

**COUNCIL ACTION FORM**

**SUBJECT: NEW WATER TREATMENT PLANT – CONTRACT 2: SETTLEMENT AGREEMENT, FINAL CHANGE ORDER AND FINAL COMPLETION**

**BACKGROUND:**

On October 14, 2014, City Council awarded a construction contract to Knutson Construction of Minneapolis, Minnesota for the City's new water treatment plant. The contract called for the work to achieve "substantial completion" by May 17, 2017, and "final completion" by August 17, 2017. The City and the contractor disagreed on whether those contractual milestone dates were achieved, and also on how other contract terms should be applied in order to close-out the contract.

Staff has engaged in more than a year of protracted negotiations with Knutson, including a failed mediation session in July 2018. Most recently City staff met with senior management from Knutson Construction (along with legal counsel for both parties) on February 4, 2019. At that meeting the parties came to an agreement on the terms of a settlement agreement and the steps that would be performed to close out the contract.

- 1) **Punch List.** The punch list prepared by FOX Engineering (the lead engineer on the project) on February 1, 2019 contained six items. Here is the negotiated status of each of those items.
  - a) #46 & #47 – Cracks in the polished concrete floor slab on the ground floor in the administrative area. The City agreed to accept the condition of the cracks "as is." These two items were removed from the punch list.
  - b) #195 – Relocated unit heater near Filter #1. The unit heater has been relocated, and the missing insulation was installed on February 8. This item is considered "complete."
  - c) #541 – Lighting controls. For over a year, the lighting controls have not worked as intended (occupancy sensors not responding, timers leaving lights on continuously, exterior lights turning on during the day and shutting off at night, etc.). After replacing some equipment and having a new technician assigned to the project, the lighting controls have now properly functioned continuously for one month, a condition imposed by the City before accepting them as complete. The City is now willing to accept this item as complete.

Under this punch list item, Knutson is also required to provide IP addresses, subnet numbers, and a color-coded floor plan for the lighting control system. Knutson agreed to make a good faith effort to get the electrical subcontractor to provide the

item, but admitted that as long as they are in a separate payment dispute with the subcontractor, they may not be able to force the subcontractor to respond in a timely manner. Knutson was able to provide the IP addresses. It was agreed that Knutson would make a concerted, good-faith effort to obtain the remainder of the required information. In exchange, the City would move this item from the punch list to the warranty list.

- d) #636 – LEED Enhanced Commissioning checklist. There are 31 items still open on the HVAC and electrical “issue tracking spreadsheet” used by the third-party commissioning agent, most of which are related to the building automation system (BAS). The original BAS sub-subcontractor has closed their local office and walked away from the project. As a result, the mechanical subcontractor had to secure the services of a different BAS contractor. The new BAS contractor has consistently been on site for several weeks and is making progress in addressing the numerous outstanding BAS issues. Because of the progress being made and the increased responsiveness of the on-site BAS technician, the City and Knutson have agreed to move this item from the punch list to the warranty list.

This item #636 initially included a number of documentation requirements that Knutson was required to provide in order for the City to file for its LEED certification. An initial submittal was made to the US Green Building Council (US GBC) in November 2018, seeking 48 points. Forty points is the threshold that must be achieved to become “certified.” Achieving a “certified” status is critically important, as the City will receive roughly \$6.6 million in loan forgiveness from the Iowa DNR once the facility is LEED certified. Knutson worked with the consultants to compile additional documentation for five of the points that were initially not approved. After the City’s LEED consultant confirmed that the additional documentation was complete and likely to achieve the necessary points, the City agreed to remove the LEED documentation from the punch list. A resubmittal of those five LEED points was made on February 7, 2019, with a response expected from the US GBC by March 7<sup>th</sup>. A statement is included in the settlement agreement whereby Knutson agrees to cooperate should additional resubmittals be required.

- e) #647 – Missing Operations and Maintenance manuals. Knutson has secured all of the missing documents and provided them to the consultants to be incorporated into the electronic O&M manual for the facility.

**With that, all items on the punch list were complete as of February 15, 2019.**

- 2) **Progress on the warranty list.** Starting in late December, Knutson has shown an increased commitment to being responsive in addressing the items on the warranty list. Over the past month, items have been removed from the warranty list at a faster pace than new items are being added, and the list has shrunk considerably. The most recent warranty list will be attached to the settlement agreement, with a commitment by Knutson to be timely and responsive in addressing those items for which they are responsible. They are not agreeing that they have responsibility for every item on the

list, and there will be ongoing discussions between the contractor, the design team, and the City on some items.

- 3) **Final Payment to Knutson.** The settlement agreement calls for a final payment of \$547,550 to be made to Knutson by March 1st. The City will retain \$547,550 of the currently unpaid balance. The parties agree that there were no liquidated damages assessed, and that the City will not make a claim against Knutson's performance bond. **This amount fully covers the City's out of pocket expenses incurred as a result of the delay in obtaining final completion, and provides compensation towards expenses that are more difficult to quantify, such as lost productivity.**
- 4) **Substantial Completion.** The City resisted Knutson's continued requests to have the dates of the various Partial Substantial Completion certificates changed to a date that differs from what was actually certified by the consulting engineers. In particular, Knutson wanted the Full Substantial Completion certificate date changed from May 23, 2018 to July 27, 2017 in order to trigger an earlier start date to the project's warranty. With the resolution of the warranty period (described below), this issue went away and the previously issued certificates can remain unaltered.
- 5) **Final Completion.** The parties agreed that the Final Completion date for the project will be March 1, 2019. The consultants have submitted a signed Certificate of Final Completion that reflects that date.
- 6) **Warranty Period.** It proved to be easier to simply agree on a warranty end date rather than argue over when substantial completion was achieved and the warranty started. That way, there was no pressing reason for Knutson to want the substantial completion certificates to be revised. As a part of the negotiated settlement, the parties agreed that the end date of the two-year warranty will be on December 31, 2019.
- 7) **Electrical Subcontractor's Claim for Nonpayment.** Schammel Electric, the electrical subcontractor on the project, has filed notice with the City and with Knutson that they have an unpaid claim in the amount of \$674,541.60 for work on the project. Under Iowa Code Section 573, the City is required to withhold 200% of the amount of the claim by the subcontractor from the final release of retainage to the general contractor. Alternatively, the general contractor can provide a discharge bond equal to 200% of the amount of the claim to protect both the City and the subcontractor. Knutson has provided a discharge bond in the amount of 200% of Schammel's claim for unpaid work: \$1,349,083.20.
- 8) **Final Change Order.** A final change order has been prepared by the consultant and signed by Knutson that certifies the final dollar amount of the contract, the date of final completion, and the conclusion of the warranty date. A copy of the change order is included in the attached Settlement Agreement as Exhibit B.

Staff believes it is now appropriate for Council to: approve the Settlement Agreement; approve Change Order #26 that adjusts the final dollar amount and the start of the warranty period; and, accept the project as complete.

**ALTERNATIVES:**

1. Take the following three actions on the Water Treatment Plant – Contract 2.
  - a. Approve the Settlement Agreement signed by Knutson Construction
  - b. Approve Change Order #26, (Exhibit B in the Settlement Agreement), thereby deducting \$547,550 from the contract amount and adjusting the warranty end date to December 31, 2019
  - c. Accept the project as complete
2. Direct staff to attempt to negotiate alternative terms or conditions.
3. Take no action at this time.

**CITY MANAGER’S RECOMMENDED ACTION:**

Staff has negotiated with the general contractor on the project for over a year, going so far as to retain outside counsel with specific experience in construction contract law. Earlier this month staff was able to reach a settlement agreement with Knutson Construction that resolved the outstanding issues to both parties’ satisfaction. **The settlement fully covers the City’s direct out-of-pocket expenses, and provides compensation for a measure of intangible damages such as lost productivity of staff. The settlement preserves a reasonable warranty period, and fulfills the City’s obligations to a subcontractor who has filed a claim for non-payment.**

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

Attachment A – Settlement Agreement and Release, with Exhibits  
Attachment B – Engineer’s Statement of Completion

SETTLEMENT AGREEMENT  
AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this "Settlement Agreement") is made to be effective on February 13, 2019 and is entered into by and between the City of Ames, Iowa ("Ames"), and Knutson Construction Services, Inc. ("Knutson") (collectively "the Parties").

Recitals

The recitals, below, are true and correct and are material terms of this Settlement Agreement, and the Recitals are incorporated into and are part of the Settlement Agreement.

WHEREAS, on October 14, 2014, Ames, as owner, and Knutson, as contractor, entered into a construction contract ("the Contract") for the Water Treatment Plant - Contract 2, Treatment Facilities ("the Project").

WHEREAS, disputes arose between Ames and Knutson during and after the Project's construction, resulting in Knutson having a \$1,095,100.00 Contract Balance, Ames withholding that payment from Knutson, and both Parties asserting claims against each other.

WHEREAS, the Parties conducted face-to-face negotiations throughout the fall of 2017 and through May 2018 to try to resolve their differences, and the Parties completed a mediation in Ames, Iowa, at City Hall on July 2, 2018 with the next Contract dispute resolution procedure to be for the Parties to commence suit.

WHEREAS, a final settlement meeting occurred in Ames, Iowa, at the Project on Monday, February 4, 2019, and in order to avoid the uncertainties, costs, distractions, and delays of litigation, the Parties have reached an agreement and compromise to fully settle and release all claims made by and between them in order to close out the Ames/Knutson Contract and avoid a protracted lawsuit, and the Parties wish to reduce the terms of their agreement and compromise to writing herein.

**NOW, THEREFORE,** for mutual consideration as described herein, the Parties hereto agree as follows:

1. **Settlement Closing.** The Parties agree that time is of the essence. The Parties agree that they will complete the following actions under this Settlement Agreement on or before March 1, 2019: executing and delivering all Settlement Documents, including the Settlement Agreement, the Contract Revision, the Discharge Bond, and the Ames Letter described below on Ames' letterhead. The Parties agree that Ames will deliver the Settlement Payment to Knutson pursuant to Paragraph 3 of this Settlement Agreement. The Parties further agree to take all supplementary actions, including signing and delivering additional documents, to effectuate the intent of this Settlement Agreement, even if those actions occur after March 1, 2019.

2. **Mutual Release.** Except for the obligations and exceptions specifically stated in this Settlement Agreement, each Party (for itself and its respective officers, directors, owners, officials, councils, boards, departments, shareholders, employees, agents, insurers, sureties, successors, and assigns) hereby releases, acquits, and forever discharges the other Party (and its respective officers, directors, owners, officials, councils, boards, departments, shareholders, employees, agents, insurers, sureties, successors, and assigns) from any and all manner of actions, suits, claims, counterclaims, demands, causes of action, debts, promises, damages, costs, and liquidated damages related to or arising out of the Project and/or the Ames/Knutson Contract, which are known or reasonably should have been known by the releasing Party as of the date of this Settlement Agreement, except:

a. Ames specifically retains all rights against Knutson under all warranties set forth in the Ames/Knutson Contract, including the correction period set forth in Paragraph 15.08 of the Ames/Knutson Contract. The Parties agree that the two-year correction period

under Paragraph 15.08 of the Ames/Knutson Contract began on December 31, 2017, and concludes on December 31, 2019.

b. Knutson specifically retains its rights to pursue the assigned claims, as set forth in Section 10 of this Settlement Agreement. The Parties agree that the two-year correction period under Paragraph 15.08 of the Ames/Knutson Contract began on December 31, 2017, and concludes on December 31, 2019.

3. **Payment.** Ames agrees to pay \$547,550.00 (Five Hundred Forty-Seven Thousand Five Hundred Fifty Dollars and Zero Cents) ("the Settlement Payment") of the \$1,095,100.00 balance under the Contract to Knutson on or before March 1, 2019.

4. **Punch List and Warranty List.** Knutson agrees to address the remaining work items described on a Punch List and Warranty List prepared by Fox Engineering dated February 1, 2019. Knutson shall make a good faith effort to complete items 195, 541, 636, and 647 on the Punch List. The City withdraws items 46 and 47 from the Punch List. Knutson has completed items on the Punch List and Warranty List dated February 1, 2019 but those lists have not been updated as of the date Knutson signed this Settlement Agreement. The Parties agree that all items on the Punch List are moved to the Warranty List. The Parties agree that Knutson reserves all rights related to each item on the Warranty List and Knutson does not agree that it has responsibility to address any item by virtue of the fact that it is listed by the City on the Warranty List. The most recent Punch List and Warranty List are dated February 1, 2019, and are attached hereto as **Exhibit A**.

5. **Contract Revision.** The Parties agree to sign a Contract Revision to deduct \$547,550.00 from Knutson's \$1,095,100.00 Contract Balance. The Contract Revision will state:

"The City of Ames and Knutson Construction negotiated this Contract Revision to amicably close out the Parties' Contract. The City and Knutson have agreed to close out the Parties' Contract for the Project for a final payment by Ames to Knutson of \$547,550.00 pursuant to the terms of the Settlement Agreement and Release. The Parties have resolved all claims, known and reasonably should have known, by and against each other and all complaints and claims related to delays in construction or incomplete work caused by any contractor, subcontractor or sub-subcontractor on the project, as specified in the Settlement Agreement and Release. The Parties have agreed to a \$547,550.00 deductive Contract Revision to resolve all of Ames' claims, offsets, and damages, except as set forth in the Settlement Agreement and Release. The City of Ames and Knutson agree that no liquidated damages have been assessed nor shall be assessed in connection with the Project. Warranty/correction period begins December 31, 2017 and will conclude on December 31, 2019." The Contract Revision will be signed by the Parties on or before March 1, 2019, and will be in the form attached hereto as **Exhibit B**.

6. **Certificate of Substantial Completion**. The Parties agree that the entire Project (all phases) was substantially completed by Knutson on May 23, 2018. However, the Parties agree that the two-year correction period set forth in Paragraph 15.08 of the Knutson/City Contract started on December 31, 2017. The Parties agree that this Settlement Agreement supersedes any reference to warranty start or end dates contained in previously issued Substantial Completion Certificates and this Settlement Agreement is intended to close out the Ames/Knutson Contract.

7. **Knutson's Performance Bond**. Ames agrees that no claims will be made on Knutson's performance bond for the Project, which bond is hereby released and discharged.

8. **Letter from Ames**. Ames will deliver to Knutson a letter on Ames' letterhead



signed by John Dunn, P.E. addressed to Dave Bastyr of Knutson, in the form attached as **Exhibit C.**

9. **Cooperation.** With respect to any future dispute resolution process, arbitration, or litigation between Knutson and Knutson's electrical subcontractor or between Knutson and any other subcontractor or supplier of any tier on the Project, Ames agrees, subject to availability of Ames Staff and in view of the priority of providing services and fulfilling obligations to the City of Ames, to provide in good faith and with reasonable efforts:

a. Producing documents, including Electronically Stored Information ("ESI"), without requiring a subpoena. Knutson agrees to make payment to Ames in the amount of Ames' out of pocket cost for producing such documents. Ames shall provide up to four hours of engineering time at no charge for purposes of producing documents or meeting with counsel of Knutson's choice about providing testimony, but once the total of four hours of engineering time is used, than any additional time shall be charged at normal hourly rates of \$65.00 to \$100.00 for engineer's time depending on the person involved in providing service related to litigation or other requests from Knutson.

10. **Assignment.** Ames assigns its claims for delays and actual damages to Knutson and consents to Knutson pursuing all such claims against third parties, including subcontractors and suppliers of any tier, in any manner that Knutson determines is in its best interest. Knutson shall prosecute any assigned claims in its own name, as the assignee of Ames' claims and not in Ames' name. For purposes of this Settlement Agreement, the assignment of Ames' claims and damages to Knutson occurred first, and after the assignment occurred, then Ames released its remaining claims against Knutson thereafter. For the avoidance of doubt, this Settlement Agreement is not intended to have any effect, preclusive or otherwise, on Knutson's ability to

prosecute the assigned claims.

11. **Warranties.** This Settlement Agreement does not affect Knutson's two year Contract warranty or manufacturer warranties for building materials or equipment supplied by Knutson or its subcontractors/suppliers which are incorporated into the Project, or any other warranties set forth in the Ames/Knutson Contract, including the correction period set forth in Paragraph 15.08 of the Ames/Knutson Contract. The warranties stand on their own terms. Knutson's two year Contract warranty started on December 31, 2017 and concludes on December 31, 2019. Warranty claims shall be made pursuant to the terms of the Ames/Knutson Contract. This Settlement Agreement does not affect the warranty items that are currently on the Warranty List dated February 1, 2019, which list is attached to this agreement as **Exhibit A**.

12. **Change Order Requests.** The parties agree that no additional or pending change orders or change proposal requests will be recognized, processed, or approved, and that no additional credits or deductions will be recognized or credited to either party.

13. **LEED Cooperation.** Knutson agrees to promptly and fully cooperate with Ames to provide necessary documentation that may be required by the US Green Building Council or any other entity for LEED certification.

14. **Chapter 573 Claims.** Knutson agrees to sign and deliver to the Ames a Discharge Bond in the form attached hereto as **Exhibit D** on or before March 1, 2019. Knutson shall file with the City of Ames a surety bond for \$1,349,083.20, which is double the amount of the claim of Schammel Electric as stated in the letter of Schammel Electric Inc. dated November 13, 2018, conditioned to pay any final judgment rendered for the claim so filed, as a condition of this agreement and the payment of funds pursuant to this Settlement Agreement.

15. **Non-Admissions.** The Parties wish to avoid the distractions, expenses, and delays

of litigation and wish to buy their peace. Nothing in this Settlement Agreement or the Settlement Documents shall be construed as an admission by either party. This Settlement Agreement is a product of good faith negotiations by both Parties and is entered into to close out the Ames/Knutson Contract. This Settlement Agreement, the delivery of the Settlement Payment, and any Settlement Documents shall not be construed as an admission of wrongdoing or liability. The Parties expressly deny liability to each other for all issues, claims, and damages related to the Contract and the Project.

16. **Consent and Advice of Counsel.** The Parties each represent that they have been represented by independent legal counsel, or that they have had the opportunity to retain independent legal counsel, that they have read the terms of this Settlement Agreement and that the terms of this Settlement Agreement have been completely read and explained to them by their attorney, or if they did not have an attorney, that those terms are fully understood, and voluntarily accepted by them. The Parties further affirmatively represent that they have voluntarily entered into this Settlement Agreement and that there are no representations made by any party or their attorneys, agents or other representatives which are not expressly set forth in this Settlement Agreement.

17. **Miscellaneous Provisions.**

a. **Amendments and Alterations.** Amendments and alterations to this Settlement Agreement shall be in writing and signed by both Knutson and Ames.

b. **Entire Agreement.** The foregoing constitutes the entire agreement between the Parties. All prior settlement discussions are superseded. No modification of any of the terms or conditions contained herein may be made except by subsequent written documents signed by both of the Parties.

c. Severability. If one provision of this Settlement Agreement is held invalid, then the Parties agree that the remaining portions of the Settlement Agreement are valid and enforceable and the invalidity or unenforceability of one provision shall not affect any other provision of this Settlement Agreement.

d. Binding Effect. Assignment. This Settlement Agreement is binding upon and inures to the benefit of the Parties, and their successors and assigns.

e. Waiver. No waiver of any term or provision of this Settlement Agreement shall be effective unless set forth in any written documents signed by the party charged thereby and the waiver shall be limited to the circumstances or events specifically referred to in the written waiver or document. It shall not be deemed a waiver of any other term or provision of this Settlement Agreement of the same circumstance or event upon any recurrence thereof.

f. Governing Law. This Settlement Agreement, and other documents taken hereunder, shall be governed by and construed in accordance with the laws of the State of Iowa. Any actions regarding any dispute or any other matter regarding or arising out of this Settlement Agreement shall be venued in Iowa. In the event of any dispute arising out of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

g. Authority. The persons signing this Settlement Agreement have the authority to bind Ames and Knutson, and this representation survives execution of this Settlement Agreement. Ames represents that all government approvals were obtained before signing the Settlement Agreement.

h. No Single Drafter. The Parties agree that there is no single drafter of this

Settlement Agreement and the Settlement Documents. The Parties agree that they both participated in the drafting of the Settlement Agreement and Settlement Documents and they retained legal counsel to draft, review, and approve the Settlement Agreement and Settlement Documents. The Settlement Agreement and Settlement Documents shall be construed according to their plain language and shall not be interpreted for or against either party.

i. Headings. The headings in this Settlement Agreement are for convenience purposes only and do constitute substantive terms of this Settlement Agreement.

**IN WITNESS WHEREOF**, this Settlement Agreement is entered into as of the date set forth above.

**CITY OF AMES, IOWA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**KNUTSON CONSTRUCTION  
SERVICES, INC.**

By: David J. Bastin

Its: EVP

Dated: 2/18/2019

EXHIBIT A  
Punch List as of 2019-02-01

#	Discipline	Location	Description	Created By	Responsible Party	Due Date	Item Status	Comments
46		6C-06-132	Crack in floor slab in front of ground level elevator entrance	Brian Hoagland	Mitch Elliott		Fix Not Accepted	Provide Floor Mats in accordance with Field Order 101.
47		6C-06-132	Crack in floor slab in front of ground level transition to area 5	Brian Hoagland	Mitch Elliott		Fix Not Accepted	Provide Floor Mats in accordance with Field Order 101.
195	M	2A/2B	Relocate unit heaters so as not to conflict with filter cell lights, complete insulation of new hot water piping.	Lance Worth	Mitch Elliott	06/23/2017	Fix Not Accepted	
541	E	All	Need lighting training - want Seimens to walk around with us and show us how each area works, need areas programmed differently, need to be shown how to program lights, some of the occupancy sensors don't work, most of the override switches (silver button	John Washington	Kevin Schammel	10/06/2017	Fix Not Accepted	Map, IP addresses, and written instructions on how to modify are still needed
636	General	General	Address all items on KFI list of outstanding items.	John Washington	Mitch Elliott		New	Documentation for LEED appears to be sufficient as of 2/1/2019 for re-submission to the USBGC.
647	General	General	Submit last of electronic O&M manuals (a few resubmittals outstanding and Section 15112-Slide and Weir Gates. Provide paper copies of O&M manuals.	Lance Aldrich	Mitch Elliott		New	Correction, filter is "Submittals Needed".

EXHIBIT A  
Warranty List as of 2019-02-01

#	Location	Description	Created By	Responsible Party	Due Date	Item Status	Comments
01	2A 2B	System Pressure Gauges on Sample Pumps are Broken	John Washington	Mitch Elliott		New	
15	6C	East facility wall leaks when rain and wind from the east, investigate and repair	John Washington	Kurt Tjelmeland		New	
16	3B 5A	Opening to stairs from 3B process level to stairway still leaks when raining, investigate and repair	John Washington	Kurt Tjelmeland		New	
23	4B Ammonium Sulfate	Internal toggle switch still intermittent	John Washington	Kevin Schammel		New	
25		Replace the defective control relay in the lighting control cabinet. The spare was used and needs to be replaced.	John Washington	Kevin Schammel		New	
26	1A	Crack and coating failure at aeration basin, see attached photo	John Washington	Mitch Elliott		New	
27	2B	Tank leak at SCU1 (easternmost) at wall pipe, see photo	John Washington	Mitch Elliott		New	
28	2A	Tank leak at SCU3 (westernmost) near grating, see photo	John Washington	Mitch Elliott		New	
31	Site	Reased areas of poor germination, fix fills and washes throughout the project.	John Washington	Rick Fox		New	
33	1C	Card reader at HSPS does not always work correctly. This is interior door to the new HSPS from area 2, seems to be a programming issue	John Washington	Mitch Elliott		New	
35	General	Security System Training, need to be able to see who is inside the building. Pending City installation of firewall	John Washington	Kevin Schammel		New	From Punchlist, Item 624
36	Area 1B and 1C	Server Room door and HS Pump room door keypad light turns green when keypad is presented but door does not unlock	John Washington	Mitch Elliott		New	
37	6B	Lights outside of upstairs offices have stopped turning off	John Washington	Mitch Elliott		New	
40	Area 1B	Two of the SCU rake disconnect/breakers are labeled 'rack'	John Washington	Mitch Elliott		New	
41	Area 4B	Cracked chlorine dampener	John Washington	Mitch Elliott		New	
42	Area 4A	Solenoid still leaks air on north slater discharge valve	John Washington	Mitch Elliott		New	
45	Various	Historian fix (version of Excel not compatible with wonderware?)	John Washington	Mitch Elliott		New	
49	6C Room 06-158	AC Unit Leak, or possible roof leak, see attached photo	John Washington	Mitch Elliott		New	
50	30 Line Sludge Building	Mechanical Unit on roof is leaking, interior unit insulation is saturated, see photos	John Washington	Mitch Elliott		New	
53	1C	Water is seeping/leaking in the new HSPS along north wall of this room, see attached images	John Washington	Mitch Elliott		New	
54	6A basement	Water is leaking/seeping into the northwest corner of the maintenance storage room in the basement.	John Washington	Mitch Elliott		New	
55	6A basement	Paint is coming off the fire service line in the maintenance storage room in the basement.	John Washington	Chad Terry		New	
56	2A 2B	Concrete SCU walls in pipe gallery are flaking where they had been patched previously, see attached photos	John Washington	Mitch Elliott		New	
57	6B	Large drywall cracks are appearing near the main stairs, see attached photos	John Washington	Mitch Elliott		New	
58	4B	Sodium Hypo Bulk Tanks are leaking, see attached photo	John Washington	Mitch Elliott		New	
59	3	The displays on all 3 SCU pinch valves have become cracked and difficult to read, see attached photo.	John Washington	Mitch Elliott		New	
61	4B	Ammonia day tank bung is leaking	John Washington	Doug McCoy		New	
63	1C	Light switch at east end of high service pump room near exterior door does not work	John Washington	Kevin Schammel		New	

Date of Issuance: February 13, 2019	Effective Date: February 13, 2019
Owner: City of Ames	Owner's Contract No.: 2014-120
Contractor: Knutson Construction	Contractor's Project No.: 5320
Engineer: FOX Engineering	Engineer's Project No.: 3338-12A
Project: Ames Water Treatment Plant - Contract 2	Contract Name: Contract 2

The Contract is modified as follows upon execution of this Change Order:

Description:

Final Contract Revision per City of Ames and Knutson Construction Settlement Agreement dated February 13, 2009

Deduct \$547,550.00

The City of Ames and Knutson Construction negotiated this Contract Revision to amicably close out the Parties' contract. Ames and Knutson have agreed to close out the Parties' Contract for the Project for a final payment by Ames to Knutson of \$547,550.00, pursuant to the terms of the Settlement Agreement and Release. The Parties have resolved all claims, known and reasonably should have known, by and against each other and all complaints and claims related to delays in construction or incomplete work caused by any contractor, subcontractor or sub-subcontractor on the Project, as specified in the Settlement Agreement and Release. The Parties have agreed to a \$547,550.00 deductive Contract Revision to resolve all of Ames' claims, offsets, and damages, except as set forth in the Settlement Agreement and Release. The City of Ames and Knutson Construction agree that no liquidated damages have been assessed nor shall be assessed in connection with the Project. Warranty / Correction Period begins December 31, 2017, and will conclude on December 31, 2019.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:  \$ <u>52,497,000.00</u>	Original Contract Times: Substantial Completion: <u>May 17, 2017</u> Ready for Final Payment: <u>August 17, 2017</u> days or dates
[Increase] [ <del>Decrease</del> ] from previously approved Change Orders No. <u>01</u> to No. <u>25</u> :  \$ <u>1,214,111.00</u>	[Increase] [ <del>Decrease</del> ] from previously approved Change Orders No. <u>01</u> to No. <u>25</u> : Substantial Completion: <u>0 days</u> Ready for Final Payment: <u>0 days</u> days
Contract Price prior to this Change Order:  \$ <u>53,711,111.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>May 17, 2017</u> Ready for Final Payment: <u>August 17, 2017</u> days or dates
[ <del>Increase</del> ] [ <del>Decrease</del> ] of this Change Order:  \$ <u>547,550.00</u>	[Increase] [ <del>Decrease</del> ] of this Change Order: Substantial Completion: _____ Ready for Final Payment: <u>March 1, 2019</u> days or dates
Contract Price incorporating this Change Order:  \$ <u>53,163,561.00</u>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: <u>March 1, 2019</u> days or dates



<b>RECOMMENDED:</b>		<b>ACCEPTED:</b>		<b>ACCEPTED:</b>	
By: <u><i>[Signature]</i></u>	By: _____	By: <u><i>[Signature]</i></u>	By: _____	By: <u><i>[Signature]</i></u>	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: <u><i>Project Manager</i></u>	Title _____	Title <u><i>EVP</i></u>	Title _____	Title _____	Title _____
Date: <u><i>2/21/19</i></u>	Date _____	Date <u><i>2/20/2019</i></u>	Date _____	Date _____	Date _____

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT C

February 26, 2019

Dave Bastyr, Executive Vice President  
Knutson Construction  
7515 Wayzata Boulevard  
Minneapolis, MN 55426

**RE: AMES WATER TREATMENT PLANT CONTRACT 2 CLOSE-OUT**

This letter is written confirmation that the above referenced contract has been closed.

The facility began producing water on or about July 27, 2017. Substantial and Final Completion were thereafter achieved. The project was accepted as complete by the Ames City Council at its February 26, 2019 meeting

Knutson's two-year contractual warranty started on December 31, 2017 and will conclude on December 31, 2019.

Final payment to be made by Ames to Knutson will be \$547,550 on or before March 1, 2019, subject to the terms and conditions of the Settlement Agreement and Release, made effective on February 26, 2019.

A handwritten signature in blue ink that reads 'John R. Dunn'.

John R. Dunn, PE, MBA

Director

Ames Water and Pollution Control

BOND NUMBER: 107001584

KNOW ALL MEN BY THESE PRESENTS, That we, Knutson Construction Services, Inc., as Principal and Travelers Casualty and Surety Company of America as Surety, are held and firmly bound unto The City of Ames, State of Iowa, as Obligee in the sum of One Million Three Hundred Forty Nine Thousand Eighty Three and 20/100 Dollars (\$1,349,083.20), lawful money of the United States to be paid to said Obligee his heirs, legal representatives or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and each of our heirs, legal representatives and assigns firmly by these presents.

WHEREAS, Schammel Electric, Inc. filed a claim for the sum of Six Hundred Seventy Four Thousand Five Hundred Forty One and 60/100 Dollars (\$674,541.60), against the Principal for work performed for the Ames Water Treatment Plant – Contract 2, Treatment Facilities, and

WHEREAS, said claim purports to have been made as prescribed in accordance with Iowa Code Section 573.16, against the above described public property for labor and/or materials furnished to said Principal for the construction of the aforementioned property, and

WHEREAS, in accordance with Iowa Code 573.16 this surety bond is provided in double the amount of the claim.

NOW, THEREFORE, the condition of this obligation is such that, if the above bounden Principal shall well and truly pay any and all judgments which may be rendered for the claims so filed in favor of the aforesaid claimant, his successors or assigns, in any action or proceeding to enforce said claim, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and seals this 19th day of February, 2019.

Knutson Construction Services, Inc.

By: 

Travelers Casualty and Surety Company of America

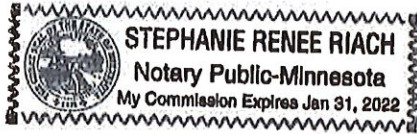
By:   
Kelly Nicole Bruggeman, Attorney-in-Fact

# Corporate Acknowledgment

STATE OF Minnesota )  
 ) ss  
COUNTY OF Hennepin )

On this 1st day of February, 2019, before me personally appeared Dave Buster To me known, who being by me duly sworn, did say that he is the Executive Vice President of the Knutson Construction Services, Inc.

corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal is affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his/her name thereto by like order.



(Notary Seal)

Stephanie Riach  
Notary Public Signature

# Acknowledgment of Corporate Surety

STATE OF Minnesota )  
 ) ss  
COUNTY OF Hennepin )

On this 1st day of February, 2019, before me appeared Michelle Halter, to be known, who being by me duly sworn did say that (s)he is the aforesaid Attorney-in-Fact of the Travelers Casualty and Surety Company of America

a corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by the aforesaid officer, by authority of its Board of Directors; and the aforesaid officer acknowledged said instrument to be the free act and deed of said corporation.



(Notary Seal)

Kelly Nicole Bruggeman  
Notary Public Signature



**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Michelle Halter** of **Minneapolis, Minnesota**, their true and lawful Attorney-in-Fact 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 **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

By: *Robert L. Raney*  
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance 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**, 2021



*Marie C. Tetreault*  
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 Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance 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 understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance 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 remains in full force and effect.

Dated this 1st day of February, 2019



*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

# Engineer's Statement of Completion

Project: <b>Ames Water Treatment Plant – Contract 2</b>	Date of Award: <b>October 28, 2014</b>
Owner: <b>City of Ames</b>	Owner's Contract No.: <b>2014-120</b>
Engineer: <b>FOX Engineering</b>	Engineer's Project No.: <b>3338-12A</b>
Contractor: <b>Knutson Construction</b>	

I hereby state that the construction of the **Ames Water Treatment Plant – Contract 2, Ames, Iowa** project by a Contract dated **October 28, 2014** has been satisfactorily completed in general compliance with the terms, conditions, and stipulations of said Contract.

The work was completed on **February 15, 2019**. The Contract completion date is **March 1, 2019**.

I further state that the total amount due to the Contractor for the fulfillment of said Contract is **\$53,163,561.00** including Change Orders 1-26.

The Contractor has been paid \$52,616,011.00 as of Pay Application No. 37.

The remaining balance of the total amount due to the Contractor (work and remaining retainage of \$547,550.00 per Contractor's Application for Payment No. 38) shall then be paid on or before March 1, 2019 following formal acceptance of the construction by the City of Ames City Council in accordance with the settlement agreement.

**Signed:**

FOX Engineering Associates

By: 

Iowa Registration No.: 15259

Date: February 18, 2019

FOX PN: 3338-12A

**Accepted by:**

Owner: \_\_\_\_\_

Resolution: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Distribution:

- Engineer
- Contractor
- Owner
- IDNR