shall immediately notify WSU. The Excluded Parties List System has been consolidated within the System for Award Management at <https://www.sam.gov/portal/public/SAM/>. (E.O.s 12549 and 12689)
3. **DOMESTIC PREFERENCE FOR PROCUREMENTS.** Contractor and its Subcontractors shall comply with 2 C.F.R. 200.322. The requirements of Part 200.322 include providing a

preference, to the greatest extent practicable, for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). As described in 2 C.F.R. 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Additionally, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

4. **PROHIBITION ON CERTAIN TECHNOLOGIES (2 C.F.R. 200.216).** Contractor and its Subcontractors shall comply with Section 889 of the National Defense Authorization Act of 2019. The requirements of Section 889 include a prohibition on the procurement or use of certain telecommunications and video surveillance services or equipment. Company and its Contractors are prohibited from obligating or expending federal funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Covered video surveillance equipment is video surveillance equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
5. **BYRD ANTI-LOBBYING AMENDMENT.** If this Contract or Subcontract, as applicable, is valued over one hundred thousand dollars (\$100,000.00), each tier is required to certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to WSU.



ATTACHMENT 9:

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT ("Agreement") is by and between WICHITA STATE UNIVERSITY, a state educational institution of Kansas, located at 1845 Fairmount, Wichita, KS 67260-____, contracting on behalf of _____ (hereinafter "WSU"), and _____ and its employees, located at _____ (hereinafter "COMPANY").

WHEREAS, WSU and COMPANY (hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES"), desire to exchange and discuss information related to _____ (hereinafter referred to as "PROJECT"); and,

WHEREAS, during the course of these discussions and evaluations, each PARTY may disclose certain confidential and proprietary information concerning, without limitation, trade secrets, devices, designs, specifications, plans, or other ideas or inventions relating to the PROJECT, and desire such information to be treated as PROPRIETARY INFORMATION.

NOW, THEREFORE, in consideration of the above premises and the individual and mutual promises of the PARTIES hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the PARTIES:

- 1. DEFINITIONS. As used in this Agreement, these terms shall have the following meanings:
1.1. "DISCLOSING PARTY" means the PARTY disclosing information to the other in furtherance of the PROJECT.
1.2. "RECEIVING PARTY" means the PARTY receiving information from the other in furtherance of the PROJECT.
1.3. "PROPRIETARY INFORMATION" means any information, knowledge or data received by the RECEIVING PARTY from the DISCLOSING PARTY in furtherance of or pursuant to the PROJECT that is clearly marked with proprietary legends by the DISCLOSING PARTY at the time of disclosure and, if the information is orally or visually disclosed, that is identified as proprietary at the time of said first disclosure and is clearly marked with proprietary legends and/or is reduced to writing within thirty (30) days of oral or visual disclosure.
2. RESTRICTIONS ON USE AND DISCLOSURE.
2.1. The PARTIES agree that all documents received from and marked as PROPRIETARY INFORMATION shall be kept confidential and shall not be disclosed to third parties and will be treated by the PARTIES with the same degree of care with which each treats and protects its own PROPRIETARY INFORMATION. In addition, RECEIVING PARTY shall only disclose PROPRIETARY INFORMATION to those personnel within its organization or affiliates requiring access to perform tasks contemplated by this Agreement, and any such personnel or affiliates shall be made aware of the restrictions imposed on the use of the PROPRIETARY INFORMATION.
2.2. RECEIVING PARTY shall use such PROPRIETARY INFORMATION only for the mutual benefit of the PARTIES and in furtherance of the PROJECT. RECEIVING PARTY shall not use such PROPRIETARY INFORMATION



for any other purpose, such as competing with DISCLOSING PARTY.

- 2.3. In the event that DISCLOSING PARTY furnishes sample products or other equipment or material ("ITEMS") to RECEIVING PARTY, which are suitably marked to identify them as encompassing PROPRIETARY INFORMATION of DISCLOSING PARTY, ITEMS so received shall be used and the PROPRIETARY INFORMATION derived from said ITEMS shall be treated as PROPRIETARY INFORMATION transferred pursuant to this Agreement. RECEIVING PARTY agrees not to cause or permit the reverse engineering, reverse assembly, or reverse compilation of ITEMS.
- 2.4. All PROPRIETARY INFORMATION and ITEMS shall remain the property of DISCLOSING PARTY and shall be promptly returned to DISCLOSING PARTY or destroyed upon written request, except as allowed under paragraph 5.3 or as required by applicable law and/or regulation. The requested action will be at the expense of DISCLOSING PARTY.
- 2.5. Notwithstanding any other provision of this Agreement, the obligations of confidentiality and non-use under this Agreement do not apply to any PROPRIETARY INFORMATION or ITEM that is:
 - 2.5.1. in the public domain at the time of initial disclosure to RECEIVING PARTY by DISCLOSING PARTY, or subsequently becomes publicly known through no wrongful act of RECEIVING PARTY;
 - 2.5.2. known to RECEIVING PARTY prior to the time of initial disclosure, as evidenced by competent and contemporaneous written documentation;
 - 2.5.3. furnished to a third party by DISCLOSING PARTY without confidentiality restrictions substantially similar to those herein;
 - 2.5.4. rightfully received by RECEIVING PARTY, without restriction as to further disclosure, from a third party that had the lawful right to disclose such information;
 - 2.5.5. independently developed by RECEIVING PARTY without the use of or reference to PROPRIETARY INFORMATION; or
 - 2.5.6. required to be disclosed pursuant to applicable law, subpoena, or proper governmental or judicial process, or order. Where such information is required to be disclosed under this section 2.5.6, prompt notice shall be provided to DISCLOSING PARTY, to the extent permitted by law, in order that DISCLOSING PARTY may have every reasonable opportunity to intervene in such process to contest such disclosure.
- 2.6. To the extent permitted by law, the identification of any of the occurrences, (2.5.1) - (2.5.6) above, will be promptly communicated between the PARTIES to this Agreement

3. **DISCLAIMERS.**

- 3.1. DISCLOSING PARTY does not, by virtue of disclosure of PROPRIETARY INFORMATION to RECEIVING PARTY, grant RECEIVING PARTY any right or license under any patents, copyrights or trade secrets, other than those rights granted to RECEIVING PARTY in section 2.2.
- 3.2. Neither PARTY makes any warranty or representation as to the accuracy or completeness of any PROPRIETARY INFORMATION disclosed under this Agreement.



4. TERM AND TERMINATION.

- 4.1. This Agreement shall expire five (5) years after the effective date hereof unless terminated earlier upon the end of a thirty (30) day period after receipt of a written notice by one PARTY from the other. Such termination shall not affect RECEIVING PARTY'S obligations relative to PROPRIETARY INFORMATION received prior to the effective date of such termination, as defined in section 4.2 below.
4.2. The obligations under this Agreement as to any PROPRIETARY INFORMATION shall continue for five (5) years from the date of first disclosure of such PROPRIETARY INFORMATION to RECEIVING PARTY, notwithstanding any earlier expiration or termination of this Agreement.

5. COMPLIANCE.

- 5.1. Each PARTY certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations ("C.F.R.") §120.6, or otherwise declared ineligible for the award of contracts by any Federal agency. If at any time a PARTY learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances, that PARTY shall provide immediate written notice to the other PARTY.
5.2. Each PARTY further agrees, to the extent applicable, to comply with all U.S. laws relating to the 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), and the Export Administration Regulations (EAR) 15 C.F.R. Parts 730-774. DISCLOSING PARTY shall notify the RECEIVING PARTY in writing prior to disclosure of any technical data or other items subject to EAR or ITAR. The PARTIES will reasonably cooperate with and support each other in obtaining the correct Export Control Classification Number (ECCN), the Harmonized Tariff Schedule (HTS) number or classification of a defense article.
5.3. PARTIES agree that each PARTY may retain one archival copy of all documents from the PROJECT for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

6. DESIGNATED REPRESENTATIVES AND NOTICES.

6.1. The following individuals are designated as the persons to receive PROPRIETARY INFORMATION and primarily responsible for compliance with the terms of this Agreement:

If to Wichita State University: Attn: _____ Company: Wichita State University Address: 1845 Fairmount Street Address: Wichita, KS 67260- E-Mail: _____
If to COMPANY: Attn: _____ Company: _____ Address: _____ Address: _____ E-Mail: _____



With a copy of all notices sent to:

Gc.contracts@wichita.edu

With a copy of all notices sent to:

6.2. All notices, demands, requests, approvals, reports, instructions, consents or other communications which may be required or desired to be given by either PARTY to the other shall be in writing and sent by certified mail or overnight traceable delivery and addressed to the individuals set forth above, unless any other person or address may be designated by notice from one PARTY to the other.

6.3. Either PARTY can change the individual designated by written notice to the other. Receipt of PROPRIETARY INFORMATION by any individual other than the designated receiver shall not affect the obligations of the RECEIVING PARTY.

7. **USE OF MARKS, LOGOS AND MARKETING.** COMPANY shall not use the name, logos, insignias or trademarks of WSU, any affiliates of WSU, or any PROJECT member, in any publicity, advertising, promotional materials, news release or websites except as set forth in this Agreement or as authorized in writing by WSU in each instance. Any permitted use of such marks shall be in compliance with WSU’s visual standards/brand identity guidelines (available upon request). COMPANY may use the name of WSU in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements.

8. **ASSIGNMENT.** This Agreement and the rights and duties hereunder may not be assigned or otherwise transferred by either of the PARTIES without the prior written consent of the other. If this Agreement is so assigned or otherwise transferred, it shall be binding on all successors and assigns.

9. **CAPTIONS.** The captions and headings in this Agreement are for reference only and do not define, describe, extend or limit the scope or intent of this Agreement.

10. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, to any extent, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

11. **WAIVER.** Any waiver by a PARTY shall be in writing and provided to all other PARTIES. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any PARTY hereto.

12. **COUNTERPARTS / EXECUTION.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via “wet” signature, authorized signature stamp or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means.

13. **ELECTRONIC SIGNATURES.** The PARTIES agree that this Agreement may be signed with electronic signatures. If an electronic signature is used, the PARTIES agree that it is the legally binding equivalent to the signing PARTY’s handwritten signature. Whenever either PARTY executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature. The PARTIES agree that neither



PARTY will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.

- 14. **ENTIRE AGREEMENT.** This Agreement may not be superseded, amended or modified except by written agreement between the PARTIES, and signed by a duly authorized official of each of the PARTIES.
- 15. **CHOICE OF LAW AND VENUE.** This Agreement shall be subject to, governed by and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in Sedgwick County, Kansas.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures, said Agreement to become effective as of the later date.

WICHITA STATE UNIVERSITY

COMPANY

SIGNATURE

SIGNATURE

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE

CONTACT INFORMATION (PHONE, E-MAIL)

CONTACT INFORMATION (PHONE, E-MAIL)

FOR WSU PI

ACKNOWLEDGMENT

I, the undersigned, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all participants of WSU are informed of their obligations under this Agreement.

By: _____

Name: _____

Title: _____

Date: _____