

RESOLUTION NO. 3917

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MILES CITY AND TROJAN TECHNOLOGIES FOR WASTEWATER ULTRAVIOLET DISINFECTION EQUIPMENT.

WHEREAS, the City has received bids for the sale and purchase of ultraviolet disinfection equipment as part of the Miles City Wastewater Improvements project, Phase II;

AND WHEREAS, Trojan Technologies has been awarded such bid, and the City and Trojan Technologies desire to enter into an Agreement setting forth the obligations and responsibilities of the parties;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The City of Miles City hereby approves the Agreement between the City and Trojan Technologies, attached hereto as Exhibit "A," and authorizes the Mayor to execute the same on behalf of the City, and to bind the City thereto; and
2. The Mayor is hereby authorized and empowered to execute such further documents as may be necessary to carry out the terms of said Agreement.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 10th DAY OF May, 2016.


JOHN HOLLOWELL, Mayor

ATTEST:



Lorrie Pearce, City Clerk

AGREEMENT

THIS AGREEMENT is by and between City of Miles City ("Buyer") and Trojan Technologies ("Seller").

Buyer and Seller hereby agree as follows:

ARTICLE 1 – GOODS AND SPECIAL SERVICES

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows: Miles City Wastewater Improvements Phase II-2016 Equipment Procurement, Schedule Four; Ultraviolet Disinfection.

ARTICLE 3 – ENGINEER

- 3.01 The Contract Documents for the Goods and Special Services have been prepared by Robert Peccia and Associates ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

ARTICLE 4 – POINT OF DESTINATION

- 4.01 The Point of Destination is designated as: *Miles City Wastewater Treatment Facility unless Buyer notifies Seller otherwise. In any case delivery will be within the confines of Miles City, MT.*

ARTICLE 5 – CONTRACT TIMES

5.01 *Time of the Essence*

- A. All time limits for Milestones, if any, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Contract Documents, are of the essence of the Contract.

5.02 *Milestones*

- A. *Date for Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Contract Documents to Buyer for Engineer's

review and approval within 21 days of the issuance of the Notice to Proceed. It is the intent of the parties that (1) Engineer conduct such review and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within 14 days of Seller's submittal of such Shop Drawings and Samples; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.

- B. *Date for Delivery of Goods:* The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery within 98 days from the date of Approved Submittals.

5.03 *Buyer's Final Inspection*

- A. *Days to Achieve Final Inspection:* Buyer shall make a preliminary inspection of the Goods pursuant to Paragraph 8.01.C of the General Conditions within 10 days after Buyer's acknowledgement of receipt of delivery of the Goods and Seller's completion of furnishing Special Services, if any.

5.04 *Liquidated Damages*

- A. Buyer and Seller recognize that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.02 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.02. Further, they recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$ 500.00 for each day that expires after the time specified in Paragraph 5.02.B for delivery of acceptable Goods.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:

- A. A Lump Sum of \$ 240,500.00. (To paid out in accordance with Article 7 herein).

ARTICLE 7 – PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payment*

- A. Seller shall submit Applications for Payment in accordance with Section 8 of the Special Provisions. Applications for Payment will be processed by Engineer as provided in the Special Provisions.

7.02 *Progress Payments*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment. Application for Payment submitted in accordance with Section 8 of the Special Provisions, payments shall be as follows:
- B. There shall be three (3) progress payments based upon 1) Insurance, Bonding and Submittals 2) Manufacturing and Delivery 3) Final Payment which includes Startup, Testing, and Training. A payment of up to 10% of the contract price will be allowed once Bond and Insurance Certificates and Submittals have been received and approved. A payment of up to 80% of contract price (increasing total payments to 90% of Contract Price) will be allowed once the materials and equipment are delivered, inspected and approved by the Engineer and/or Buyer. A Final Payment less any liquated damages and reimbursable engineering expenses will be allowed once manufacturer's startup, testing and operator training has occurred, and corrective work that may be warranted has been completed. The Final Application for Payment may only be submitted after the Engineer has signed the Certificate of Substantial Completion and all punch list items have been addressed as described in Supplementary Condition 18.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the statutory rate.

ARTICLE 9 – SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
 - A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
 - B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be

- installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
- C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.
 - D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.
 - E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
 - F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 8, inclusive);
 - 2. Performance Bond (pages 1 to 4, inclusive);
 - 3. Payment Bond (pages 1 to 4, inclusive);
 - 4. Other bonds
 - a. _____ (pages ____ to ____, inclusive);
 - b. _____ (pages ____ to ____, inclusive);
 - c. _____ (pages ____ to ____, inclusive);
 - 5. General Conditions (pages 1 to 31, inclusive);
 - 6. Supplementary Conditions (pages 1 to 14, inclusive);

7. Specifications as listed in table of contents of the Project Manual;
 8. Drawings, consisting of a cover sheet and sheets numbered 1 through 5, inclusive, with each sheet bearing the following general title: Wastewater Improvements Phase II
 9. Addenda (Numbers 1 to 1, inclusive);
 10. Exhibits to this Agreement (enumerated as follows): Not Applicable
 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Change Order(s);
 - c. Work Change Directive(s).
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 *Terms*

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

11.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 *Severability*

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

11.05 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.06 *Limitations*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Contract. Upon assignment the terms of this Paragraph 11.06.A shall be binding upon the assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against

the other based on any of the following: (a) contribution or indemnification, (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

- B. Upon assignment the terms of this Paragraph 11.06.B shall be binding upon both the assignor and assignee with respect to Seller's liability, and upon Seller with respect to both assignor's and assignee's liabilities. The terms of this mutual limitation do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification with respect to third-party claims, losses, and damages; (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

PERFORMANCE BOND FOR PROCUREMENT CONTRACTS

Any singular reference to Seller, Surety, Buyer, or other party shall be considered plural where applicable.

SELLER (Name and Address):

Trojan Technologies

3020 Gore Road, London, ON N5V 4T7

BUYER (Name and Address):

City of Miles City

17 South 8th Street, Miles City, MT 59301

SURETY (Name and Address of Principal

Place of Business):

Travelers Casualty and Surety Company of America

One Tower Square, Hartford, CT 06183

CONTRACT

Date: March 31, 2016

Amount: Two Hundred Forty Thousand Five Hundred and 00/100 Dollars (\$240,500.00)

Description (Name and Location): Miles City Wastewater Improvements - Phase II - 2016

BOND

Date (Not earlier than Contract Date): April 06, 2016

Bond Number: 106442810

Amount: Two Hundred Forty Thousand Five Hundred and 00/100 Dollars (\$240,500.00)

Modifications to this Bond Form: None

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Seller as Principal

Company: (Corp. Seal)

Trojan Technologies

Signature:

Name and Title:

Surety

Company: (Corp. Seal)

Travelers Casualty and Surety Company of America

Signature:

Name and Title: Adanna Brathwaite, Attorney-in-Fact

(Attach Power of Attorney)

Address: 1050 Connecticut Avenue, NW, Suite 700

Washington, DC 20036

Telephone Number: 202-263-7600

(Space is provided below for signatures of additional parties, if required.)

Seller as Principal

Company: (Corp. Seal)

Signature:

Name and Title:

Surety

Company: (Corp. Seal)

Signature:

Name and Title:

Address:

Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer for the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. If Seller performs the Contract, Surety and Seller have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Buyer Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Buyer has notified Seller and Surety pursuant to Paragraph 10 that Buyer is considering declaring a Seller Default and has requested and attempted to arrange a conference with Seller and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. (If Buyer, Seller, and Surety agree, Seller shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Buyer's right, if any, subsequently to declare a Seller Default); and
 - 3.2. Buyer has declared a Seller Default and formally terminated Seller's right to complete the Contract. Such Seller Default shall not be declared earlier than 20 days after Seller and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3. Buyer has agreed to pay the Balance of the Contract Price to:
 - a. Surety in accordance with the terms of the Contract;
 - b. Another seller selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Buyer has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Seller, with consent of Buyer, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified sellers acceptable to Buyer for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Buyer and a seller selected with Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to Buyer the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Buyer resulting from Seller Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances, either:
 - a. determine the amount for which it may be liable to Buyer and, as soon as practicable after the amount is determined, tender payment therefor to Buyer; or

- b. deny liability in whole or in part and notify Buyer citing reasons therefor.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Buyer to Surety demanding that Surety perform its obligations under this Bond, and Buyer shall be entitled to enforce any remedy available to Buyer. If Surety proceeds as provided in paragraph 4.4, and Buyer refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Buyer shall be entitled to enforce any remedy available to Buyer.
6. After Buyer has terminated Seller's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3, then the responsibilities of Surety to Buyer shall not be greater than those of Seller under the Contract, and the responsibilities of Buyer to Surety shall not be greater than those of Buyer under the Contract. To a limit of the amount of this Bond, but subject to commitment by Buyer of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
- 6.1. the responsibilities of Seller for correction or replacement of defective Goods and Special Services and completion of the Contract;
- 6.2. Additional legal, design professional, and delay costs resulting from Seller's Default, and resulting from the actions of or failure to act of Surety under Paragraph 4; and
- 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Seller.
7. Surety shall not be liable to Buyer or others for obligations of Seller that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Buyer or its heirs, executors, administrators, successors, or assigns.
8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location of the Point of Destination, and shall be instituted within two years after Seller Default or within two years after Seller ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to Surety, Buyer or Seller shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

- 12.1. *Balance of the Contract Price:* The total amount payable by Buyer to Seller under the Contract after all proper adjustments have been made, including allowance to Seller of any amounts received or to be received by Buyer in settlement of insurance or other Claims for damages to which Seller is entitled, reduced by all valid and proper payments made to or on behalf of Seller under the Contract.
- 12.2. *Contract:* The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
- 12.3. *Seller Default:* Failure of Seller, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4. *Buyer Default:* Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

PAYMENT BOND FOR PROCUREMENT CONTRACTS

Any singular reference to Seller, Surety, Buyer or other party shall be considered plural where applicable.

SELLER (Name and Address):

Trojan Technologies

3020 Gore Road, London, ON N5V 4T7

BUYER (Name and Address):

City of Miles City

17 South 8th Street, Miles City, MT 59301

SURETY (Name and Address of Principal

Place of Business):

Travelers Casualty and Surety Company of America

One Tower Square, Hartford, CT 06183

CONTRACT

Date: March 31, 2016

Amount: Two Hundred Forty Thousand Five Hundred and 00/100 Dollars (\$240,500.00)

Description (Name and Location): Miles City Wastewater Improvements - Phase II - 2016

BOND

Date (Not earlier than Contract Date): April 06, 2016

Bond Number: 106442810

Amount: Two Hundred Forty Thousand Five Hundred and 00/100 Dollars (\$240,500.00)

Modifications to this Bond Form: None

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Seller as Principal

Company: (Corp. Seal)

Trojan Technologies

Signature:

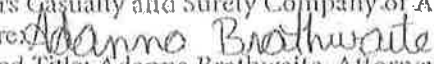
Name and Title:



Surety

Company: (Corp. Seal)

Travelers Casualty and Surety Company of America

Signature: 

Name and Title: Adanna Brathwaite, Attorney-in-Fact

(Attach Power of Attorney)

Address: 1050 Connecticut Ave, NW, Ste 700, Washington,

DC 20036

Telephone Number: 202-263-7600

(Space is provided below for signatures of additional parties, if required.)

Seller as Principal

Company: (Corp. Seal)

Signature:

Name and Title:

Surety

Company: (Corp. Seal)

Signature:

Name and Title:

Address:

Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. With respect to Buyer, this obligation shall be null and void if Seller:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies and holds harmless Buyer from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided Buyer has promptly notified Seller and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Seller and Surety, and provided there is no Buyer Default.
3. With respect to Claimants, this obligation shall be null and void if Seller promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Seller have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Seller:
 - a. Have furnished written notice to Seller and sent a copy, or notice thereof, to Buyer, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - b. Have either received a rejection in whole or in part from Seller or not received within 30 days of furnishing the above notice any communication from Seller by which Seller had indicated the claim will be paid directly or indirectly; and
 - c. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Seller.
5. If a notice required by Paragraph 4 is given by Buyer to Seller or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Buyer to Seller under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By Seller furnishing and Buyer accepting this Bond, they agree that all funds earned by Seller in the performance of the Contract are dedicated to satisfy obligations of Seller and Surety under this Bond, subject to Buyer's priority to use the funds for the completion of the furnishing the Goods and Special Services.
9. Surety shall not be liable to Buyer, Claimants or others for obligations of Seller that are unrelated to the Contract. Buyer shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Goods relevant to the claim are located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Buyer or Seller shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Buyer or Seller, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Seller shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
 - 15.1 *Claimant*: An individual or entity having a direct contract with Seller or with a Subcontractor of Seller to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for furnishing the Goods and Special Services by Seller and Seller's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 *Contract*: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.

15.3. *Buyer Default*: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In-Fact No. 226117

Surety Bond No. or Project Description:
106442810

Principal: Trojan Technologies

Obligee: City of Miles City

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Adanna Brathwaite of the City of Washington State of District of Columbia, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this Instrument to be signed and their corporate seals to be hereto affixed, this 4th day of March, 2013.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company


St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

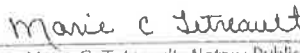

Robert L. Raney, Senior Vice President

On this the 4th day of March, 2013, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2016.




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or undertaking to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 6th day of April, 2016.

Kevin E. Hughes

Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



Certificate of Insurance

No.: 2015-647

Dated: June 25, 2015

This document supersedes any certificate previously issued under this number

This is to certify that the Policy(ies) of insurance listed below ("Policy" or "Policies") have been issued to the Named Insured identified below for the policy period(s) indicated. This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder named below other than those provided by the Policy(ies).

Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the Policy(ies) is subject to all the terms, conditions, and exclusions of such Policy(ies). This certificate does not amend, extend, or alter the coverage afforded by the Policy(ies). Limits shown are intended to address contractual obligations of the Named Insured.

Limits may have been reduced since Policy effective date(s) as a result of a claim or claims.

Certificate Holder:

Trojan Technologies
3020 Gore Road
London, ON N5V 4T7

Named Insured and Address:

Danaher Corporation a/o Trojan Technologies
3020 Gore Road
London, ON N5V 4T7

Evidence of Insurance

Type(s) of Insurance	Insurer(s)	Policy Number(s)	Effective/Expiry Dates	Sums Insured Or Limits of Liability	
AUTOMOBILE * Includes: OPCF 21B - Blanket Fleet. * Includes: OPCF 5 - Permission to Rent or Lease. * Includes: SEF5, QEF5, SEF21b, QEF21b, SEF21d	ACE INA Insurance	CAC 424447	Jul 01, 2015 to Jul 01, 2016	Third Party Liability	USD 3,000,000 Each Accident
				Self Insured for Physical Damage	
COMMERCIAL GENERAL LIABILITY * Employee's Liability * Personal Injury and Advertising Liability * Severability of Interest * Blanket Contractual Liability * OEF 98II * Cross Liability * Firefighting Expenses * Bodily Injury and Property Damage * Owners' and Contractors' Protective Liability * Separation of Insured	ACE INA Insurance	CGL 324827	Jul 01, 2015 to Jul 01, 2016	Each Occurrence	\$ 2,000,000
				Products-Completed Operations Aggregate	\$ 5,000,000
				Non - Owned Auto	\$ 1,000,000
				Tenants Legal Liability	\$ 2,000,000
				Fire Department Service Charges	\$ 500,000
				Firefighting Expense	\$ 500,000

Notice of cancellation:

Should any of the policies described herein be cancelled before the expiration date thereof, the insurer(s) affording coverage will endeavour to mail 30 days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer(s) affording coverage, their agents or representatives, or the issuer of this certificate.

Marsh Canada Limited

120 Bremner Boulevard
Suite 800
Toronto, ON M5J 0A8
Telephone: 416-349-6677
Fax: 416-349-4515
gonika.sunichura@marsh.com

Marsh Canada Limited

By

Gonika Sunichura

NOTICE OF AWARD

TO: Trojan Technologies

Attn: Pauline Wood

3020 Gore Rd.

London Ontario, Canada N5V4T7

DATE: 3/29/2016

PROJECT: Miles City Wastewater Improvements

Phase II - 2016 Equipment Procurement

PROJECT NO: 14804.002

PROJECT DESCRIPTION:

Manufacturing, delivering, startup, and testing of process equipment and materials for Schedule Four, Ultraviolet Disinfection, Consisting of Ultraviolet Disinfection Equipment to be located in the existing chlorine contact basin which is being converted into the new UV Building. As described in the Miles City Wastewater Improvements Phase II - 2016 Equipment Procurement Contract Documents.

The Owner has considered the Bid submitted by you for the above-described work in response to its Invitation to Bid dated January 25, 2016 and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for:

Miles City Wastewater Improvements Phase II - 2016 Equipment Procurement Schedule Four: Ultraviolet Disinfection

In the amount of \$ 240,500.00

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond, Acknowledgment and Certification of Insurance Requirements, and Certificates of Insurance within 10 calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds and proof of insurance within 10 days from the date of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this 30 day of MARCH, 2016.

OWNER: City of Miles City

BY:

SIGNATURE

PRINT OR TYPE NAME

TITLE

ACCEPTANCE OF NOTICE OF AWARD

Receipt of the above Notice of Award is hereby acknowledged
this _____ day of _____, 2016.

CONTRACTOR: Trojan Technologies

BY:

SIGNATURE

PRINT OR TYPE NAME

TITLE

Handwritten signature of Allan Gates

Allan Gates
Director Sales - Americas
Trojan Technologies



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives, on the day and year first written above

CITY OF MILES CITY

TROJAN TECHNOLOGIES


Representative

ATTEST:

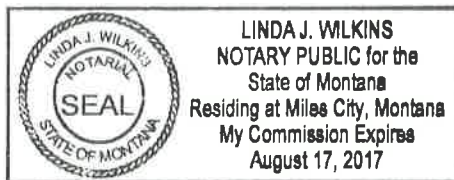



APPROVED AS TO FORM:

STATE OF MONTANA)
:SS,
MILES CITY)

On this 16th day of May, 2016, before me, Linda J. Wilkins, a Notary Public for the State of Montana, personally appeared John L. Hollwell and Lorrie Pearce, known to me to be the Mayor and City Clerk, respectively, of the City of Miles City, a municipal corporation and political subdivision of the State of Montana, and acknowledged to me that they executed the written instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written




PRINTED NAME Linda J. Wilkins
NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT Miles City, MT
MY COMMISSION EXPIRES August 17, 2017