

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
May 9, 2024
7:00 P.M.**

Call to Order

1. **Roll Call**

_____ Roberts _____ Longanecker _____ Lewis _____ Lebakken _____ Malloy _____ Conus

2. **Welcome**

3. **Pledge of Allegiance**

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes from April 25th, 2024 Regular City Council Meeting
5. Consider Resolution No. 05-09-2024A Approving The Mayoral Appointment For Certain Public Officials For The City Of Edgerton, Kansas

Motion: _____ Second: _____ Vote: _____

Regular Agenda

6. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.
7. **Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

Business Requiring Action

8. **PUBLIC HEARING RELATED TO A POSSIBLE DANGEROUS AND UNSAFE BUILDING EXISTING AT 312 E. 5TH STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS**

9. **CONSIDER RESOLUTION 05-09-24B PROVIDING FOR A HEARING TO DISCUSS A POSSIBLE DANGEROUS AND UNSAFE BUILDING EXISTING AT 312 E. 5TH STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO CITY OF EDGERTON MUNICIPAL CODE, CHAPTER IV, ARTICLE 4, SECTION 4-405.**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER RESOLUTION NO. 05-09-2024C CONSENTING TO THE EXECUTION AND DELIVERY OF ESTOPPEL CERTIFICATES, CONSENTS TO COLLATERAL ASSIGNMENTS, AND SUBORDINATION AGREEMENTS IN CONNECTION WITH NINE LOGISTICS PARK PROJECTS**

Motion: _____ Second: _____ Vote: _____

11. **PUBLIC HEARING RELATED TO SUBMITTAL OF 3RD & E HULETT SANITARY SEWER PROJECT APPLICATION TO JOHNSON COUNTY FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING FOR 2025**

12. **CONSIDER SUBMITTAL OF 3RD & E HULETT SANITARY SEWER PROJECT APPLICATION TO JOHNSON COUNTY FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING FOR 2025**

Motion: _____ Second: _____ Vote: _____

13. **CONSIDER AWARD OF CONSTRUCTION OF THE DWYER FARMS – SANITARY SEWER EXTENSION PROJECT TO BEEMER CONSTRUCTION CO., INC. FOR \$747,900.00 FOR THE BASE BID TOTAL**

Motion: _____ Second: _____ Vote: _____

14. **CONSIDER AWARD OF CONTRACT WITH KDHE TO ACCEPT AWARD OF THE KDHE WASTE TIRE GRANT OF \$24,791.36 FOR THE GLENDELL ACRES PARK IMPROVEMENTS PROJECT**

Motion: _____ Second: _____ Vote: _____

15. Report by the City Administrator

- Community Development 1st Quarter Report
- Update to Safety Manual

16. Report by the Mayor

17. Future Meeting Reminders:

- May 14: Planning Commission – 7:00 PM
- May 23: City Council Meeting – 7:00 PM
- June 11: Planning Commission – 7:00 PM
- June 13: City Council Meeting – 7:00 PM
- June 27: City Council Meeting – 7:00 PM

18. **Adjourn** Motion: _____ Second: _____ Vote: _____

EVENTS

5/11: Family Yoga
5/11: 80's Outdoor Movie Night
5/14: Tales for Tots
5/17: Coloring Café
5/22: Out of School Ice Cream
5/31: Animal Wonders
6/1: Summer Kickoff Party

City of Edgerton, Kansas
Minutes of City Council Regular Session
April 25, 2024

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas April 25, 2024. The meeting convened at 7:00 PM with Mayor Donald Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	present
Deb Lebakken	present
Bill Malloy	absent
Ron Conus	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- Assistant to the City Administrator, Kara Banks
- Finance Director, Karen Kindle
- Public Works Director, Dan Merkh
- Development Services Director, Zach Moore
- Public Work Superintendent, Trey Whitaker
- Maintenance Technician, Chance Heinz
- Parks and Recreation Director, Levi Meyer
- Parks and Recreation Superintendent, Brittany Paddock
- Assistant City Clerk, Alex Firth
- Planning and Zoning Coordinator/Deputy City Clerk, Chris Clinton

2. WELCOME. Mayor Roberts welcomed all in attendance.

3. PLEDGE OF ALLEGIANCE. All present participated in the Pledge of Allegiance.

Consent Agenda (*Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action*)

4. Declaration

Councilmember Longanecker had a phone conversation with realtor Nancy Kirk-Matthews, but he expressed that the conversation would not impact or influence his vote today.

5. Approve Minutes from March 28, 2024, Regular City Council Meeting

City Administrator Beth Linn stated that the minutes were inadvertently excluded from the packet. She stated the minutes were reviewed by staff for accuracy.

Councilmember Lewis moved to approve the Minutes, seconded by Councilmember Longanecker. The Consent Agenda was approved, 4-0.

6. **Public Comments**

Ms. Katy Hoffman and Mr. Gary Scott from the Silver Haired Legislature addressed the Council. Ms. Hoffman described her organization and discussed how they are elected and what the organization advocates for at the State Legislature. She stated their priorities recently include establishing a medical cannabis advisory board, Medicaid expansion, and other topics. Mr. Scott added that his property tax is almost what his mortgage used to be, and he is a widower on a fixed retirement income, so tax relief is also a major priority.

Ms. Linn shared information about the monthly Senior Lunch and suggested they attend.

Mayor Roberts thanked Ms. Hoffman for representing the seniors and for what they are doing for their communities.

Mayor Roberts stated that any public comments that are for municipal code changes will be held until the agenda item that they correlate with.

7. **Introduction of New Employee Chance Heinz** – Public Works Director Mr. Dan Merkh introduced Chance Heinz to the Council. Mr. Heinz stated he started work with the City of Edgerton roughly 3 weeks ago in the utilities department and grew up in Garden city Kansas, went to University of Kansas and all paths had led him to Kansas City.

Business Requiring Action

8. **CONSIDER THE 2023 AUDIT OF FINANCIAL STATEMENTS AS PRESENTED BY VARNEY & ASSOCIATES**

Karen Kindle, Finance Director, introduced Jessica Linsley with Varney and Associates.

Ms. Linsley stated that she has been working on the City's audits for the last 3-4 years and is very familiar with Edgerton's account. She stated the numbers that were provided to her by the staff of Edgerton, and they did not need to make any adjustments. Edgerton received a clean opinion again in 2023.

She complimented the city for how smooth the transition was to a new financial software system because it can be hard.

She stated auditors must receive reasonable assurance and they detailed some utility billings and also looked over the expenditures of high and low amount purchases. They are looking for fraud purchases and did not find anything, but she wanted to let Council know that they looked at some different procedures this year.

The amounts match and reconcile with the prior year. She notes that the State now requires auditors to include if Edgerton had a revenue neutral rate (RNR) hearing, which is only difference on that section of the audit.

She stated there were no violations of Kansas statues throughout the year. There were no funds over budget. She added the audit shows status of capital projects that continue past the financial year.

Mayor thanks Ms. Linsley for coming and thanked staff for working on the budget through the transition to a new system.

Councilmember Longanecker moved to approve the 2023 Audit financial statement, seconded by Councilmember Labbaken. The Financial Audit was approved, 4-0.

9. **CONSIDER RESOLUTION NO. 04-25-24A AUTHORIZING SPECIAL EVENT PERMIT FOR SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY WITHIN THE CITY OF EDGERTON, KANSAS**

Brittany Paddock, Superintendent of Parks and Recreation, reviewed the resolution and introduced the members of the Frontier Days Association in attendance, Nathan Eggleston and Darlene Brown. She stated Frontier Days will be moved to Martin Creek Park in 2024 due to the construction of The Greenspace. The festival will be held June 14 – June 15. She explained this first resolution allows liquor sales at the park and showed a map of the event space. She outlined the requirements that all alcohol must stay within Martin Creek Park and within certain material of containers.

Councilmember Lewis moved to approve Resolution No. 04-25-24A, seconded by Councilmember Longanecker. The Resolution was approved, 4-0.

Mayor noted that the Council did not specifically waive the fees associated with the special event permit as they have historically done.

Motion made by Councilmember Longanecker to waive the special event fees. Councilmember Lebakken seconded the motion, and the vote was approved 4-0.

10. **CONSIDER RESOLUTION NO. 04-25-24B AUTHORIZING PERMISSION TO USE REQUESTED CITY BUILDINGS/PUBLIC SPACES AND THE APPROVAL OF ADDITIONAL SERVICE REQUESTS DURING EDGERTON FRONTIER DAYS**

Ms. Paddock stated this resolution is a request to use Martin Creek Park and city buildings and Edgerton city lake to provide event space and shuttle locations for the event.

Ms. Linn stated the Council had authorized a capital improvement project to put in a split row fence. She noted the City's Public Works Department did a tremendous job of installing it, which will be a great asset for Frontier Days and events in the future.

Mayor stated City staff dedicates a lot of staff time to parking on the 3rd of July and asked the Frontier Days Committee what kind of staffing will be needed for parking. Mr. Eggleston stated they are deliberating on whether they will hire out the parking safety personnel.

Councilmember Longanecker asked about the truck route.

Ms. Paddock states this keeps a majority of trucks away from the event.

Ms. Linn stated there may also be road closures of Nelson Street downtown during that weekend due to the construction of the Greenspace and this could help with pedestrian safety.

Councilmember Longanecker moved to approve Resolution No. 04-25-24B, seconded by Councilmember Lewis. The Resolution was approved, 4-0.

11. CONSIDER RESOLUTION NO. 04-25-24C AUTHORIZING THE CLOSURE OF PUBLIC STREET FOR THE EDGERTON FRONTIER DAYS FESTIVAL PARADE IN 2024.

Ms. Paddock reviewed the resolution. The closure for the street is on Nelson due to the parade and take place on the morning of June 15th from 8th Street to 3rd Street and will be a short closure. Barricades will be set up from 8:30 - 10:30 am.

Councilmember Lebakken moved to approve Resolution No. 24-25-24C, seconded by Councilmember Longanecker. The Resolution was approved, 4-0.

12. CONSIDER RESOLUTION NO. 04-25-24D FOR TEMPORARY NO PARKING RELATED TO FRONTIER DAYS

Ms. Paddock reviewed the resolution. She stated one of the areas that staff wants to make sure is the unobstructed includes the stretch of 3rd Street from Morgan Street to Martin Street to make sure the fire department can get out in case of an emergency.

Councilmember Lewis moved to approve Resolution No. 24-25-24D, seconded by Councilmember Lebakken. The Resolution was approved, 4-0.

13. CONSIDER RESOLUTION 04-25-24E RECOGNIZING THE EDGERTON FRONTIER DAYS AS A "PUBLIC FESTIVAL" FOR PURPOSES OF THE CITY'S NOISE RESTRICTIONS.

Ms. Paddock stated the resolution waives the City's noise ordinance on Friday and Saturday night. Councilmember Longanecker asked what time the band stops playing. Mr. Eggleston said it was 11:30 pm. Mayor Roberts added this year's event should be less impactful because it is at the park.

Councilmember Lewis moved to approve Resolution 04-25-24E, seconded by Councilmember Longanecker. The resolution was approved, 4-0.

Mayor thanked the Frontier Days group for carrying on the tradition. This festival has been held for more than 50 years. It is not a city event and is entirely put on by volunteers. He thanked the organization for their efforts for the event.

Mr. Eggleston and Ms. Brown announced the bands that are playing and reviewed some of the highlights for this year's event.

The mailer with the event schedule will go out with June utility bills.

14. CONSIDER ORDINANCE NO. 2159 AMENDING CHAPTER IV – BUILDINGS, CONSTRUCTION AND FIRE OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS

Development Services Director, Zach Moore stated the city adopted the 2006 building code in 2010. This ordinance would update the codes to the 2018 ICC suite, as drafted by International Code Council with specific City amendments. Mr. Moore reviewed several specific changes, including work hours, storm shelters, and mobile food vendors.

The first proposed item is the introduction of work hours, which would be Monday through Friday from 7 am – 6 pm with special permitted hours allowed on Saturday. Work on Sundays would be prohibited. He added that the work hours provision does not apply to homeowners working on their own homes outside of those hours. He stated staff can issue extended construction hours due to heat or other conditions if requested.

The second proposed item is a requirement for storm shelters for residential development. Based on previous Council discussions, staff offered three options if Council wanted to amend in a storm shelter requirement: 1) require a shelter in each new single family or two-family home, 2) to require a storm shelter at time of original construction or a single- or two-family home unless the owner signs a opt out form for that option, or 3) to allow for the construction or maintenance of a storm shelter which would be maintained by the HOA.

Councilmember Longanecker questioned that this is not a retrofit and this amendment is only for new construction. Mr. Moore responded that this requirement is only for new construction.

The third proposed item is mobile food preparation vehicles, or food trucks. Mr. Moore stated the staff is recommending amending that section out and would like to research food

trucks and understand how this part of the ordinance could impact the city since we use food trucks for events such as Meat Inferno. Mr. Moore stated staff has spoken with Fire District 1 because they expressed safety concerns about the City opting out of those requirements.

This ordinance change would also take any other wording within the municipal code that is fire related from chapter VII and put it in chapter IV. So, this would make sure that anything that is about construction and fire would be within the same chapter.

Councilmember Longanecker asked if section 903.3.121 only applies to apartment buildings. Mr. Moore confirmed that it only applies to buildings with more than 2 units that are new construction.

Councilmember Conus asked if neighboring communities have made storm shelters a requirement. Mr. Moore answered that Gardner, Baldwin City and Spring Hill do not have a storm shelter requirement, but Olathe and Kansas City, KS do.

PUBLIC COMMENTS:

Chief Trig Morley and Fire Marshal Brad Ralston of Johnson County Fire District #1 encouraged council to not amend this section out. Chief Morley stated they understand the city's position. He stated they had a good conversation and would be happy to help with research.

Division Manager for Rausch Coleman Shawn Cheever stated they need to keep the prices as low as possible for the buyers to draw in people to the area. The requirement for storm shelters would be more of an added cost and should stay as an option for owners to choose the shelter not a requirement. He stated they agreed that giving the homeowners this option is a great and safe initiative for the community, however he was concerned that mandating this ordinance would eliminate thousands of people from qualifying for their dream of home ownership. He stated this would add about \$10,500 to the price of the home.

Mr. Cheever stated some other ordinances that the city has mandated have already increased the price of the homes. Additional thickness of concrete, additional street lighting, and concrete storm pipes everywhere instead of just in roadways, has increased the cost of the homes by 4,000 dollars. He stated that they understand that the codes can change over time, but a lot of these requirements have been changed while in the middle of the development of the subdivision here in Edgerton. Mr. Cheever stated one of the biggest reasons they chose Edgerton was to beat the housing by land price than other surroundings communities. He states that these changes would price out thousands of families that would not be able to afford their homes if they must increase their prices. He does not want to drive people away from this area due to increases. He requested summer construction hours to start at 6 am due to high heat, especially for projects like concrete pouring. He added the requirement that down spouts cannot be more than 10 feet from the property line would also be a problem.

Deputy City Clerk, Chris Clinton, read a letter from ElevateEdgerton! President James Oltman. The statement emphasizes that they are not taking sides but wants to stress the responsibility that the city has in balancing the future of Edgerton's public safety with its growth. They want to encourage the council to consider the unintended consequences additional regulation may have for the progress of growing the community and encouraging new residential development.

Kristen Peck who works with Rausch Coleman stated she wanted to stress how important it is to keep their prices lower for the families that they are trying to target. Edgerton would be the only community that would mandate storm shelters if this would move forward.

Mayor Roberts asked what their current selling price is. Mr. Cheever answered the goal is the low \$250s, but final costs will not be known until the homes are done. He stated homes are starting in the \$290s in Gardner and Spring Hill and prices are climbing weekly. Mayor states that \$249,000 was the amount that the City was originally given, so there has not been a big price change. Mr. Cheever stated they have made changes in the homes to keep the price low and keep the delta between Edgerton and its neighboring communities.

Mayor asks if Mr. Cheever would like summer hours changed to 6 am to 6 p.m. Mr. Cheever answers that they need to pour concrete early due to heat and how the concrete can crack if the concrete dries too fast. Ms. Linn added that the ordinance as written allows for exceptions to the time of the construction, especially for concrete.

Councilmember Longanecker asked why an opt-out on the storm shelters is not their preference. Mr. Cheever would like an opt in to the storm shelters. He stated this is due to the price increase and not being able to reach the people they need if they cannot advertise at certain prices. He would rather the customer be able to opt in and understand that they have an increase. Instead of loading the price up and bringing it down if the customer would like to opt out, they would rather have the basic model and opt in to additional costs like the storm shelters and fencing. Mayor Roberts asked if that was Rausch Coleman's standard practice? Mr. Cheever stated yes, opt-in is standard because it keeps prices down. Mayor asked how many people have opted into the safe room. Mr. Cheever stated he knows of three that have bought in. Councilmember Longanecker asked if those were slab homes and Mr. Cheever responded they were on slabs. Councilmember Longanecker stated he is concerned about keeping people safe. Mr. Cheever stated if the homeowner wants it, they can have it. They encourage people to get what they want. Mayor Roberts stated the Council received quite a bit of public pressure because of the limited space for storm shelters in Edgerton.

Michele Downing addressed the Council. She stated it is not just concrete. She does framework and says the framing and roofing can get very hot as early as 7 am in the summer and wanted to state that the proposed hours may have a longer impact because it will take longer to build. If they could start earlier, it would take them less time.

Taylor Akinmoladun of Blue Springs, MO addressed the Council. She works as a real estate agent and says it will be harder for Edgerton to grow if the home prices increase too much. She stated that a lot of the people that would want to purchase a home at this price point, like empty nesters, would not go into a basement anyway.

Councilmember Longanecker asked the City Administrator about the hours. Ms. Linn said the current code does not have any hours. This code offers some basic hours, but staff can negotiate hours development-wide.

Councilmember Lewis stated when hours requests are made, it makes it easier to inform the public about what is going on. He added that it removes friction from the public. Deputy City Clerk Chris Clinton offered up that staff has worked with contractors in the past, especially during concrete pours to make sure that the project could still move forward and be safe.

Councilmember Lewis asked about the food truck exemption recommendation – he asked why the Fire District was concerned. Fire Marshall Brad Ralston said section 319 is basically a checklist for safety for food trucks. The food truck sticker program – streamlined process for food trucks in the area – makes it easier for inspectors. If an event has a food truck, then they can quickly decide if they meet the safety requirements.

Ms. Linn stated staff was concerned that adding additional requirements like the sticker would limit food trucks from outside Johnson County. The existing code does not have any regulations. She stated staff have had trouble finding food trucks for events and would like to understand the impact that the ordinance may have on the community. She stated staff would need more time to research the impact and speak with the food trucks.

Councilmember Lewis asked when staff would bring regulations back. Ms. Linn responded the goal would be this fall. Councilmember Lewis stated he wants to make sure it gets back on the agenda.

Mr. Ralston said the sticker program is no cost, but the safety improvements could be high for food truck owners. Chief Morley stated they would be happy to do an education campaign and help trucks become compliant with regulations.

Mayor spoke to the concern about the length of the downspouts and issues with the neighbors discharging their downspouts into their neighbors' yard. Mr. Cheever stated other communities have added a swell.

Jim Brown, Building Inspector for the City of Edgerton, addressed Council. He stated the code allows for a stormwater management plan for each property. The goal is to keep nuisance water off neighboring properties.

Ms. Linn said staff get frequent calls related to storm water because many homes currently have drainage at their property line, which can lead to flooding on a neighboring property. She stated that the standard setback is at 9 feet on smaller lots and the standard 10 feet

would only allow from front and back of property and not a drain on the sides. Staffs' recommendation is that it is on the front or back of the house to ensure that storm water is dispersed properly.

Mayor stated the Council did not seem to have any concerns about the proposed work hours requirements and exceptions. He then asked Council about downspouts. Mr. Brown said the code would allow for stormwater mitigation exceptions, with approval from building inspector, public works director, city engineer.

Ms. Linn recommended the Council add a number if they did not like 10 feet. Mr. Brown said the code already allows for exemptions based on property features.

Councilmember Longanecker wants to make sure storm water is not dispersed onto neighboring properties.

Mayor agrees that 10 feet from the property line is a great recommendation and would be best for the community.

Ms. Linn referred to the storm water master plan, which addressed how to fix issues that were created from policies in the past and how to set the policy to mitigate issues in the future. She stated staff has found that side discharges of water exacerbate issues.

Councilmember Lewis asked Rausch Coleman what other communities do for stormwater management. Mr. Cheever said Paola allows 3 feet with a swell. Mayor asked if they would be comfortable working with staff on the downspout issue. Kyle Jones with Rausch stated they want to make sure the water is flowing correctly because it's a top concern in almost every community for their homeowners. Stormwater is important to everybody.

Councilmember Conus asked about the drainage from sump pumps and asked if this would impact on the existing home and Ms. Linn answered with no, this ordinance is only for new construction.

Mayor Roberts then asked the Council for their thoughts on the storm shelter options.

Councilmember Conus recommends that we keep home prices low and allow for opt-ins.

Councilmember Longanecker says that it is on the council to recommend things that are the safest for the city and what is in the communities' best interest and making this opt in or out makes it the responsibility of the homeowners and construction builders' decision.

Mayor stated that the people should have to sign off on it and say that they do not want it. He would rather the homeowner make a choice and opt out.

Councilmember Lewis asked Rauch Coleman the current plan that they have in place, do you make money on the construction of the storm shelter and what motivation that they

would have for selling the storm shelter feature to a customer. Mr. Cheever says ideally their customers are moving out of rental properties, many of whom cannot afford much.

Ms. Peck says that in the building of what the customer wants they start from the base and add to the price, so the customer knows what they are getting.

Councilmember Longanecker recommends customers opt out because he wants the customer to know what they are saying no to instead of the home buyer just saying as a blanket statement that they do not want any extras.

Mayor asks Fire District One what their recommendations are. Chief Morley answered that being prepared is the best way to go. He would encourage residents to have a plan and have early warning. Edgerton is in a unique position in the most southern part of the county. It is important that they have a plan to shelter in place when they can. Getting education to the community is recommended as well in any case, not just for this ordinance.

Councilmember Lebakken says that this ordinance decision could be a matter of life and death with the option council may chose.

Councilmember Lewis says at the end of the day if safety is important to you as a buyer to find the money to cover that cost.

Councilmember Conus stated the opt-in option strengthens Edgerton's competitiveness against neighboring communities.

Mayor then asked Council for their opinions about food trucks. He added that it sounds like staff and the fire district will work together to draft regulations.

Councilmember Longanecker makes a motion to approve Ordinance No. 2159 as written with an opt-out option for storm shelters. Councilmember Lebakken seconds. The vote was 3-1, with Councilmember Conus opposed.

Mayor states that he appreciates everyone's time on this matter and all the education that has come with this meeting from everyone that came to Council tonight and gave their public comments.

15. CONSIDER ORDINANCE NO. 2160 REPEALING CHAPTER VII FIRE OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS

Zach Moore stated this amends the code to clean it up. The fire code is moved now to Chapter IV and Chapter VII would be redundant language.

Councilmember Longanecker moved to approve the Ordinance, seconded by Councilmember Lewis. Ordinance 2160 was approved, 4-0.

16. CONSIDER ORDINANCE NO. 2161 REPEALING ORDINANCE 891 AND THE CODE OF REGULATIONS FOR BUILDINGS AND CONSTRUCTION OF THE CITY OF EDGERTON, KANSAS.

Zach Moore stated this ordinance repeals ordinance 891 due to redundant language. Mayor asked the City Attorney if the ordinance would take effect upon publication. Mr. Lee Hendricks, City Attorney, confirmed it does.

Councilmember Longanecker moved to approve the Ordinance, seconded by Councilmember Lebakken. Ordinance 2161 was approved, 4-0.

17. CONSIDER A PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH TO PROVIDE DESIGN SERVICES FOR THE 2024 CDBG 2ND AND HULETT SANITARY SEWER REHABILITATION PROJECT

Holly Robertson, CIP Project Manager presented and explained the design services agreement – design would begin immediately with completion in 2024.

Councilmember Lewis moved to approve the agreement with Tetra Tech, seconded by Councilmember Longanecker. The agreement was approved, 4-0.

18. Report by the City Administrator

- 1st Quarter 2024 Financial Report

Karen Kindle, Finance Director, reviewed the 1st quarter general fund. She stated the first of two property tax distributions have been added to the funds and the City has received some delinquent tax. She stated most revenue line items are on track.

Councilmember Conus asked how much Rausch Coleman makes up of the estimate for licenses and permits for the whole year. Ms. Linn said they have not paid anything yet. Conus clarified that he meant the estimate. Ms. Linn answered that she did not know and would have to get that answer back to Conus at a later date.

Ms. Kindle stated the fund balance is within reserve requirements and within budget authority. She then reviewed the water and sewer funds. Water billing is lower at this time of year and will trend higher in the summer. She stated the City has two debt payments each year and one of them has been paid already this year.

- Update on Community Picnic and Fireworks Show

Ms. Linn states that the pricing has continued to rise for this event. She stated this past year staff noticed many people coming just for a free t-shirt and then leaving, which defeats the goal of the event to bring the community together. Staff would like to offer shirts for sale through an online store which would also include items that are available year-round. She added that staff wants to prioritize the core goals of the event, which is

coming together and sharing a meal while celebrating our nation's independence. She stated many communities offer similar options.

Mayor Roberts says that the focus used to be on the food, fireworks, and people and not the t-shirts. He would like to keep the food and fireworks free and focus the dollars on what will serve the entire event, meaning the food and fireworks. The goal for the new online store is to try to see if this works for the community and see if they want to have a piece of the event to share with the community.

- **Water Conservation and Emergency Plan Annual Review**

Dan Merkh, the Director of Public Works, addressed the Council. He stated there were only minor revisions and no major changes to the conservation and emergency water plans.

He also announced that the City was awarded a grant from the state for almost 25,000 for the playground surfacing at Glendell Acres Park. He stated Holly Robertson led the grant application and told Council that she was recently named the AESKC 2023 Engineer of the Year.

- Ms. Robertson addressed the Council. She stated there is a change order at The Greenspace. Staff recommends the Council approve Combes Construction to construct the library sewer as part of The Greenspace project for \$19,699. Having Combes take care of this would ensure that the work is done in step with the order and paving of the alley. There are available funds that would be utilized to cover this added cost of the project. This would also lessen the amount of time that the library would be down for business and would minimize the impact on them.

Councilmember Longanecker made a motion to approve Change Order, Councilmember Lebakken seconded. The change order was approved 4-0.

19. Report by the Mayor

- There was no report given by Mayor Roberts.

20. Future Meeting Reminders

Mayor Roberts reminded the Council of the future meetings for the Council and Planning Commission.

21. Adjourn

Councilmember Lebakken moved to adjourn, seconded by Councilmember Lewis. The meeting was adjourned at **9:46 PM, 4-0.**

Submitted by Alex Firth, Assistant City Clerk

City Council Action Item

Council Meeting Date: May 9, 2024

Department: Administration

Agenda Item: Consider Resolution No. 05-09-2024A Approving the Mayoral Appointment for Certain Public Officials for the City of Edgerton, Kansas

Background/Description of Item:

Chapter 1, Article 3, Section 301 of the Edgerton City Code states that at the first regular meeting in May of each year the mayor, by and with the consent of the council, shall appoint the city clerk and city treasurer, and may appoint a city attorney, municipal judge and such other officers as may be deemed necessary for the best interest of the city.

Draft Resolution 05-09-2024A includes the following appointments to serve the City of Edgerton:

Alexandria Clower as City Clerk
Alexandra Firth as Deputy City Clerk
Karen Kindle as City Treasurer
Lee Hendricks as City Attorney
Nate Sutton as Municipal Judge
Tom Barnes II as Municipal Prosecutor
David Hamby as City Engineer

Related Ordinance(s) or Statue(s): Article 3, Section 1-301 of the Edgerton Municipal Code.

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approve Resolution No. 05-09-2024A Approving the Mayoral Appointments for Certain Public Officials for the City of Edgerton, Kansas

Enclosed: Draft Resolution No. 05-09-2024A

Prepared by: Beth Linn, City Administrator

RESOLUTION NO. 05-09-24A

A RESOLUTION APPROVING THE MAYORAL APPOINTMENTS FOR CERTAIN PUBLIC OFFICIALS FOR THE CITY OF EDGERTON, KANSAS

WHEREAS, City Code requires the Mayor to appoint certain public officials;

WHEREAS, the appointments named below meet all qualifications set forth by City Code;

WHEREAS, the Mayor hereby appoints, subject to the approval of the City Council, the individuals named below to fill the public appointments for the City of Edgerton, Kansas;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDGERTON, KANSAS:

SECTION ONE: The City Council hereby approves the following Mayoral appointments to serve the City of Edgerton:

Alexandria Clower as City Clerk
Alex Firth as Assistant City Clerk
Karen Kindle as City Treasurer
Lee Hendricks as City Attorney
Nate Sutton as Municipal Judge
Tom Barnes II as Municipal Prosecutor
David Hamby as City Engineer

SECTION TWO: EFFECTIVE DATE

This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 9TH DAY OF MAY, 2024.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Alex Firth, Assistant City Clerk

APPROVED AS TO FORM:

Lee W. Hendricks, City Attorney

City Council Action Item

Council Meeting Date: May 9, 2024

Department: Community Development

Agenda Item: Consider Resolution 05-09-24B To Determine A Possible Dangerous and Unsafe Building And Providing A Deadline Of June 10, 2024 To Resolve, Existing At 312 E. 5th Street In The City Of Edgerton, Johnson County, Kansas Pursuant to Resolution 03-14-24A And City of Edgerton Municipal Code, Chapter IV, Article 4, Section 4-1107.

Background/Description of Item:

On March 14, 2024, the City Council adopted Resolution 03-14-24A, which set a date of May 9, 2024 to conduct a public hearing regarding the property at 312 E. 5th Street, pursuant to Section 4-1105 of the Edgerton Municipal Code and K.S.A. 12-1752. This public hearing provides an opportunity for the property's owner, owner's agent, any lien holders of record, and any occupant of the property may appear and show cause why such structure should not be condemned and ordered repaired or demolished.

Since Resolution 03-14-24A was adopted on March 14, 2024, the Resolution has been published twice in the Gardner News (March 27 and April 3), in accordance with State law and City Code requirements. Staff has been in contact with the property owner (Lakeview Loan Servicing, LLC), the owner's attorney (SouthLaw PC), and the owner's representative (Mortgage Specialists International). The property owner's attorney and representative have been in contact with staff regarding the status of the property, and steps for the property to be in compliance.

Between publication of Resolution 03-14-2024A and the publishing of this report, the owner's representative has taken steps to clean the property, including removing exterior storage of junk and debris. Despite these steps, the modified sheds at the north of the property remain in violation and the dilapidated camper also remains on the property. Upon last communication with the owner's representative, bids are being collected for these items to be removed from the property. In addition, no building permits have been submitted to date to repair the damage identified in the Building Official's Request for Condemnation report that was included with the March 14, 2024 City Council agenda packet, and is included as an attachment to this packet.

Lastly, the property is currently not connected to City water and the utility accounts for the property have not been set up in the property owner's name. The City Attorney has mailed two (2) letters to the property owner, informing them that the utility accounts must be placed within their name, and if the accounts are not established, then the City may remove the meter from

the property. This action has not taken place to date, however, the owner's attorney has been made aware of the letters and potential removal of the meter. Pursuant to Edgerton Municipal Code, Sections 4-1114 and 15-145, any structure within the city limits which is not connected to City water and paying at least the monthly minimum charge shall be deemed unfit for human habitation.

The enclosed draft resolution has not yet been reviewed by the City Attorney. Staff recommends approval of the Ordinance pending any revisions by the City Attorney following review.

Related Ordinance(s) or Statute(s): Municipal Code Chapter IV, Article 4; KSA 12-1752

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approve Resolution 05-09-2024B Determining A Dangerous and Unsafe Building And Providing A Deadline Of June 10, 2024 To Resolve, Existing At 312 E. 5th Street In The City Of Edgerton, Johnson County, Kansas Pursuant to Resolution 03-14-24A And City of Edgerton Municipal Code, Chapter IV, Article 4, Section 4-1107

Prepared by: Zachary Moore, Development Services Director

Enclosed:

1. DRAFT Resolution 05-09-24B
2. Resolution 03-14-24A
3. Excerpt of Minutes from the March 14, 2024 City Council Meeting Pertaining to Resolution 03-14-24A
4. Building Official's Request for Condemnation/Inspection Report
5. Letter from City Attorney Regarding Water Connection Dated April 9, 2024
6. Letter from City Attorney Regarding Water Connection Dated April 23, 2024

RESOLUTION NO. 05-09-24B

A RESOLUTION IN THE CITY OF EDGERTON, KANSAS, PROVIDING FOR A DEADLINE OF JUNE 10, 2024 TO RESOLVE DANGEROUS AND UNFIT STRUCTURES EXISTING AT 312 E. 5TH STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO CITY OF EDGERTON CITY CODE, CHAPTER IV, ARTICLE 4, SECTION 4-407.

WHEREAS, the Public Officer has filed with the Governing Body a written statement that the structures located upon the property located at 312 E. 5th Street, Edgerton, Kansas (the "Property"), are declared unsafe or dangerous; and

WHEREAS, pursuant to Resolution 03-14-24A the City Council requested the appearance of the listed owner of the Property, Lakeview Loan Servicing LLC, at a hearing held on May 9, 2024 at 7:00 P.M. at City Hall; and

WHEREAS, Resolution 03-14-24A was published in the official City newspaper and was mailed in accordance with Edgerton Municipal Code, Article IV, Section 4-406; and

WHEREAS, the Property owner's attorney provided written testimony to be read at said hearing which states that her client continues to make progress towards the repair and restoration of the Property. City Staff observed that as of the date of the hearing the Property remains unfit for human habitation and is in violation of the City Code; and

WHEREFORE, the City Council has determined that the structures located at the Property are dangerous, unsafe, and unfit for human habitation and use and wish to set a deadline for the Property to be in compliance.

BE IT RESOLVED BY THE CITY COUNCIL, CITY OF EDGERTON, JOHNSON COUNTY, KANSAS:

That pursuant to Section 4-407 of the City Code the City Council hereby finds that the Property is currently dangerous, unsafe and unfit for human habitation and use and sets a deadline of June 10, 2024 to either bring the Property within compliance with the City Code or demolish the structures on the property. While the Council has established such a deadline, it is agreeable to extend that deadline an additional sixty (60) days, if the Owner shows a good faith effort to make continued progress on the repair of the Property. Such progress shall be measured by tangible improvements being made week to week on the Property, monthly updates which show adequate progress to City of Edgerton staff and the Owner must continue to obtain building inspections as required by the adopted building code of the City of Edgerton. Said monthly updates and inspection reports will be shared with the council as they are received by staff.

Should the property not have been demolished or abated to the satisfaction of the City Council by June 10, 2024, or should progress not continue to be made within the sixty days (60) following, with the Property in compliance no later than August 10, 2024, the City of Edgerton by its agent is hereby authorized to abate the conditions and demolish or remove the structure.

BE IT FURTHER RESOLVED:

That should it be necessary to demolish or remove the structure, the costs incurred by the City of Edgerton, Kansas, including attorneys' fees, shall be charged against the above-described property as provided in Chapter IV, Article 4, Section 4-411, and the City Clerk shall, at the time of certifying other taxes to the County Clerk, certify the costs of cleanup. The County Clerk shall extend the same on the tax roll and it shall be collected by the County Treasurer and paid to the City of Edgerton as other City taxes are collected and paid.

PASSED by the City Council on this 9th day of May, 2024.

APPROVED BY the Mayor on this 9th day of May, 2024.

DONALD ROBERTS, MAYOR

ATTEST:

CHRISTOPHER CLINTON, DEPUTY CITY CLERK

APPROVED AS TO FORM:

LEE W. HENDRICKS, CITY ATTORNEY

RESOLUTION NO. 03-14-24A

A RESOLUTION IN THE CITY OF EDGERTON, KANSAS, ESTABLISHING THE TIME AND PLACE FOR A PUBLIC HEARING REGARDING A PROPERTY LOCATED AT 312 EAST 5th STREET HAVING A DANGEROUS OR UNSAFE STRUCTURES, IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO CITY OF EDGERTON CITY CODE, CHAPTER IV, ARTICLE 4, SECTION 4-405

WHEREAS, the Public Officer has filed with the Governing Body a written statement that the structures located upon the property located at of 312 E. 5th Street, Edgerton, Kansas (the "Property"), is declared unsafe or dangerous; and

BE IT RESOLVED BY THE CITY COUNCIL, CITY OF EDGERTON, JOHNSON COUNTY, KANSAS:

Section 1: That pursuant to Section 4-405 of the Municipal Code of the City of Edgerton, Kansas and K.S.A. 12-1752, the owner, the owner's agent, any lien holders of record, and any occupant of the Property may appear and show cause why such structure should not be condemned and ordered repaired or demolished at 7:00 PM on May 9, 2024, in Edgerton City Hall, 404 E. Nelson Street, Edgerton, Kansas.


Section 2: This resolution shall be in full force and effect from and after its adoption by the Governing Body and the City Clerk shall cause it to be published once each week for two consecutive weeks on the same day of each week in the official City newspaper as required by Edgerton Municipal Code, Chapter IV, Article 4, Section 4-406 and K.S.A. 12-1752.

BE IT FURTHER RESOLVED:

That any and all costs incurred by the City of Edgerton, Kansas, of any repairs, alterations, improvements, vacating, removal, or demolition, including making the site safe shall be assessed against the Property as provided in Section 4-411 of the City Code. Should those amounts go unpaid, the County Clerk shall extend the same on the tax roll and it shall be collected by the County Treasurer and paid to the City of Edgerton as other City taxes are collected and paid.

PASSED by the City Council on this 14th day of March, 2024.

APPROVED BY the Mayor on this 14th day of March, 2024.


CLAY LONGANECKER, COUNCIL PRESIDENT

ATTEST:


CHRIS CLINTON, DEPUTY CITY CLERK



APPROVED AS TO FORM:


LEE W. HENDRICKS, CITY ATTORNEY

Ms. Robertson said the Glendell Acres Renovation total project budget is \$740,867 and revised to \$1,140,867 on February 22, 2024. The maximum not to exceed lump sum provided by BG Consultants is \$10,000 and is within the budgeted amount. The Agreement is the City's standard agreement provided by the City Attorney.

Councilmember Longanecker said the City has had good luck with BG Consultants and he does not know who else would perform the work up to the City's standards.

Councilmember Conus moved to approve an agreement with BG Consultants, Inc. to provide construction inspection services for the Glendell Acres Park Renovation Project for a maximum not to exceed the sum of \$10,000. Councilmember Longanecker seconded the motion. The agreement with BG Consultants was approved, 4-0.

10. CONSIDER RESOLUTION NO. 03-14-24A PROVIDING FOR A HEARING TO DISCUSS A POSSIBLE DANGEROUS AND UNSAFE BUILDING EXISTING AT 312 E 5TH STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO THE CITY OF EDGERTON MUNICIPAL CODE, CHAPTER IV, ARTICLE 4, SECTION 4-405

Mr. Zach Moore, Development Services Director, spoke before the Council. He stated that on January 23, 2024, the City's Building Inspector conducted an inspection of the property at 312 E 5th Street in response to unpermitted work completed on the water meter at the subject property. The result of the inspection was provided in the packet.

Mr. Moore explained the Edgerton Municipal Code provides that when it appears to the Public Officer, in this case, the Building Inspector, that a structure is dangerous, unsafe or unfit for human habitation, they may report such findings to the Governing Body. Upon receipt of the report, should the Governing Body find a structure unfit for human use or habitation because of dilapidation, defects, unsanitary conditions, or conditions which provide a general blight upon the neighborhood or surrounding properties, the Governing Body may fix a time and place at which the owner, owner's agent, any lienholder of record and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.

Mr. Moore stated Resolution 03-14-24A has been prepared pursuant to Section 4-405 of the Edgerton Municipal Code to set the date and time for such a hearing. This resolution must be published once each week for two (2) consecutive weeks, and 30 days must elapse between the last publication and the date set for the hearing. Publication for this resolution will occur on March 27, 2024, and April 3, 2024, with a public hearing set for 36 days later on Thursday, May 9, 2024, at 7:00 PM, should this resolution be adopted.

Councilmember Longanecker inquired as to what can be done to the structure prior to the public hearing. Mr. Moore answered that more information will be collected, and the property will be monitored to see if any improvements are made by the property owner, which at this time is a bank as it was foreclosed on. Councilmember Longanecker asked if

any safety measures can be done to secure the structure. Mr. Moore replied that the City is unable to do anything about the property currently.

Ms. Linn stated the property owner has made an attempt to secure the structure. Mr. Moore said that is correct and the site is secure. A representative or contractor for the property owner was onsite on March 11, 2024, and March 13, 2024. Councilmember Longanecker asked which bank owns the property. Mr. Moore replied it is Lakeview Loan Servicing and they have contracted a company called MSI to secure and clean up some of the property. Ms. Linn added that if the resolution is adopted then notification will be sent to the property owners and other stakeholders. Mr. Lee Hendricks, City Attorney, explained that is why it is a two (2) month process. The property owners are allowed due process and if there is a public safety emergency then the City could secure the site. Councilmember Longanecker stated the site is as safe as possible for now. Mr. Moore agreed.

Councilmember Conus inquired if anyone was living on the property. Mr. Moore replied that nobody is living onsite to the City's knowledge and the bank has secured the property.

Councilmember Conus asked if tampering with the water meter is against the law. Mr. Moore answered it is against the City Municipal Code and that is currently being processed.

Councilmember Conus asked if the bank is trying to bring the structure into compliance with the Building Code. Mr. Moore replied they have not made their intentions known to City staff.

Councilmember Longanecker queried if anyone is living in the camper and storage container that are onsite. Mr. Jim Brown, Building Inspector, approached the Council and said he has visited the site many times. There is a modified container with a chimney that goes to the outside, so there was a heating element there at some point. The camper was being used as a dwelling unit and electricity was borrowed from a neighbor. He said he has met MSI onsite, and the site is secure as best as it can be. He explained there are locks on the access points and there are flyers with contact information for MSI and they will have to allow access. Councilmember Longanecker asked if Mr. Brown was ok with the security measures in place. Mr. Brown stated that he is.

Councilmember Lebakken moved to approve Resolution 03-14.24A providing for a hearing to discuss a possible dangerous and unsafe building existing at 312 E. 5th Street in the City of Edgerton, Johnson County, Kansas pursuant to City of Edgerton Municipal Code, Chapter IV, Article 4, Section 4-405. The motion was seconded by Councilmember Malloy. Resolution 03-14-24A was adopted, 4-0.

11. CONSIDER SUBMITTAL OF AN APPLICATION FOR EAST 2ND STREET RECONSTRUCTION PROJECT TO THE KANSAS DEPARTMENT OF TRANSPORTATION FOR A SPRING 2024 COST SHARE PROGRAM

Ms. Robertson addressed the Council. She stated the Kansas Department of Transportation (KDOT) Cost Share Program provides financial assistance to local entities for transportation

Building Official's Request for Condemnation

The City of Edgerton Community Development Department has determined that the following structure is dangerous and unsafe as defined by the Municipal Code and Kansas Statutes Annotated.

Request By: Jim Brown, CBO, LEED Green Associate

Date: 03/11/2024

Address: 312 E 5th Street

KS Uniform Parcel #: 0462030701013008000

City of Edgerton, Kansas.

Legal Description: CITY OF EDGERTON (MARTIN) LTS 22 THRU 24 BLK 21 EDC 352

Occupancy Status: Vacant

Building Description: Residential building

Zoning: R-1

Appraised value of the structure: \$163,000 (Per Johnson Co. Appraiser's office as of March 6, 2024)

Taxes and other assessments owed: Taxes are current. Not aware of other assessments at this time.

Background:

The structure at 312 E 5th Street is a 1,214 square foot single family structure constructed in 1920. The property is currently zoned R-1 (Single Family Residence District).

Previous owner: Darren Seute

Current Owner: Lakeview Loan Servicing LLC
4425 Ponce De Leon Blvd. #MS 5-252
Coral Gables, FL 33146

On January 23, 2024, in response to complaints received involving an unauthorized water service at 312 E 5th Street an investigation was carried out. Staff met with the occupant on-site to discuss the complaint and unauthorized water service. During this inspection, several other significant violations were also observed and documented as noted in the inspection report (attached).

In response to additional complaints staff performed a follow-up inspection on March 6, 2024.

DANGEROUS STRUCTURES INSPECTION

Municipal Code Chapter IV, Article 4

Following an inspection of the subject property at 312 E. 5th Street, the City Building Inspector found the following:

1. The means of egress at the lower level has been eliminated due to the removal of the existing door and replacement thereof with various sizes of plywood.
2. The lower-level stairway is in disrepair and unsafe.
3. The structural foundation elements of the southeast enclosed porch area is in extreme disrepair with no means of egress or access to the exterior door. The lack of stability is instrumental to the structure becoming detached or dislodged.
4. The structure shows evidence of extreme dilapidation and deterioration. Evidence of faulty construction is apparent at the southeast enclosed porch area. The foundation, (rubble stone masonry) as observed in the basement area from the exterior doorway shows evidence of partial to major collapse with large sections of the foundation wall crumbling away. The structural support columns for the first-floor beams have dislodged and fallen into the 2.5 to 3 feet of standing water in the basement area.
5. Due to the violations observed and noted in item 4 clearly demonstrates the building is unsafe for its intended use and occupancy.
6. The building is now vacant, leading to its enticement as an attractive nuisance. The access to the lower level remains unsecured (no door, only makeshift plywood) which may contribute to harboring of vagrants and other unauthorized persons.
7. In addition to the violations noted on the principal dwelling, there were also reports of individuals residing in an unauthorized and damaged recreational vehicle (RV Trailer) and a makeshift dilapidated container located on the property.
8. An unauthorized material was installed from the meter to the water service connection located in the basement area. This unauthorized and illegal work was performed to provide some water service to the residence after the main water line froze and broke. The Public Works Department has since abated the illegal service line and issued the applicable citation for the violation.
9. There is no current water service to this structure. There is no evidence of operating fire(smoke) alarms or mechanical or plumbing systems.
10. The building now appears to be vacant and abandoned thereby leading to its being determined to be an unattractive nuisance and ongoing hazard.

All dangerous buildings and structures are hereby declared to be a public nuisance and shall be vacated, repaired and/or demolished in accordance with the procedures specified in the Municipal Code and under authority of Kansas Statutes Annotated KSA 12-1750 through 12- 1756a.



2887 SW MacVicar Avenue, Topeka, Kansas 66611
Telephone (785) 267-3410 Facsimile (785) 267-9516
www.stumbolaw.com

April 9, 2024

Letter Sent Via Certified Mail

Lakeview Loan Servicing, LLC
c/o Corporation Service Company
1100 SW Wanamaker Rd, Suite 103
Topeka, KS 66604

Lakeview Loan Servicing, LLC
4425 Ponce De Leon Blvd 5th Floor
Coral Gables, FL 33146

**Re: 312 E. Fifth Street, Edgerton, KS
Unfit Dwelling and Failure to Transfer Utility Services
NOTICE OF INTENT TO REMOVE WATER METER**

To Whom it May Concern:

I am contacting you on behalf of my client, the City of Edgerton, KS, regarding a property owned by Lakeview Loan Servicing, LLC. More specifically, the Johnson County Register of Deeds has reflected ownership of 312 E. Fifth Street in Edgerton, Kansas by Lakeview Loan Servicing for multiple months. In that time, Lakeview has failed to connect to City utilities as required by the City Code. As a result of that failure to connect to water, prior attempts to illegally connect to City water and the general deterioration of the property, the home has been deemed unfit for human habitation by the city Building Official. A resolution is currently in the process of consideration by the City Council to order the property condemned.

The City has attempted to contact you and your property manager multiple times via email and phone and received no response. Please be advised that should you fail to connect to city water and place the utilities in your corporate name within twenty-one (21) days, the City will proceed with the removal of the water meter from the property. Should that occur, you or your successor will be required to pay significant costs to replace the meter and establish service, an expense which can be completely avoided by you making a phone call and establishing service as you are required to do by law.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lee W. Hendricks", is written over a printed name.

LEE W. HENDRICKS

cc: City of Edgerton

Tom R. Barnes II
Todd A. Luckman
Lee W. Hendricks
Caleb B. Hitz

Of Counsel: Gary H. Hanson
Quentin E. Kurtz

Walter G. Stumbo (1911-1998)



2887 SW MacVicar Avenue, Topeka, Kansas 66611
Telephone (785) 267-3410 Facsimile (785) 267-9516
www.stumbolaw.com

April 23, 2024

Letter Sent Via Certified Mail

Lakeview Loan Servicing, LLC
c/o Corporation Service Company
1100 SW Wanamaker Rd, Suite 103
Topeka, KS 66604

Lakeview Loan Servicing, LLC
4425 Ponce De Leon Blvd 5th Floor
Coral Gables, FL 33146

**Re: 312 E. Fifth Street, Edgerton, KS
Unfit Dwelling and Failure to Transfer Utility Services
NOTICE OF INTENT TO REMOVE WATER METER**

To Whom it May Concern:

This letter is a follow-up to my prior letter dated April 9, 2024. Since that time, I have spoken with someone with Lakeview named Yvette (817-345-0838) regarding the property, and informed her that while the property has not been condemned, there is a resolution filed by the City stating that it is unfit for human habitation.

During that call I informed Yvette that the most pressing issue to Lakeview is the fact that the property is not connected to City water, as is required by city code, and that a failure to connect the home to water and pay the monthly minimum would result in the water meter being removed. That would mean that Lakeview or its successor would be responsible for the costs of re-obtaining and installing a meter, as opposed to retaining it and having it for the benefit of a future owner or renter.

I received a message from Yvette yesterday informing my office that the property is vacant and as a result Lakeview will not be turning on the water. The water cannot be turned on/off if the service is not connected. And if the service is not connected, the City can deem the property unfit for human habitation and remove the meter.

Please be advised that should you fail to connect to city water and place the utilities in your corporate name within ten (10) days, the City will proceed with the removal of the water meter from the property. Should that occur, you or your successor will be required to pay significant costs to replace the meter and establish service, an expense which can be completely avoided by you making a phone call and establishing service as you are required to do by law.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lee W. Hendricks", is written over a printed name.

LEE W. HENDRICKS

Tom R. Barnes II
Todd A. Luckman
Lee W. Hendricks
Caleb B. Hitz

Of Counsel: Gary H. Hanson
Quentin E. Kurtz

Walter G. Stumbo (1911-1998)

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: May 9, 2024

Agenda Item: Resolution Approving Execution and Delivery of Estoppel Certificates, Consents to Collateral Assignments and Subordination Agreements

Subject: ELHC 4, 5, 11, 12, 14, 15, 31, 32 and 33 Projects

The City has issued industrial revenue bonds for the ELHC 4, 5, 11, 12, 14, 15, 31, 32 and 33 Projects. Every time the City issues tax-abatement bonds for an ELHC entity, the ELHC entity leases the project to the City, and the City then subleases the project back to the ELHC entity. This gives the City the necessary legal interest in the project which is required by Kansas statutes to issue bonds. In 2017, each of the above-referenced bond issues was assigned from the original ELHC entity to a new IP (Inland Port) entity, which is a joint venture between NorthPoint and Ares, a global real estate investment fund.

ELHC is in the process of refinancing all of the projects covered by the above-referenced bond issues. The lender is Massachusetts Mutual Life Insurance Company (“Lender”), which is the current lender on the projects.

The resolution approves the following documents:

- (a) Estoppel Certificate. A sample estoppel certificate is attached to this item summary as **Exhibit A**. The Lender has requested that the City deliver this estoppel certificate to certify copies of bond documents, state there are no current defaults under the bond documents, and state that no amounts are currently owed to the City.
- (b) Consent to Collateral Assignment of IRB Documents. A sample collateral assignment is attached to this item summary as **Exhibit B**. As a condition to making the loans, Lender is requiring that the interest of the borrower entities be assigned to the Lender as collateral for the new loans. If any entity defaults, the Lender will be able to foreclose on the entity’s interest in the project. The collateral assignment contains an acknowledgement for the Mayor to sign where the City acknowledges the existence of each agreement.
- (c) Subordination/Attornment Agreement. A sample subordination is attached to this item summary as **Exhibit C**. In the subordination, the City agrees to subordinate its interest in the bond documents for each project to the Lender’s new mortgage. Accordingly, if any entity is in default with Lender, Lender can step in to the shoes of the entity and the City agrees to recognize the Lender as the new counter party to the bond documents. The Lender will then have the right to keep the bond documents in place, transfer the bond documents to a purchaser, or terminate the bond documents and the corresponding property tax abatement for that project.

This Resolution and the documents being executed have no impact on the amount or term of the tax abatement for each project.

EXHIBIT A

Sample Estoppel Certificate

ESTOPPEL CERTIFICATE

(City of Edgerton, Kansas)

TO: IPIV Kill Creek LLC, a Delaware limited liability company ("**OWNER**")
Massachusetts Mutual Life Insurance Company ("**LENDER**")

RE: **\$25,000,000 AGGREGATE MAXIMUM PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS (ELHC IV, LLC PROJECT), SERIES 2014 (CITY OF EDGERTON, KANSAS), AS ISSUED BY CITY PURSUANT TO THE INDENTURE ("**BONDS**")**

DATE: _____, 2024 (the "**Effective Date**").

In connection with that certain mortgage loan that Lender anticipates making to Owner, to be secured by Owner's fee interest in the industrial property known as 18905 Kill Creek Road, Edgerton, Kansas (the "**Property**"), the City of Edgerton, Kansas ("**City**") hereby certifies to Owner and Lender and their respective successors and assigns, as follows:

1. **IRB Base Lease**. Attached hereto as **Exhibit A** is a true, correct, and complete copy of that certain Base Lease Agreement dated as of May 1, 2014 by and between ELHC IV, LLC, a Kansas limited liability company ("**Developer**") and the City with respect to the Property (the "**IRB Base Lease**"). The IRB Base Lease has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit A**. The IRB Base Lease is in full force and effect.

2. **IRB Lease**. Attached hereto as **Exhibit B** is a true, correct, and complete copy of that certain Lease Agreement dated as of May 1, 2014 by and between Developer and City (the "**IRB Lease**"). The IRB Lease has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit B**. The IRB Lease is in full force and effect.

3. **Performance Agreement**. Attached hereto as **Exhibit C** is a true, correct, and complete copy of that certain Amended and Restated Performance Agreement dated as of September 1, 2015 by and between Developer and City (the "**Performance Agreement**"). The Performance Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit C**. The Performance Agreement is in full force and effect.

4. **Origination Fee Agreement**. Attached hereto as **Exhibit D** is a true, correct, and complete copy of that certain Amended and Restated Origination Fee Agreement dated as of September 1, 2015 by and between Developer and City (the "**Origination Fee Agreement**"). The Origination Fee Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit D**. The Origination Fee Agreement is in full force and effect.

5. **Indenture.** Attached hereto as **Exhibit E** is a true, correct, and complete copy of that certain Trust Indenture dated as of May 1, 2014, by and between UMB Bank, N.A., as Trustee (the "***Trustee***") and City, as Issuer (the "***Indenture***"). The Indenture has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit E**. The Indenture is in full force and effect.

6. **Bond Purchase Agreement.** Attached hereto as **Exhibit F** is a true, correct, and complete copy of that certain Bond Purchase Agreement dated April 30, 2014 by and between Developer and City ("***Bond Purchase Agreement***"). The Bond Purchase Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit F**. The Bond Purchase Agreement is in full force and effect.

7. **Definition of IRB Documents.** The Bonds, Bond Purchase Agreement, Indenture, IRB Base Lease, IRB Lease, Performance Agreement, and Origination Fee Agreement are collectively referred to as the "***IRB Documents***". Capitalized terms used but not defined herein shall have the meaning ascribed thereto pursuant to the IRB Documents.

8. **Assignment and Assumption Agreement related to IRB Documents.** Attached hereto as **Exhibit G** is a true, correct, and complete copy of that certain Assignment and Assumption of IRB Documents dated May 15, 2017 between Developer, as assignor, and Owner, as assignee (the "***Assignment and Assumption Agreement***").

9. **Transfer of the Bonds.** Attached hereto as **Exhibit H** is a true, correct, and complete copy of that certain Representation Letter delivered to City as of May 15, 2017. City acknowledges that it consented to Developer's transfer of the Bonds to Owner.

10. **No Default under IRB Documents.** City has not been notified of any default and, to the best of City's information and belief as of the Effective Date, neither City nor Owner is in default under the IRB Documents, and, to the best of City's information and belief, no event has occurred and no condition exists that might, with the giving of notice or the passage of time, or both, constitute a default by City or Owner under the IRB Documents, or would otherwise permit a termination or modification by City under the IRB Documents.

11. **Additional City Certifications.** Without limiting the generality of the foregoing certifications, City also hereby certifies that, as of the Effective Date:

(a) The final Certificate of Occupancy for the Property has been issued by City and is in full force and effect as of the Effective Date, and there are no further obligations to City on the part of Owner or any other person or entity to cause design, construction, completion or modification of, nor incur any additional costs associated with, the construction of the Project or to comply with the IRB Documents (other than (i) ongoing Trustee fees, (ii) rights of the City to be reimbursed for legal or other fees or for indemnification, (iii) obligations of the Owner to make lease payments under the IRB Lease, and (iv) obligation of the Owner to pay the purchase price upon termination of the IRB Lease).

(b) City has been advised by the Trustee under the Indenture that the total principal amount of the outstanding Bonds as of the Effective Date is \$_____. The amount held in the Bond Fund (as such term is defined in the IRB Documents) is \$0.00. There are no funds remaining in the Construction Fund (as such term is defined in the IRB Documents).

(c) City has not asserted any claim for indemnification from Owner under any of the IRB Documents, and City is not aware of and has not been notified of, as of the Effective Date, any fact, event or circumstance that could be the basis of any such claim for indemnification.

(d) There is no suit, action, proceeding or audit pending or, to the knowledge of City, threatened against or affecting City or the Property under the IRB Documents, at law or in equity, or before or by any court, administrative agency, or other governmental authority which brings into question the validity of the IRB Documents.

(e) Owner has provided to City all reports, certifications, notices or similar documents required to be submitted by Owner under the IRB Documents through the Effective Date.

(f) To the best of City's information and belief, the Project has been completed in accordance with the IRB Documents and all applicable laws and requirements and is being lawfully occupied. The Trustee has informed the City that the Trustee has received the completion certificate required pursuant to Section 4.5 of the IRB Lease.

(g) There are no outstanding or unpaid fees, costs, charges, assessments or other amounts owed by Owner to City with respect to the Project or the IRB Documents other than the continuing obligation to make the lease payments and to pay the purchase price under the IRB Lease, the continuing obligation to pay origination fee payments required by the Origination Fee Agreement, and the continuing obligation to make PILOT payments under the Performance Agreement.

(h) City deems this Estoppel Certificate as constituting any and all notices of the transactions described herein that might otherwise be required under the IRB Documents.

(i) City hereby confirms that the City's assignment of the City's rights and obligations under the IRB Lease to Trustee pursuant to that certain Assignment of Lease Agreement dated May 5, 2014, from the City to the Trustee, was a collateral assignment to Trustee that terminates upon full payment or cancellation of the Bonds.

(j) City shall send to Lender copies of all default or termination notices hereafter given by City to Owner under the IRB Documents concurrently with the sending of such notices to Owner and no such notice shall be effective against Lender until delivered to Lender. City shall accept from Lender a timely cure of any default. City will send all notices to Lender at the below address (or such other address as Lender may provide from time to time):

Massachusetts Mutual Life Insurance Company
c/o Barings
300 S. Tryon Street, Suite 2500
Charlotte, North Carolina 28202
Attention: Finance Group Loan Servicing
Loan No. 24401

With a copy to:

Massachusetts Mutual Life Insurance Company
c/o Barings
300 S. Tryon Street, Suite 2500
Charlotte, North Carolina 28202
Attention: Legal Department, Real Estate Finance
Loan No. 24401

And to:

NewPoint Real Estate Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, Texas 75024
Attention: Loan Administration
Loan No. 24401

12. **City Authority.** City represents and warrants that it has all right, power, and authority to bind itself, and to execute and deliver this Estoppel Certificate.

City makes the above certifications to and for the benefit and protection of Owner and Lender, and with the intent and understanding that they will be justifiably relied upon by them or any of them.

[SIGNATURE PAGE FOLLOWS]

Dated as of the Effective Date.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST

By: _____
Christopher Clinton, Interim City Clerk

EXHIBIT B

Sample Consent to Collateral Assignment of IRB Documents

(Space above reserved for the Register of Deeds' recording information)

Title of Document: Collateral Assignment of IRB Documents

Date of Document: May __, 2024

Grantor(s): IPIV Kill Creek LLC, a Delaware limited liability company

Grantee(s): Massachusetts Mutual Life Insurance Company, a Massachusetts corporation

Grantee's Address: c/o Barings, 300 S. Tryon Street, Suite 2500, Charlotte, North Carolina 28202, Attn: Finance Group Loan Servicing Loan No. 24401

Reference Book and Pages: Book 201405, Page 001442
Book 201405, Page 001443

Legal Description: See attached Schedule 1

COLLATERAL ASSIGNMENT OF IRB DOCUMENTS

This Collateral Assignment of IRB Documents (“**Assignment**”) is executed as of the ____ day of May, 2024, by **IPIV Kill Creek LLC**, a Delaware limited liability company (“**Assignor**”), in favor of **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, a Massachusetts corporation (“**Lender**”).

W I T N E S S E T H

WHEREAS, the City of Edgerton, Kansas (the “**City**”) has previously issued its \$25,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC IV, LLC Project) Series 2014 (the “**Bonds**”) pursuant to a Trust Indenture dated as of May 1, 2014 (the “**Indenture**”), between the City and UMB Bank, n.a., as trustee (“**Trustee**”), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture);

WHEREAS, ELHC IV, LLC, a Kansas limited liability company (“**Developer**”), leased the Project to the City pursuant to the Base Lease Agreement dated as of May 1, 2014 (the “**Base PILOT Lease**”), between Developer and the City, a memorandum of which was recorded May 5, 2014, in Book 201405, Page 001442, and the Base PILOT Lease was modified by that certain First Supplemental Base Lease of even date herewith in order to revise the legal description of the land that is subject to the Base PILOT Lease, and such revised legal description is set forth on **Schedule 1** (the “**Real Property**”);

WHEREAS, the City subleased the Project to Developer pursuant to a Lease Agreement dated as of May 1, 2014 (the “**Sub PILOT Lease**”), between the City and Developer, a memorandum of which was recorded May 5, 2014, in Book 201405, Page 001443, which Sub PILOT Lease was subsequently collaterally assigned to Trustee pursuant to that certain Assignment of Lease Agreement dated May 1, 2014, which was recorded on May 5, 2014, in Book 201405, Page 001444, and the Sub PILOT Lease was modified by that certain First Supplemental Lease Agreement of even date herewith in order to revise the legal description of the land that is subject to the Sub PILOT Lease to describe the Real Property;

WHEREAS, the City and Developer entered into an Amended and Restated Performance Agreement dated as of September 1, 2015 (the “**Performance Agreement**”) whereby the parties set forth the terms relating to tax abatement for the Project, and the Performance Agreement was modified by that certain First Amendment to Performance Agreement of even date herewith in order to revise the legal description of the land that is subject to the Performance Agreement to describe the Real Property;

WHEREAS, the City and Developer entered into an Amended and Restated Origination Fee Agreement dated as of September 1, 2015 (the “**Origination Fee Agreement**”) whereby Developer agreed to make certain origination fee payments to the City over time;

WHEREAS, the City and Developer entered into a Bond Purchase Agreement dated as of April 30, 2014 (the “**Bond Purchase Agreement**”) whereby City agreed to issue and Developer agreed to purchase the Bonds on the terms and conditions set forth therein;

WHEREAS, Developer negotiated the Bonds to Assignor, and, pursuant to that certain Assignment and Assumption of IRB Documents dated as of May 15, 2017 by and between Developer and Assignor, Developer assigned and transferred to Assignor, and Assignor assumed, all of Developer's interest in and to the Bonds, the Indenture, the Bond Purchase Agreement, the Base PILOT Lease, the Sub PILOT Lease, the Performance Agreement and the Origination Fee Agreement (collectively, the "**IRB Documents**");

WHEREAS, prior to the date hereof, the City reissued the Bonds in the name of Assignor;

WHEREAS, pursuant to that certain Promissory Note, dated of even date herewith, executed by Assignor and certain other borrowers (collectively, "**Borrower**"), and payable to the order of Lender in the original principal amount of \$244,000,000.00 (together with all replacements, renewals, modifications, increases, splits and extensions thereof, the "**Note**"), Borrower has become indebted, and may from time to time be further indebted, to Lender with respect to a loan ("**Loan**") which is governed by, among other things, that certain Loan Agreement by and between Borrower and Lender of even date herewith (the "**Loan Agreement**") and secured, in part, by the lien and security interest of that certain Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Borrower for the benefit of Lender of even date herewith (the "**Mortgage**"), and further evidenced, secured or governed by other instruments and documents now or hereinafter executed in connection with the Loan (together with the Note, the Loan Agreement and the Mortgage, the "**Loan Documents**"); and

WHEREAS, one condition to Lender's agreement to extend credit to Assignor is that Lender must be provided a first priority perfected collateral assignment of IRB Documents;

NOW, THEREFORE, as an inducement to cause Lender to extend the Loan to Assignor, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. Affirmation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.
2. Capitalized Terms. Capitalized terms, used but not defined herein, shall have the meaning attributed to them in the Loan Agreement.
3. Security Interest; Assignment. To secure the payment of the Indebtedness, Assignor does hereby collaterally assign, pledge, mortgage, convey and set over unto Lender and grants Lender a security interest in all of Assignor's right, title and interest in, to and under the IRB Documents.

Notwithstanding anything to the contrary contained herein, until such time as an Event of Default occurs, Assignor shall have a revocable license to exercise, subject to the other provisions of this Assignment and the Loan Documents, all of its rights and privileges under the IRB Documents.

4. Negotiation of Collateral Note; Perfection. Prior to the date hereof, Assignor negotiated the Bonds to Lender by endorsing an assignment of the Bonds in blank (without restriction or qualification) and delivering such endorsement to Lender. Lender shall retain such endorsement, and Trustee shall, as agent and bailee for Lender, retain possession of the Bonds to perfect Lender's security interest therein, subject to Lender's rights pursuant to the

acknowledgment of the Trustee attached hereto; provided, however, that Trustee shall not be responsible for and makes no representation as to the value or condition of such Bonds or as to the validity or first priority status of Lender's security interest in such Bonds and pursuant to the Indenture shall be protected in acting upon the written direction of the registered owner of the Bonds. By its acknowledgement hereto, the Trustee agrees it shall not release or otherwise deliver the Bonds at the direction of the Assignor at any time prior to the full repayment of the Indebtedness under the Loan absent the receipt of written consent of the Lender.

5. Financing Statements. Assignor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of Assignor that indicate that the IRB Documents are collateral for the Loan.

6. Termination. Upon full payment, performance and observance by Assignor of all Indebtedness or the expiration of the term of the IRB Documents, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically terminate and cease to exist and Lender shall, upon Assignor's request and at Assignor's expense, execute and deliver to Assignor such instruments of re-assignment or termination as shall be reasonably necessary to effectuate such termination and cause Trustee to, if the term of the IRB Documents has expired, deliver a copy of the cancelled Bonds to the Assignor, and if full payment, performance, and observance has been made by the Assignor of all obligations related to the Indebtedness but the Bonds remain outstanding, deliver the Bonds to the Assignor at the written request of the Assignor.

7. Assignor's Representations, Warranties and Covenants. Assignor represents, warrants and covenants to Lender that:

(a) Except in connection with this Assignment and the other Loan Documents, Assignor has not and shall not sell, transfer, assign, pledge, encumber or mortgage the IRB Documents or any interest therein without the prior written consent of Lender, and shall use commercially reasonable efforts to prevent anything that materially impairs the enjoyment of its rights under the IRB Documents or the security intended to be afforded by this Assignment. Except as set forth in Section 6 hereof, Assignor shall not amend, modify or terminate (other than termination by expiration of the term of the Bonds) any of the IRB Documents without the prior written consent of Lender.

(b) Assignor shall reimburse Lender for all actual out-of-pocket costs, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by Lender to remedy a default of Assignor under this Assignment, together with interest on all said amounts at a per annum rate equal to the Default Rate from and after the date such amounts are incurred by Lender.

(c) Until the Indebtedness is repaid, Assignor shall remain liable for all costs, fees and expenses which may be or become due and payable under the IRB Documents and for all responsibilities of the ownership of the Real Property.

8. Limitation of Lender's Liability. Notwithstanding anything to the contrary contained in any of the IRB Documents, the interest of Assignor therein is assigned and

transferred to Lender by way of collateral security only, and Lender shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Assignor under the IRB Documents by Lender's acceptance hereof, whether provided for by the terms thereof, arising by operation of law or otherwise. Assignor hereby acknowledges that Assignor shall remain liable for the due performance of Assignor's obligations under the IRB Documents to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment, the Loan Agreement, the Note, the Mortgage, and the other Loan Documents are made and entered into for the sole protection and benefit of Lender and Assignor, and their respective successors and assigns (but in the case of assigns of Assignor, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loan at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loan at any time. The relationship between Lender and Assignor is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

9. Legal and Binding Agreement. Assignor warrants that to the best of its knowledge the execution and performance of this Assignment will not violate any judicial or administrative order or governmental law or regulation binding on Assignor, and that this Assignment is valid, binding and enforceable in every respect according to its terms.

10. Remedies Upon Default. Immediately upon the occurrence of an Event of Default, the license granted herein to Assignor shall automatically be revoked upon notice from Lender to Assignor, and Lender may pursue any or all of the following remedies without notice to Assignor except as required below:

(a) Notice to the City. Lender may notify the City and the Trustee to make payments due to Assignor and give notices pertaining to the IRB Documents directly to Lender.

(b) Rights of Holder. Lender may exercise any or all rights of the holder of the Bonds and Assignor's interest under the IRB Documents. Without limiting the foregoing, Lender may initiate any administrative or judicial proceeding that it may deem necessary in the course of enforcing any rights under the IRB Documents. Any administrative or judicial action or other action taken by Lender pursuant to the IRB Documents may be taken by Lender in its own name or in Assignor's name. Lender may enter into any amendment or extension of the IRB Documents and may grant any indulgences with respect thereto that Lender may deem appropriate in the course of exercising its rights under the IRB Documents. Assignor hereby appoints Lender Assignor's attorney-in-fact to take any action authorized by this Assignment upon default. Assignor acknowledges that this power of attorney is coupled with an interest and is irrevocable.

(c) Sale of Bonds. Lender may sell the Bonds pursuant to Lender's rights under the Code (as defined in the Mortgage). Any such sale may be either public or private. If public, the sale may be postponed by announcement at the scheduled time and place and adjourned to another time or place, or both. It is agreed that ten (10) days' notice of any sale is commercially reasonable notice thereof. Any public sale may be adjourned to a different time, place, or both by announcement at the advertised time and place of sale, without further

publication. Any advertised sale may be canceled in Lender's discretion, either before or after the opening of bidding. Lender shall transfer the Bonds to any purchaser thereof by endorsing the assignment in blank of the Bonds to the purchaser's order, without warranty or recourse on the part of Lender and in connection therewith shall assign to said purchaser its interest in the other IRB Documents. Notwithstanding anything to the contrary herein, any future sale or other transfer of the Bonds shall be subject at all times to the requirements of the Indenture.

(d) Setoff. Lender may exercise its lien upon and right of setoff against any monies, items, credits, deposits or instruments that Lender may have in its possession and which belong to Assignor or any other person or entity liable for the payments of any or all of the Indebtedness.

(e) Other Remedies. Lender may pursue any other remedies available under any other document evidencing or securing the Indebtedness or otherwise available to Lender at law or equity including any rights or remedies of a secured party under the Code.

(f) Application of Proceeds. All amounts received by Lender for Assignor's account by exercise of its remedies hereunder shall be applied first, to the payment of all expenses incurred by Lender in exercising its rights hereunder, including reasonable out-of-pocket attorney's fees, and any other expenses due Lender from Assignor and thereafter, as set forth in Section 2.7 of the Loan Agreement.

11. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

12. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

13. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. Governing law. This Assignment shall be interpreted and construed under the laws of the State of Kansas, excluding any conflict of law or choice-of-law rules that might lead to the application of the internal laws of another jurisdiction.

15. Recording. Lender shall submit this Assignment for recording in the Office of the Register of Deeds of Johnson County, Kansas on or about the Effective Date.

16. Indemnity. Assignor hereby agrees that no liability shall be asserted or enforced by Assignor against Lender in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Assignor except to the extent arising from Lender's gross negligence or willful misconduct. Assignor hereby indemnifies, defends

and holds Lender harmless from and against all claims, demands, losses, damages, expenses and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignor's failure to observe, perform and discharge each and every one of the covenants, obligations, and liabilities of the Assignor under the IRB Documents to be observed, performed, or discharged with respect to the period prior to Lender obtaining title to the Real Property.

17. Direction to Trustee. Assignor, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Assignment.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Assignment as of the Effective Date.

ASSIGNOR:

IPIV Kill Creek LLC, a Delaware limited liability company

By: _____

Name: Susan Rohrbach

Its: Vice President & Assistant Secretary

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of May, 2024, appeared Susan Rohrbach, to me personally known, who being duly sworn did say that she is the Vice President & Assistant Secretary of IPIV Kill Creek LLC, a Delaware limited liability company (the “**Company**”), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and she further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

CONSENT OF THE CITY OF EDGERTON, KANSAS

The City hereby acknowledges, consents and agrees to the execution and delivery of this Collateral Assignment of IRB Documents dated May __, 2024, by IPIV Kill Creek LLC, a Delaware limited liability company in favor of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation.

Moreover, pursuant to Section 10.4 of the Sub PILOT Lease, the City hereby acknowledges that Assignor has the right to assign its rights and interest in the IRB Documents to Lender (or its designee or nominee) without the consent of the City. The City further acknowledges that in the event Lender (or its designee or nominee) acquires ownership of the Real Property, Lender (or its designee or nominee) shall have the further right to assign the IRB Documents without the consent of the City. Pursuant to Section 206 of the Indenture, the City consents to any and all assignments and transfers of the IRB Documents from Assignor to Lender (or its designee or nominee) and from Lender (or its designee or nominee) to any future assignee.

The City hereby further acknowledges that the interest of Assignor in the IRB Documents is assigned and transferred to Lender by way of collateral security only, and Lender shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Assignor under the IRB Documents by Lender's acceptance hereof, whether provided for by the terms thereof, arising by operation of law or otherwise.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Name: _____
Its: _____

ATTEST:

Name: _____
Its: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this ___ day of May, 2024, before me, a notary public in and for said county and state, came _____, _____ of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and _____, _____ of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

SCHEDULE 1

LEGAL DESCRIPTION OF REAL PROPERTY

Lot 3, LOGISTICS PARK KANSAS CITY, THIRD PLAT, a subdivision in the City of Edgerton, Johnson County, Kansas.

EXHIBIT C

Sample Subordination/Attornment Agreement

(Space above reserved for the Register of Deeds' recording information)

Title of Document: Subordination/Attornment Agreement

Date of Document: May __, 2024

Grantor(s): The City of Edgerton, Kansas and IPIV Kill Creek LLC, a Delaware limited liability company

Grantee(s): Massachusetts Mutual Life Insurance Company, a Massachusetts corporation

Grantee's Address: c/o Barings, 300 S. Tryon Street, Suite 2500, Charlotte, North Carolina 28202, Attn: Finance Group Loan Servicing, Loan No. 24401

Reference Book and Pages: Book 201405, Page 001442
Book 201405, Page 001443

Legal Description: See attached Schedule 1

SUBORDINATION/ATTORNMENT AGREEMENT

This Subordination/Attornment Agreement (this "**Agreement**") is made as of the ____ day of _____, 2024, by and among the City of Edgerton, Kansas (the "**City**"), IPIV Kill Creek LLC a Delaware limited liability company ("**Property Owner**") and MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation ("**Lender**").

RECITALS

A. The City of Edgerton, Kansas (the "**City**") has previously issued its \$25,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC IV, LLC Project) Series 2014 (the "**Bonds**") pursuant to a Trust Indenture dated as of May 1, 2014 (the "**Indenture**"), between the City and UMB Bank, n.a., as trustee ("**Trustee**"), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture).

B. ELHC IV, LLC, a Kansas limited liability company ("**Developer**"), leased the Project to the City pursuant to the Base Lease Agreement dated as of May 1, 2014 (the "**Base PILOT Lease**"), between Developer and the City, a memorandum of which was recorded May 5, 2014, in Book 201405, Page 001442, and the Base PILOT Lease was modified by that certain First Supplemental Base Lease Agreement of even date herewith in order to revise the legal description of the land that is subject to the Base PILOT Lease, and such revised legal description is set forth on **Schedule 1** (the "**Property**").

C. The City subleased the Project to Developer pursuant to a Lease Agreement dated as of May 1, 2014 (the "**Sub PILOT Lease**"), between the City and Developer, a memorandum of which was recorded May 5, 2014, in Book 201405, Page 001443, and the Sub PILOT Lease was subsequently collaterally assigned to Trustee pursuant to that certain Assignment of Lease Agreement dated May 1, 2014, which was recorded on May 5, 2014, in Book 201405, Page 001444, and the Sub PILOT Lease was modified by that certain First Supplemental Lease Agreement of even date herewith in order to revise the legal description of the land that is subject to the Sub PILOT Lease to describe the Property.

D. The City and Developer entered into an Amended and Restated Performance Agreement dated as of September 1, 2015 (the "**Performance Agreement**") whereby the parties set forth the terms relating to tax abatement for the Project, and the Performance Agreement was modified by that certain First Amendment to Performance Agreement of even date herewith in order to revise the legal description of the land that is subject to the Performance Agreement to describe the Property.

E. The City and Developer entered into an Amended and Restated Origination Fee Agreement dated as of September 1, 2015 (the "**Origination Fee Agreement**") whereby Developer agreed to make certain origination fee payments to the City over time.

F. The City and Developer entered into a Bond Purchase Agreement dated as of April 30, 2014 (the "**Bond Purchase Agreement**") whereby City agreed to issue and Developer agreed to purchase the Bonds on the terms and conditions set forth therein.

G. Pursuant to that certain Assignment and Assumption of IRB Documents dated as of May 15, 2017 by and between Developer and Property Owner, Developer has agreed to assign and transfer to Property Owner and Property Owner has agreed to assume all of Developer's interest in and to the Bonds, the Indenture, the Bond Purchase Agreement, the Base PILOT Lease, the Sub PILOT Lease, the Performance Agreement and the Origination Fee Agreement (collectively, the "**IRB Documents**").

H. Prior to the date hereof, the City reissued the Bonds in the name of Assignor;

I. Pursuant to that certain Promissory Note, dated of even date herewith, executed by Property Owner and certain other borrowers (collectively, "**Borrower**"), and payable to the order of Lender in the original principal amount of \$244,000,000.00 (together with all replacements, renewals, modifications, increases, splits and extensions thereof, the "**Note**"), Borrower has become indebted, and may from time to time be further indebted, to Lender with respect to a loan ("**Loan**") which is governed by, among other things, that certain Loan Agreement by and between Borrower and Lender of even date herewith (the "**Loan Agreement**") and secured, in part, by the lien and security interest of that certain Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Borrower for the benefit of Lender of even date herewith (the "**Mortgage**"), and further evidenced, secured or governed by other instruments and documents now or hereinafter executed in connection with the Loan (together with the Note, the Loan Agreement and the Mortgage, the "**Loan Documents**").

J. In connection with the Loan, pursuant to that certain Collateral Assignment of IRB Documents of even date herewith by and between Property Owner and Lender and consented to by the City and the Trustee (the "**Collateral Assignment**"), Property Owner has collaterally assigned all of its rights and interest in the IRB Documents to Lender.

K. Lender wishes to have the City and Property Owner confirm the priority of the Mortgage over the Base PILOT Lease and the Sub PILOT Lease (collectively, the "**Leases**").

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. The City and Property Owner hereby covenant and agree that all rights and interests whatsoever under the Leases are and shall remain subject and subordinate to the lien of the Mortgage, to all of the rights and interests of Lender under the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder or under the Note, and to any increases, renewals, extensions, modifications, substitutions, consolidations or replacements thereof or of the Note.

3. If the interest of Property Owner under the Leases shall be acquired by Lender or any purchaser ("**Purchaser**") by reason of exercise of the power of sale or the foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu

of foreclosure or by any other method, and Lender or Purchaser succeeds to the interest of Property Owner under the Leases, City and Property Owner agree that Lender or Purchaser, as the case may be, shall be entitled to all of the rights and benefits of Property Owner under the Leases, and the City shall attorn to Lender or Purchaser, as the case may be, as its lessor under the Base PILOT Lease and recognize Lender or Purchaser, as the case may be, as lessee under the Sub PILOT Lease, provided that Lender or Purchaser, as the case may be, provided, within five (5) days following its acquisition of title to the Property, notice to the City of its election to assume the rights and duties under the Leases and a Representation Letter substantially in the form attached hereto as **Exhibit A**, and the Leases shall in such event continue in accordance with their respective terms. Moreover, Lender or Purchaser, as the case may be, shall have the right to further assign the Leases pursuant to Section 10.4(c) of the Sub PILOT Lease.

4. Notwithstanding anything in Section 3 to the contrary, the City hereby agrees that Lender or Purchaser, as the case may be, shall have the option within five (5) days after foreclosure of the Mortgage or any conveyance of the Property by deed-in-lieu of foreclosure upon written notice to the City to (i) terminate the IRB Documents, in which event Lender or Purchaser, as the case may be, shall have no obligation to the City or any other party with respect to any amounts due or accruing prior, or subsequent, to the date of such foreclosure or deed-in-lieu of foreclosure or (ii) continue the IRB Documents upon all of the terms and provisions provided therein.

5. Notwithstanding anything to the contrary contained in the IRB Documents or herein, if Lender or Purchaser, as the case may be, shall succeed to the interest of Property Owner under the IRB Documents, Lender or Purchaser, as the case may be, other than for Basic Rent and Additional Rent due and payable under the Sub PILOT Lease, shall have no personal liability as successor to Property Owner, and the City shall look only to the estate and property of Lender or Purchaser, as the case may be, in the Property for the satisfaction of the City's remedies for the collection of a judgment requiring the payment of money in the event of any default under the IRB Documents.

6. In the event that the Leases terminate prior to expiration of the Lease Term (as defined in the Sub PILOT Lease), Lender shall have the right to require the City to execute new leases pursuant to Section 10.4(d)(viii) of the Sub PILOT Lease.

7. Notwithstanding anything to the contrary contained in the IRB Documents or herein, Lender or Purchaser, as the case may be, shall not be liable to the City for any liability or obligation of Property Owner under the IRB Documents unless and until Lender or Purchaser, as the case may be, shall take title to the Property and notify the City that it has assumed the obligations of Property Owner under the IRB Documents as provided above, and thereafter, upon the assignment, sale or other transfer by Lender or Purchaser, as the case may be, of its interest under the IRB Documents, Lender or Purchaser, as the case may be, shall be released from liability under the IRB Documents as of the effective date of such assignment, sale or transfer, provided that the assignee agrees to be bound by the terms and conditions of the IRB Documents for the periods of ownership by Lender or Purchaser, as the case may be.

8. The City and Property Owner shall not by agreement amend, modify, surrender, cancel or terminate any of the IRB Documents without Lender's prior written consent. Lender or

Purchaser, as the case may be, shall not be bound by any agreement or modification of the IRB Documents made without Lender's or Purchaser's written consent. Notwithstanding the foregoing, upon full payment, performance and observance by Property Owner of all obligations under the Loan or the expiration of the term of the IRB Documents, this Agreement shall automatically terminate and cease to exist and Lender shall, upon Property Owner's request and at Property Owner's expense, execute and deliver to Property Owner such instruments of termination as shall be reasonably necessary to effectuate such termination and cause Trustee to, if the term of the IRB Documents has expired, deliver a copy of the cancelled Bonds to the Property Owner, and if full payment, performance, and observance has been made by Property Owner of all obligations under the Loan but the Bonds are still outstanding, deliver the Bonds to the Property Owner at the written request of the Property Owner.

9. The City hereby covenants and agrees that no notice of default given to Property Owner, and no exercise of any remedy by the City as a result of any such default under the Leases and the IRB Documents, shall be effective unless such notice shall have been sent to Lender, and Lender shall have failed to remedy such act or omission within such period of time equal to Property Owner's applicable cure period plus (i) twenty (20) days with respect to monetary defaults or (ii) the additional period of time offered "leasehold mortgage" under Sections 10.4(d)(iv) and (vii) of the Sub PILOT Lease with respect to non-monetary defaults. Any default under any of the IRB Documents which by its nature is incapable of being cured by Lender or Purchaser, as the case may be, shall be waived by the City as between the City and Lender or Purchaser, as the case may be.

10. The City acknowledges that neither the execution nor delivery of the Loan Documents, nor any modification thereof or assignment of the beneficial interests thereunder, will be a default under the IRB Documents.

11. The City acknowledges that, in the event of damage to the improvements on the Property due to casualty or condemnation, the casualty insurance proceeds or condemnation proceeds, as the case may be, may be required by Lender to be applied to reduce the Indebtedness (as defined in the Loan Agreement) or may be required by Lender to be used for, and used by the tenant under the Leases for, restoration of the improvements on the Property. In the event of any conflict between the provisions of the Leases and the provisions of the Loan Documents with respect to application of casualty and condemnation proceeds, the provisions of the Loan Documents shall control.

12. This Agreement shall serve as notice from Lender to the City under Section 10.4(d) of the Sub PILOT Lease of the making of the Loan, and the name and address of Lender; which are as follows:

Massachusetts Mutual Life Insurance Company
c/o Barings
300 S. Tryon Street, Suite 2500
Charlotte, North Carolina 28202
Attention: Finance Group Loan Servicing
Loan No. 24401

With a copy to:

NewPoint Real Estate Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, Texas 75024

Attention: Loan Administration
Loan No. 24401

And to:

Massachusetts Mutual Life Insurance Company
c/o Barings

300 S. Tryon Street, Suite 2500

Charlotte, North Carolina 28202

Attention: Legal Department, Real Estate Finance
Loan No. 24401

The City acknowledges that Lender has complied with all requirements under Section 10.4(d) of the Sub PILOT Lease, and Lender shall be entitled to all rights, privileges and protections afforded to “mortgagees” or “leasehold mortgagees” under the Leases (including, without limitation, under Section 10.4 of the Sub PILOT Lease). To the extent there is any conflict between the Leases and this Agreement, the provisions of this Agreement shall control.

13. Lender may at any time, without the consent of the City or Property Owner, sell, assign participate or securitize all or any portion of the Loan. This Agreement shall inure to the benefit of and shall be binding upon the City, the Property Owner and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement may not be altered, modified or amended except in writing signed by all of the parties hereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the state where the Property is located.

14. Notwithstanding anything in this Agreement to the contrary, in the event Lender forecloses on the Mortgage or acquires the Property by deed-in-lieu of foreclosure, any Tax Payments (as defined in the Performance Agreement) due and payable under Section 2.3 of the Performance Agreement at the time of such foreclosure or acquisition by deed-in-lieu of foreclosure shall be the responsibility of Lender, even if Lender terminates the IRB Documents. By contrast, any Origination Fee payments that are due and payable under the IRB Documents at the time of such foreclosure or acquisition by deed-in-lieu of foreclosure shall be the responsibility of Lender only if Lender chooses not to terminate the IRB Documents.

15. Assignor, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Agreement as of the date hereof.

PROPERTY OWNER:

IPIV Kill Creek LLC, a Delaware limited liability company

By: _____
Name: Susan Rohrbach
Its: Vice President & Assistant Secretary

ACKNOWLEDGMENT

STATE OF)
) SS.
COUNTY OF)

BE IT REMEMBERED, that on this ____ day of May, 2024, appeared Susan Rohrbach, to me personally known, who being duly sworn did say that she is the Vice President and Assistant Secretary of IPIV Kill Creek LLC, a Delaware limited liability company (the “**Company**”), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and she further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____

Name:

Its:

ATTEST:

Name:

Its:

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this ___ day of May, 2024, before me, a notary public in and for said county and state, came _____, _____ of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and _____, _____ of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

Schedule 1

Legal Description of Property

Lot 3, LOGISTICS PARK KANSAS CITY, THIRD PLAT, a subdivision in the City of Edgerton, Johnson County, Kansas.

Exhibit A

Form of Representation Letter

[attached]

RESOLUTION NO. 05-09-24C

A RESOLUTION CONSENTING TO THE EXECUTION AND DELIVERY OF ESTOPPEL CERTIFICATES, CONSENTS TO COLLATERAL ASSIGNMENTS, AND SUBORDINATION AGREEMENTS IN CONNECTION WITH NINE LOGISTICS PARK PROJECTS

WHEREAS, the City of Edgerton, Kansas (the “City”) is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC IV, LLC Project), Series 2014 (the “ELHC 4 Bonds”), in the aggregate maximum principal amount of \$25,000,000, pursuant to a Trust Indenture dated as of May 1, 2014, between the City and UMB Bank, n.a., as trustee (the “Trustee”), for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 574,111 sq. ft. warehouse and distribution facility, located at 18905 Kill Creek Road, Edgerton, Kansas (the “ELHC 4 Project”); and

WHEREAS, the ELHC 4 Project was leased by ELHC IV, LLC, a Kansas limited liability company (“ELHC 4”), to the City pursuant to a Base Lease Agreement dated as of May 1, 2014, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 4 and the City, and the Project was subleased by the City to ELHC 4 pursuant to a Lease Agreement dated as of May 1, 2014, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 4; and

WHEREAS, ELHC 4, with the consent of the City, assigned the ELHC 4 Bonds and the various bond documents to IPIV Kill Creek LLC, a Delaware limited liability company (the “IP 4”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC V, LLC Project), Series 2016 (the “ELHC 5 Bonds”), in the aggregate maximum principal amount of \$31,500,000, pursuant to a Trust Indenture dated as of April 1, 2016, between the City and BOKF, N.A., as successor trustee (“BOKF”), for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 653,000 sq. ft. warehouse and distribution facility, located at 31201 W. 187th Street, Edgerton, Kansas (the “ELHC 5 Project”); and

WHEREAS, the ELHC 5 Project was leased by ELHC V, LLC, a Kansas limited liability company (“ELHC 5”), to the City pursuant to a Base Lease Agreement dated as of April 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 5 and the City, and the ELHC 5 Project was subleased by the City to ELHC 5 pursuant to a Lease Agreement dated as of April 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 5; and

WHEREAS, ELHC 5, with the consent of the City, assigned the ELHC 5 Bonds and the various bond documents to IPV 187 Street LLC, a Delaware limited liability company (“IP 5”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XI, LLC Project), Series 2015 (the “ELHC 11 Bonds”), in the aggregate maximum principal amount of \$34,000,000, pursuant to a Trust Indenture dated as of February 1, 2015 (the “Indenture”), between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 765,160 sq. ft. warehouse and distribution facility, located at 30901 W. 191st Street, Edgerton, Kansas (the “ELHC 11 Project”); and

WHEREAS, the ELHC 11 Project was leased by ELHC XI, LLC, a Kansas limited liability company (“ELHC 11”), to the City pursuant to a Base Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 11 and the City, and the ELHC 11 Project was subleased by the City to ELHC 11 pursuant to a Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 11; and

WHEREAS, ELHC 11, with the consent of the City, assigned the ELHC 11 Bonds and the various bond documents to IPXI 191 Street LLC, a Delaware limited liability company (“IP 11”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XII, LLC Project), Series 2015 (the “ELHC 12 Bonds”), in the aggregate maximum principal amount of \$29,000,000, pursuant to a Trust Indenture dated as of February 1, 2015, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 657,000 sq. ft. warehouse and distribution facility, located at 30801 W. 191st Street, Edgerton, Kansas (the “ELHC 12 Project”); and

WHEREAS, the ELHC 12 Project was leased by ELHC XII, LLC, a Kansas limited liability company (“ELHC 12”), to the City pursuant to a Base Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 12 and the City, and the ELHC 12 Project was subleased by the City to ELHC 12 pursuant to a Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and the Assignor; and

WHEREAS, ELHC 12, with the consent of the City, assigned the ELHC 12 Bonds and the various bond documents to IPXII 191 Street LLC, a Delaware limited liability company (“IP 12”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2015 (the “ELHC 14 2015 Bonds”), in the aggregate maximum principal amount of \$38,000,000, pursuant to a Trust Indenture dated as of December 1, 2015, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 822,500 sq. ft. warehouse and distribution

facility, located at 19451 and 19535 Waverly Road, Edgerton, Kansas (the “ELHC 14 Project”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2016 (the “ELHC 14 2016 Bonds”), in the aggregate maximum principal amount of \$25,000,000, pursuant to a First Supplemental Trust Indenture dated as of September 1, 2016, between the City and the Trustee, for the purpose of completing the improving and equipping of the ELHC 14 Project; and

WHEREAS, the ELHC 14 Project was leased by ELHC XIV, LLC, a Kansas limited liability company (“ELHC 14”), to the City pursuant to a Base Lease Agreement dated as of December 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of September 1, 2016, and as further supplemented and amended by a Second Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 14 and the City, and the ELHC 14 Project was subleased by the City to ELHC 14 pursuant to a Lease Agreement dated as of December 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of September 1, 2016, and as further supplemented and amended by a Second Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 14; and

WHEREAS, ELHC 14, with the consent of the City, assigned the ELHC 14 Bonds and the ELHC 16 Bonds and the various bond documents to IPXIV Waverly LLC, a Delaware limited liability company (“IP 14”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XV, LLC Project), Series 2016 (the “ELHC 15 Bonds”), in the aggregate maximum principal amount of \$25,200,000, pursuant to a Trust Indenture dated as of January 1, 2016 (the “Indenture”), between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 548,000 sq. ft. warehouse and distribution facility, located at 19351 Montrose Street, Edgerton, Kansas (the “ELHC 15 Project”); and

WHEREAS, the ELHC 15 Project was leased by ELHC XV, LLC, a Kansas limited liability company (“ELHC 15”), to the City pursuant to a Base Lease Agreement dated as of January 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 15 and the City, and the Project was subleased by the City to ELHC 15 pursuant to a Lease Agreement dated as of January 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 15; and

WHEREAS, ELHC 15, with the consent of the City, assigned the ELHC 15 Bonds and the various bond documents to IPXV Montrose LLC, a Delaware limited liability company (“IP 15”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXI, LLC Project), Series 2016 (the “ELHC 31 Bonds”), in the aggregate maximum principal amount of \$26,500,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a

commercial project, consisting of an approximately 378,000 sq. ft. warehouse and distribution facility, located at 31800 W. 196th Street, Edgerton, Kansas (the “ELHC 31 Project”); and

WHEREAS, the ELHC 31 Project was leased by ELHC XXXI, LLC, a Kansas limited liability company (“ELHC 31”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC and the City, and the ELHC 31 Project was subleased by the City to ELHC 31 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 31; and

WHEREAS, ELHC 31, with the consent of the City, assigned the ELHC 31 Bonds and the various bond documents to IPXXXI 196 Street LLC, a Delaware limited liability company (“IP 31”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXII, LLC Project), Series 2016 (the “ELHC 32 Bonds”), in the aggregate maximum principal amount of \$38,250,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and BOK, as successor trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 765,000 sq. ft. warehouse and distribution facility, located at 31450 W. 196th Street, Edgerton, Kansas (the “ELHC 32 Project”); and

WHEREAS, the ELHC 32 Project was leased by ELHC XXXII, LLC, a Kansas limited liability company (“ELHC 32”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement, between ELHC 32 and the City, and the ELHC 32 Project was subleased by the City to ELHC 32 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement, between the City and ELHC 32; and

WHEREAS, ELHC 32, with the consent of the City, assigned the ELHC 32 Bonds and the various bond documents to IPXXXII 196 Street LLC, a Delaware limited liability company (“IP 32”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXIII, LLC Project), Series 2016 (the “ELHC 33 Bonds”), in the aggregate maximum principal amount of \$46,350,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and BOK, as successor trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 927,000 sq. ft. warehouse and distribution facility, located at 31100 W. 196th Street, Edgerton, Kansas (the “ELHC 33 Project”); and

WHEREAS, the ELHC 33 Project was leased by ELHC XXXIII, LLC, a Kansas limited liability company (“ELHC 33”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement, between ELHC 33 and the City, and the ELHC 33 Project was subleased by the City to ELHC 33 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement, between the City and ELHC 33; and

WHEREAS, ELHC 33, with the consent of the City, assigned the ELHC 33 Bonds and the various bond documents to IPXXXIII 196 Street LLC, a Delaware limited liability company (“IP 33”); and

WHEREAS, IP 4 is refinancing the ELHC 4 Project with Massachusetts Mutual Life Insurance Company, a Massachusetts corporation (the “Lender”), and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 4 Project, and the City desires to approve such documents; and

WHEREAS, IP 5 is refinancing the ELHC 5 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 5 Project, and the City desires to approve such documents; and

WHEREAS, IP 11 is refinancing the ELHC 11 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 11 Project, and the City desires to approve such documents; and

WHEREAS, IP 12 is refinancing the ELHC 12 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 12 Project, and the City desires to approve such documents; and

WHEREAS, IP 14 is refinancing the ELHC 14 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 14 Project, and the City desires to approve such documents; and

WHEREAS, IP 15 is refinancing the ELHC 15 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 15 Project, and the City desires to approve such documents; and

WHEREAS, IP 31 is refinancing the ELHC 31 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 31 Project, and the City desires to approve such documents; and

WHEREAS, IP 32 is refinancing the ELHC 32 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 32 Project, and the City desires to approve such documents; and

WHEREAS, IP 33 is refinancing the ELHC 33 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 33 Project, and the City desires to approve such documents.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:

Section 1. Authorization and Execution of Estoppel Certificates. The Governing Body hereby approves of the form of the Estoppel Certificate, in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the following estoppel certificates (the “Estoppel Certificates”):

- a. Estoppel Certificate in favor of IP 4 and the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. Estoppel Certificate in favor of IP 5 and the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. Estoppel Certificate in favor of IP 11 and the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;
- d. Estoppel Certificate in favor of IP 12 and the Lender with respect to the ELHC 12 Project and the ELHC 12 Bonds;
- e. Estoppel Certificate in favor of IP 14 and the Lender with respect to the ELHC 14 Project and the ELHC 14 2015 Bonds and the ELHC 14 2015 Bonds;
- f. Estoppel Certificate in favor of IP 15 and the Lender with respect to the ELHC 15 Project and the ELHC 15 Bonds;
- g. Estoppel Certificate in favor of IP 31 and the Lender with respect to the ELHC 31 Project and the ELHC 31 Bonds;
- h. Estoppel Certificate in favor of IP 32 and the Lender with respect to the ELHC 32 Project and the ELHC 32 Bonds; and
- i. Estoppel Certificate in favor of IP 33 and the Lender with respect to the ELHC 33 Project and the ELHC 33 Bonds;

The Estoppel Certificates shall be executed for and on behalf of and as the act and deed of the City, in substantially the form presented. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to each of the Estoppel Certificates.

Section 2. Authorization and Execution of Consent to Collateral Assignments. The Governing Body hereby approves of the form of the City Consent to Collateral Assignment of IRB Documents, in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the following consents (the “Consents”):

- a. City Consent to Collateral Assignment of IRB Documents between IP 4 and the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. City Consent to Collateral Assignment of IRB Documents between IP 5 and the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. City Consent to Collateral Assignment of IRB Documents between IP 11 and the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;
- d. City Consent to Collateral Assignment of IRB Documents between IP 12 and the Lender with respect to the ELHC 12 Project and the ELHC 12 Bonds;
- e. City Consent to Collateral Assignment of IRB Documents between IP 14 and the Lender with respect to the ELHC 14 Project and the ELHC 14 2015 Bonds and the ELHC 14 2016 Bonds;
- f. City Consent to Collateral Assignment of IRB Documents between IP 15 and the Lender with respect to the ELHC 15 Project and the ELHC 15 Bonds;
- g. City Consent to Collateral Assignment of IRB Documents between IP 31 and the Lender with respect to the ELHC 31 Project and the ELHC 31 Bonds;
- h. City Consent to Collateral Assignment of IRB Documents between IP 32 and the Lender with respect to the ELHC 32 Project and the ELHC 32 Bonds; and
- i. City Consent to Collateral Assignment of IRB Documents between IP 33 and the Lender with respect to the ELHC 33 Project and the ELHC 33 Bonds.

The Consents shall be executed for and on behalf of and as the act and deed of the City, in substantially the form presented. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to each of the Consents.

Section 3. Authorization and Execution of Subordination. The Governing Body hereby approves of the form of the Subordination/Attornment Agreement (the “Subordination”), in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the following subordinations (the “Subordinations”):

- a. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;

- d. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 12 Project and the ELHC 12 Bonds;
- e. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 14 Project and the ELHC 14 2015 Bonds and the ELHC 14 2016 Bonds;
- f. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 15 Project and the ELHC 15 Bonds;
- g. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 31 Project and the ELHC 31 Bonds;
- h. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 32 Project and the ELHC 32 Bonds; and
- i. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 33 Project and the ELHC 33 Bonds.

The Subordinations shall be executed for and on behalf of and as the act and deed of the City, in substantially the form presented. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to each of the Subordination.

Section 4. Further Authority. The Mayor is hereby authorized and directed to execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 5. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 9th day of May, 2024.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

[SEAL]

ATTEST:

Alex Firth, Assistant City Clerk

Approved as to form:

Scott W. Anderson, Bond Counsel

Estoppel, Collateral Assignment, Subordination Resolution
ELHC 4,5,11,12,14,15,31,32,33 Projects

City Council Action Item

Council Meeting Date: May 9, 2024

Department: Utilities

Agenda Item: Consider Submittal of E 3rd & E Hulett Sanitary Sewer Project Application to Johnson County for Community Development Block Grant (CDBG) Funding for 2025

Background/Description of Item:

Each year Johnson County invites cities to submit applications for Community Development Block Grant (CDBG) funds made available by the federal government. Johnson County states that the primary goal of Johnson County's Community Development program is to provide federal financial assistance to eligible applicants for the purpose of community development. Toward this goal, the County has identified a number of strategic priorities.

1. Complete/advance existing projects approved by voters and the Board of County commissioners with efficiency and effectiveness.
2. Strengthen and finance the appropriate level of service to meet the needs of the County's vulnerable populations, pursuing innovative strategies.
3. Develop a creative and innovative vision for a transit plan that is fiscally stable.
4. Focus on developing innovative initiatives that enhance operational effectiveness and efficiency, levels of customer service and stewardship.

Typically, Edgerton has applied for CDBG projects every other year due to the fact that we apply for \$200,000, the two-year maximum award amount. However, in 2023 we did not receive the applied for amount. Additionally in 2024 Johnson County recommended we apply for the difference of the \$200,000 and our 2023 award in order to apply for the full 2-year amount in 2025. Therefore, City Staff plans to apply for a 2-year award of \$200,000 for 2025 to continue maximizing available outside funding to leverage city dollars to continue the replacement of aging city infrastructure.

The E 3rd & E Hulett Sanitary Sewer Project is an eligible Public Facilities and Improvement project for use of CDBG funds. Additionally, all of Edgerton is within a Census Block Group that qualifies for funding by area benefit. The E 3rd and E Hulett Sanitary Sewer Project area would be north of the 2023 CDBG Project and west of the 2024 CDBG Project. The Project would consist of Cured In Place Pipe (CIPP), Manhole Patches, and Point Repairs. Quantities of each repair type will be analyzed by an engineer but anticipated to be approximately three to six thousand (3,000-6,000) linear feet of CIPP. The project will be sized to maximize budget dollars should the market change drastically before bidding occurs or the award amount differs from the amount applied for.

The project will continue the City's replacement of aging sanitary sewer infrastructure to reduce the amount of Inflow and Infiltration (I&I) from this area. I&I is the wastewater system receiving stormwater, then conveying it to the plant for treatment.

Cities who are interested in submitting a CDBG application to the County are required to obtain the views of citizens through at least one public hearing held before the City Council and advertised at least fourteen (14) days in advance in the city's newspaper of record. The public comment period begins on the day after publication. The City of Edgerton published a Public Hearing Notice in the Gardner News on April 24th. At the time of preparation of the packet, the City received no comments. The City will hold a Public Hearing on Thursday, May 9th prior to considering this item.

CDBG is a reimbursement program in which cities may apply for up to \$200,000 every two years, or \$100,000 annually. CDBG funds do not have a required match. In the approved 2024-2028 CIP, \$50,000 has been identified as matching dollars from the Sewer Fund in 2025. Staff recommends applying for \$200,000 CDBG funding for 2025, to be used together with matching dollars (\$50,000), from the sewer fund. If the City is not awarded funding for 2025, this project cannot advance and will be tabled until 2026. If the City is awarded all \$200,000, we would be ineligible to apply for funds in 2026.

This Project is currently included in the approved 2024-2028 Capital Improvement Plan. If the City is successful in being awarded a grant, staff will notify Council, and dependent on the amount of award, any suggested revisions in funding at a future Council meeting.

Related Ordinance(s) or Statute(s):

Funding Source: Sewer Fund: \$50,000
CDBG: \$200,000

Budget Allocated: N/A

Finance Director Approval: *Karen E. Kindle*
Karen Kindle, Finance Director

Recommendation: Approve Submittal of Application to Johnson County for E 3rd & E Hulett Sanitary Sewer Project for Community Development Block Grant (CDBG) Funding for 2025

Enclosed: Notice of Public Hearing

Prepared by: Holly Robertson, PE – CIP Project Manager

NOTICE OF PUBLIC HEARING

Notice is hereby given to all interested parties, groups, and residents that the City of Edgerton will hold a public hearing on May 9, 2024 at 7:00 PM at the following location:

Edgerton City Hall, 404 E. Nelson Street, Edgerton, KS

The purpose of the public hearing is to receive input and funding proposals from the public on the possible use of Community Block Grant (CDBG) funds in resolving local community development and housing needs. CDBG funds may be used to carry out eligible activities including, but not limited to, housing rehabilitation, public improvements, economic development, and public services. All CDBG projects must address one of three national objectives: 1) benefit low and moderate income persons; 2) aid in the prevention or elimination of slums or blight; and/or 3) meet other community development needs having a particular urgency.

The City is considering an application to the Johnson County CDBG program for Fiscal Year 2025. Those interested in community development and housing needs in the City should attend and make their ideas known. Written comments are also invited.

Dated this 24th of April, 2024.

Chris Clinton
Deputy City Clerk
404 E. Nelson Street
Edgerton, Kansas 66021
(913) 893-6231



INTERIM AD DRAFT

This is the proof of your ad scheduled to run in **Gardner News** on the dates indicated below. If changes are needed, please contact us prior to deadline at **(913) 856-7615**.

Notice ID: S2a66mKLaCbiuO22asT5 | **Proof Updated: Apr. 18, 2024 at 11:45am CDT**
Notice Name: Notice of Public Hearing 2025 CDBG App

This is not an invoice. Below is an estimated price, and it is subject to change. You will receive an invoice with the final price upon invoice creation by the publisher.

FILER	FILING FOR
Holly Robertson	Gardner News
hrobertson@edgertonks.org	
(913) 893-6231	

Columns Wide:	2	Ad Class: Legals
Total Column Inches:	5.71	
Number of Lines:	23	

04/24/2024: Custom	81.97
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Subtotal	\$81.97
Tax	\$0.00
Processing Fee	\$0.00
Total	\$81.97

See Proof on Next Page

NOTICE OF PUBLIC HEARING

Notice is hereby given to all interested parties, groups, and residents that the City of Edgerton will hold a public hearing on May 9, 2024 at 7:00 PM at the following location:
Edgerton City Hall, 404 E. Nelson Street, Edgerton, KS

The purpose of the public hearing is to receive input and funding proposals from the public on the possible use of Community Block Grant (CDBG) funds in resolving local community development and housing needs. CDBG funds may be used to carry out eligible activities including, but not limited to, housing rehabilitation, public improvements, economic development, and public services. All CDBG projects must address one of three national objectives: 1) benefit low and moderate income persons; 2) aid in the prevention or elimination of slums or blight; and/or 3) meet other community development needs having a particular urgency.

The City is considering an application to the Johnson County CDBG program for Fiscal Year 2025. Those interested in community development and housing needs in the City should attend and make their ideas known. Written comments are also invited.

Dated this 24 th of April, 2024.

Alex Clower
City Clerk
404 E. Nelson Street
Edgerton, Kansas 66021
(913) 893-6231

Published in Gardner News April 24, 2024.

#####

City Council Action Item

Council Meeting Date: May 9, 2024

Department: Public Works

Agenda Item: Consider Award of Construction of the Dwyer Farms – Sanitary Sewer Extension Project to Beemer Construction Co., Inc. for \$747,900.00 for the Base Bid Total.

Background/Description of Item:

On August 11, 2022, Edgerton City Council approved the recommendation of the Planning Commission to approve an application for a Planned Unit Development (PUD) for Dwyer Farms.

On September 22, 2022, City Council approved the contract with BG Consultants for the design of the project.

The infrastructure needed to receive Dwyer Farms is a three-phase project. The scope of this phase of the project includes the installation of sanitary sewer pipe to serve the development project of Dwyer Farms and future development within the same watershed. This contract award is limited to the installation of the new sanitary sewer extension. The second project phase includes installation of an equalization basin, new transmission main, upsized to the sewer line under Sunflower Road and lift station improvements at the City Lift Station. The third project phase includes improvements to the SCADA system and replacement of aged equipment at the Big Bull Creek Wastewater Treatment Plant. The second and third project phases have not been fully scoped and have not yet been bid for design and construction but will be brought to Council at a later date.

On April 18, 2024, the City held a public bid opening and received six bids for the Dwyer Sanitary Sewer Extension. The bids ranged from \$747,900.00 to \$1,147,388.70. The engineer's estimate was \$1,200,652.60. A copy of the bid tabulations is attached.

The design team reviewed bid information provided by each contractor. Additionally, the engineer evaluated Beemer Construction's recent, similar project experience, qualifications, and understanding of all project requirements. Following that review, the engineer together with staff, recommends Beemer Construction Co., Inc., as the lowest responsive, responsible, and most qualified bidder for the project. A written recommendation from the Engineers is also attached.



For this project, staff anticipates the construction schedule as follows: (subject to change due to working with outside parties, i.e. BNSF, KPC, KDHE)

- Construction to Begin: May 2024
- Construction Substantial Complete: August 2024

Funding for this project is anticipated to be initially funded through Kansas Department of Health and Environment (KDHE) State Revolving Loan Fund. Long-term funding source will be Rural Housing Incentive District (RHID).

Related Ordinance(s) or Statue(s):

Funding Source: KDHE State Revolving Loan Fund (short-term) and Rural Housing Incentive District (RHID) (long-term)

Budget Allocated: \$5,000,000

Finance Director Approval: x 
Karen Kindle, Finance Director

Recommendation: Approve Award of Construction of the Dwyer Farms Sanitary Sewer Extension Project to Beemer Construction Co., Inc., for \$747,900.00 for Base Bid Total.

Enclosed: Bid Tabulations
Engineer's Recommendation Letter
Contract with Beemer Construction

Prepared by: Holly Robertson, PE – CIP Project Manager

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Beemer Construction Co., Inc.
606 S.E. Central Drive
Blue Springs, MO 64014-3311

SURETY:

(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196-1056

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

OWNER:

(Name, legal status and address)

City of Edgerton Kansas
404 E. Nelson Street
Edgerton, KS 66021

BOND AMOUNT: \$ 5%

Five Percent of Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

Dwyer Sanitary Sewer Improvements

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 18th day of April, 2024

(Witness)

Beemer Construction Co., Inc.

(Principal)

(Seal)

By:

(Title)

President

(Witness)

Fidelity and Deposit Company of Maryland

(Surety)

(Seal)

By:

(Title) C. LaVonne Engeman Attorney-in-Fact

Surety Phone No. 847-605-6000



Bond Number: Bid Bond

Obligee: City of Edgerton Kansas

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint C. LaVonne Engeman, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 10th day of October, A.D. 2023.



ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 10th day of October, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, Robert D. Murray, Vice President and Dawn E. Brown, Secretary of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVEVE M. MAISON
NOTARY PUBLIC
BALTIMORE COUNTY, MD
My Commission Expires JANUARY 27, 2025



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 18th day of April, 2024,



MJ Pethick

By: Mary Jean Pethick
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

**Addendum No. 1**

Project: Dwyer Sanitary Sewer Improvements Edgerton, Kansas BG Proj. No: 22-1353L
Date Issued: March 18, 2024
Bid Date & Time: April 18, 2024 @ 2:00 pm

The following items shall amend, or in case of conflict, supersede the contract documents for the above reference project:

Item 1 (PRE-BID MEETING):

A pre-bid meeting will be held on April 8, 2024, at 2:00 pm at Edgerton City Hall.

Item 2 (INSTRUCTIONS TO BIDDERS):

Add the following section to Instruction to Bidders:

24. BASIS OF AWARD OF THE CONTRACT

The award of the contract will be to the lowest responsive, responsible bidder.

Item 3 (PROPOSAL):

The following forms in "KDHE SRF CONTRACT PROVISIONS" shall be completed and included with the bid submittal:

- Kansas Act Against Discrimination
- Demonstration of Compliance with DBE Good Faith Efforts
- Certification Regarding Lobbying
- AIS Certification

Item 4 (CONTRACT DOCUMENTS):

The "KDHE SRF CONTRACT PROVISIONS" shall be added to the definition of "Contract Documents" as listed in Section GC-3 of the General Conditions.

The "KDHE SRF CONTRACT PROVISIONS" shall be added to the definition of "Contract Documents" as listed in Article II of the Contract.

Item 5 (CHANGE ORDERS):

All Change Orders to the project (scope changes affecting cost(s), design scope, and/or changes to the contract time period) must be submitted to KDHE for review and approval for SRF eligibility.

Item 6 (AMERICAN IRON AND STEEL REQUIREMENTS):

Per the SRF program requirements and loan agreement, this project must comply with the American Iron and Steel (AIS) requirements. The City is responsible for ensuring compliance with all SRF requirements, including AIS.

- The Consolidated Appropriation Act of 2014 includes an "American Iron and Steel (AIS)" requirement which requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) must use iron or steel products made in the United States for construction, alteration, maintenance, or repair projects when funded through an assistance agreement. Iron or steel products are made primarily of iron or steel and are permanently incorporated into the public water system or wastewater treatment works system. It is noted mechanical and electrical components and systems are not considered construction materials.
- Precast reinforced concrete products are defined as iron and steel products and must be produced in the USA and not just the reinforcing iron and steel used in the precast product. Construction iron and steel materials including all fasteners, galvanized, stainless and plain steel must conform



22-1353L

Dwyer Sanitary Sewer Improvements
Edgerton, Kansas

to the AIS requirements to be domestically produced. Construction material including reinforcing chairs, runners, bolsters, baskets, spacers, hangers, wire ties and form ties permanently cast in concrete must conform to the AIS requirements.

A draft list of items to be provided as part of the project, along with an indication of AIS applicability, has been attached to this addendum. Note that this list is not intended to be a comprehensive list of all items which will be installed on this project, and which require AIS certification. Other items may be installed and require certification. EPA American Iron and Steel guidance can be found at the following URL: <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>.

Item 7 (PIPE MATERIAL):

Polypropylene Pipe meeting the requirements of Section 2502.2.H of the Kansas City APWA Construction and Material Specifications will be permitted as a substitute for the 18" PVC (PS 115) except for the sections between MH B-01 and MH B-02 and between MH B-04 and MH B-05.

Item 8 (TECHNICAL SPECIFICATIONS):

The Kansas City Metropolitan Chapter of the APWA Construction Specifications can be found at this link: <https://kcmetro.apwa.org/resources/specifications/>.

Sincerely,

BG Consultants, Inc.

David J. Hamby, P.E., CFM
Project Manager

Acknowledge Receipt of Addendum and include Addendum in proposal:

Contractor's Signature

Beemer Construction Co., Inc.
Company

PROJECT PLANS	Items Subject to AIS Requirements*
ITEM	DESCRIPTION
Cast-in-Place Concrete	
Reinforcement	Reinforcing steel bars (All sizes and grades), welded steel wire fabric, dowel and tie bars.
Forms	Steel wire and form tie left in the concrete.
Concrete Paving	
Formwork and Reinforcement	All reinforcing bars, ties, and welded wire fabric.
Sanitary Sewers	
Piping	All sizes and classes of ductile iron pipe coated and uncoated, also lined and unlined. All sizes and classes of cast iron pipe coated and uncoated, also lined and unlined.
Sewer Appurtenances	All appurtenance, joint connection with iron, steel components including associated bolts, rods and treaded rods or bands components.
Fittings	All sizes and classes of ductile iron or cast iron fittings lined or coated or plain.
Adapters/Couplings	All adaptor couplings/couplings, joint connections with iron, steel components incl. associated bolts rods and treaded rods or bands components.
Cleanouts/Wyes and Tees	All sizes and classes of ductile iron or cast iron fittings lined or coated or plain.
Blocking and Anchoring	All steel reinforcing/rods used with concrete blocking or anchorage and pipe supports.
Steel Casing	All steel casing for bored pipe section
Manholes	
Precast Concrete Manholes and Bases	All precast manholes, precast bases, precast tops, and all reinforcement and iron or steel in the precast items.
Cast-in-place Manholes and Bases	Reinforcing Bars (All sizes and grades) All kinds of steel chairs, runners, bolsters, spacers, hangers & steel wire ties and steel form ties.
Precast Manholes Adjustment Rings	Precast Adjustment Rings (all reinforcement, all rebars & welded wire)
Manhole cover, steps or ladder steps	Including all steel or iron rings and covers, steps/ ladder steps coated or painted.

*Note: This list of specific items is not intended to be a comprehensive list of all items which will be installed on this project and which require AIS certification. Other items may be installed and require certification. EPA American Iron and Steel guidance can be found at the following URL:
http://water.epa.gov/grants_funding/aisrequirement.cfm



Addendum No. 2

Project:	Dwyer Sanitary Sewer Improvements Edgerton, Kansas	BG Proj. No:	22-1353L
Date Issued:	April 10, 2024		
Bid Date & Time:	April 18, 2024 @ 2:00 pm		

The following items shall amend, or in case of conflict, supersede the contract documents for the above reference project:

Item 1 (EXPLORATORY TEST PITS):

The City is going to dig two exploratory test pits located near Manhole A-27 and Manhole B-03. The test pits will be open and available for viewing on the afternoon of Monday, April 15 at 1:00 pm. Those interested in viewing the test pits should meet on Edgerton Road approximately 500' south of 207th Street at that time to walk to the sites with City Staff. Please RSVP with Holly Robertson (hrobertson@edgertonks.org, 913-424-3621) if you plan to attend.

Item 2 (PRE-BID MEETING):

A pre-bid meeting was conducted on April 8. A sign in sheet and meeting notes are attached.

Item 3 (RESTRAINED JOINT PIPE):

The restrained joint pipe shall be 18" PVC (C900 DR18 RJ).

Sincerely,
BG Consultants, Inc.

David J. Hamby, P.E., CFM
Project Manager

Acknowledge Receipt of Addendum and include Addendum in proposal:

Contractor's Signature

Beemer Construction Co., Inc.
Company

PRE-BID MEETING

Date: April 8, 2024, 2:00 PM

Project: Dwyer Sanitary Sewer Improvements

Project No.: 22-1353L

Bid Letting Date and Time: April 18th, 2:00 PM

MEETING NOTES

PROJECT DESCRIPTION

IMPORTANT INFORMATION

- Bidders must be registered as a plan holder with Drexel.
- Submit entire project manual book with bid.
- The KDHE forms must be completed and submitted with the bid.
- Project is subject to Davis Bacon wage rates.
- The project is subject to the KDHE SRF Contract Provisions.
- The project is subject to the BNSF Pipeline License Agreement.
- The project is subject to KPC Encroachment Agreement.
- An addendum will be issued prior to the bid date with any necessary information.

QUESTIONS RECEIVED/CHANGES NOTED:

- Pipe material in cased bore: 18" C900 DR18 Restrained Joint
- Cathodic protection: Designed by Kansas Professional Engineer to protect casing.
- No geotechnical report was completed, arrangements can be made with City for contractor excavations.
- The City will pay BNSF for the Observation fees. Contractor to minimize need for flagger.
- Casing size is 26". Changing the size will require BNSF approval. City preference is to maintain 26" casing size.
- US Fish & Wildlife Service has indicated that clearing is not restricted due to the Northern Long Eared Bat.

ADDITIONAL QUESTIONS RECEIVED AT MEETING:

- Does the Contractor need Railroad Insurance? (The Contractor should provide insurance as listed in Sections 15.1, 15.2 and 15.3 of the BNSF Pipeline License Agreement and in accordance with the Contract Documents. The City has paid BNSF for the Railroad Protective Liability Insurance.)
- What is the backfill under Edgerton Road? (Type AA compaction, flowable fill not required)
- How will rock excavation be handled, if encountered? (All excavation is unclassified per General Note x)
- Does the City have a location for tree disposal? (No)

Addendum No. 3

Project: Dwyer Sanitary Sewer Improvements BG Proj. No: 22-1353L
Edgerton, Kansas
Date Issued: April 17, 2024
Bid Date & Time: April 18, 2024 @ 2:00 pm

The following items shall amend, or in case of conflict, supersede the contract documents for the above reference project:

Item 1 (EXPLORATORY TEST PITS):

The City dug two exploratory test pits located near Manhole A-27 and Manhole B-03. The test pit reports are attached for your use. This information is provided for information only. The Contractor should review General Note x on Sheet 2 of the plans. All excavation shall be unclassified.

Item 2 (CATHODIC PROTECTION):

The Contractor can assume that anode beds will be an acceptable method of providing cathodic protection for the steel casing under the Railroad.

Item 3 (SITE ACCESS):

The access to the east and west sides of the railroad will be obtained by using the existing easements and City owned property. The Contractor has the option of working with the affected property owners to gain alternate access.

Sincerely,

BG Consultants, Inc.



David J. Hamby, P.E., CFM
Project Manager

Acknowledge Receipt of Addendum and include Addendum in proposal:



Contractor's Signature


Company

Test Pit Excavation for Dwyer Sanitary Sewer (East Side)

April 12, 2024

Test Pit Log and Photos at 16 feet SE of existing manhole MH A-27

Test Pit Log:

Depth Range	Description	Material
0 – 2 ft	Dk. Gray with limestone floaters/stringers	Clay
2 – 6 ft	Brown	Clay
6 – 8 ft	Light Brown	Clay
8 – 10 ft	Light Brown and Tan, weathered limestone fragments within this zone, easily excavated with a mini excavator. Rock pieces were less than 6 inches thick.	Clay with discontinuous weathered Limestone



Test Pit Excavation for Dwyer Sanitary Sewer (West Side)

April 15, 2024

Test Pit Log and Photos at ~20 feet SE of planned manhole MH B-03

Test Pit Log:

Depth Range	Description	Material
0 – 7 ft	Dk. Gray, wet	Clay
7 – 9 ft	Brown	Clay
9 – 9.5 ft	Light Brown and Tan, weathered limestone fragments within this zone. Rock pieces were less than 6 inches thick.	Clay with discontinuous weathered Limestone





CITY OF EDGERTON, KANSAS PROJECT MANUAL

DWYER SANITARY SEWER IMPROVEMENTS

BG PROJECT NO. 22-1353L



Digitally signed
by David J
Hamby
Date: 2024.03.08
15:10:10 -06'00'

March 8th, 2024

CITY OF EDGERTON, KANSAS

MAYOR
DONALD ROBERTS

CITY COUNCIL
CLAY LONGANECKER
JOSH LEWIS
RON CONUS
DEB LEBAKKEN
BILL MALLOY

CITY CLERK
ALEXANDRIA CLOWER

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**CITY OF EDGERTON, KANSAS
DWYER SANITARY SEWER IMPROVEMENTS**

PROJECT MANUAL

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EDGERTON, KANSAS

DWYER SANITARY SEWER IMPROVEMENTS**ADVERTISEMENT FOR BID**

Sealed proposals for the DWYER SANITARY SEWER IMPROVEMENTS, in the City of Edgerton, Kansas will be received from qualified bidders by the City of Edgerton, Kansas at 404 East Nelson (PO Box 255), Edgerton, Kansas 66021 until 2:00 PM on THURSDAY, APRIL 18th, 2024 at which time and place all bids will be publicly opened and read. Bids received after the designated closing time will be returned unopened. All contractors who plan to submit a proposal on the project are requested to attend.

All proposals shall be made on a printed proposal form included in a bound Project Manual containing the specifications for the Work and shall be submitted in sealed envelopes addressed to the City of Edgerton, Kansas and marked "DWYER SANITARY SEWER IMPROVEMENTS".

This project will construct 1,795 LF of 18" Sanitary Sewer, 8 Each of 4' Dia. Manholes and 223 LF of 26" Cased Bore along with other related improvements.

The Project Manual, consisting of the Bidding Documents (which shall include the advertisement for bid, instructions to bidders, proposal and statement of bidder's qualifications) and Contract Documents (which shall include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda authorized by the Owner), and the Plans may be examined at the office of the City Clerk, Edgerton City Hall, 404 East Nelson, Edgerton, Kansas 66021. Copies of Project Manual can be seen or purchased on-line at www.drexeltech.com in their electronic plan room, additional assistance is available at distribution@drexeltech.com. At the web site, information regarding this project can be found in the 'Public Jobs' link. Contractors desiring the Project Manual for use in preparing bids may also obtain a set of such documents from Drexel Technologies, 10840 West 86th Street, Lenexa, Kansas 66214, telephone (913) 371-4430. **Any questions regarding the project, plans, specifications or bid documents should be directed to David Hamby, City Engineer at (785) 727-7278.**

Each bid shall be accompanied by a certified check or cashier's check drawn on a National Bank or a bank having membership in the Federal Reserve System or a bid bond made payable to "The City of Edgerton, Kansas" in an amount of not less than five percent (5%) of the total bid, which may be retained until a contract for the project shall have been awarded. Bid checks or bid bonds will be returned to the unsuccessful bidders if and when their bids are rejected. An agent authorized to transact business in the State of Kansas shall write the bonds.

Each bidder shall upon request of the City of Edgerton, Kansas submit on the form furnished for that purpose, a statement of the bidder's qualifications, the bidder's experience record in the type of work embraced in this project, his organization and equipment available for the work contemplated and, when specifically requested by the City of Edgerton, a detailed financial statement.

The City of Edgerton shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligations under the Contract and the bidder shall furnish the City of Edgerton all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available evidence or information does not satisfy the City of Edgerton, in its sole discretion, that the bidder is qualified to carry out properly the terms of the Contract.

The bidder to whom a contract for the Work is awarded will be required to furnish performance and statutory bonds acceptable to the City of Edgerton, Kansas, each in amount of one hundred percent (100%) of the Contract, in conformity with the requirements of the proposed Contract Documents. Each bond shall be written by an agent having an established office in Kansas.

The City of Edgerton, Kansas reserves the right to reject any or all bids for any reason or to waive any informalities in the bidding.

Bids may be held by the City of Edgerton, Kansas for a period not to exceed sixty (60) days from the date of the opening of the bids for the purpose of reviewing the bids and investigation of the qualifications of the bidder prior to the awarding of the Contract.

Bidders on this work will be required to comply with the president's Executive Order No. 11246 (Equal Employment Opportunity) as amended. Requirements for bidders and contractors under this order are explained in the specifications.

"Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions. Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at www.sam.gov are not eligible for award of any contracts funded by the KDHE State Revolving Fund programs."

All contracts and subcontracts exceeding \$100,000, at any tier under a SRF Loan Agreement shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above.

INSTRUCTIONS TO BIDDERS

1. GENERAL NOTICE

Sealed proposals for DWYER SANITARY SEWER IMPROVEMENTS, in the City of Edgerton, Kansas will be received from qualified bidders by the City of Edgerton, Kansas at 404 East Nelson Street (PO Box 255), Edgerton, Kansas 66021 until 2:00 PM on THURSDAY, APRIL 18th, 2024, at which time and place all bids will be publicly opened and read. Bids received after the designated closing time will be returned unopened. All Contractors who plan to submit a proposal on the project are requested to attend.

2. PLANS AND SPECIFICATIONS

The Project Manual, consisting of the Bidding Documents (which shall include the advertisement for bid, instructions to bidders, proposal and statement of bidder's qualifications) and Contract Documents (which shall include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner), and the Plans may be examined at the office of the City Clerk, Edgerton City Hall, 404 East Nelson Street, Edgerton, Kansas 66021. Copies of Project Manual can be seen or purchased on-line at www.drexeltech.com in their electronic plan room, additional assistance is available at distribution@drexeltech.com. At the web site, information regarding this project can be found in the 'Public Jobs' link. Contractors desiring the Project Manual for use in preparing bids may also obtain a set of such documents from Drexel Technologies, 10840 West 86th Street, Lenexa, Kansas 66214, telephone (913) 371-4430. **Any questions regarding the project, plans, specifications or bid documents should be directed to David Hamby, City Engineer at (785) 727-7278.**

3. PROPOSALS

All proposals shall be made on the forms provided in this bound copy of the Project Manual. All proposals shall be legibly written in ink or typewritten, with all prices given in figures.

No alterations in proposals or in the printed forms will be permitted by erasures, deletions or interpolations unless each alteration is signed or initialed by the bidder. If initialed, the City of Edgerton ("Owner" or "City") may require the bidder to identify the alterations so initialed. Proposals carrying riders or qualifications to the bid as submitted will be rejected as irregular.

Each bidder shall enclose the bound copy of the Project Manual containing his proposal in a sealed envelope, addressed to "The City of Edgerton, Kansas," and marked "DWYER SANITARY SEWER IMPROVEMENTS" in the City of Edgerton, Kansas.

4. PROPOSAL GUARANTEE

Each proposal shall, as guarantee of good faith on the part of the bidder, be accompanied by a certified check or cashier's check, drawn on a National Bank, or on a bank having a membership in the Federal Reserve System, or a bid bond, in the amount of not less than five percent (5%) of the total bid. The proposal guarantee shall be made payable without conditions to "The City of Edgerton, Kansas" and the amount of the check will be retained by, and forfeited to, the Owners as liquidated damage if such proposal is accepted and the contract is awarded, and the bidder fails to enter into a contract in the form prescribed, with legally responsible sureties, within ten (10) days after such award is made by the Owners.

5. SIGNATURE OF BIDDER

Each proposal must be signed in ink by the bidder with his/her full name and with his/her business address or place of residence and telephone number. In the case of a firm, the name and residence of each member must be inserted, and in the case the proposal is submitted by, or on behalf of, a corporation, it must be signed in the name of the corporation by an official who is authorized to bind the bidder and who shall also affix the corporate seal of such corporation.

6. ONLY ONE PROPOSAL ACCEPTED

No bidder may submit more than one (1) proposal. Two proposals under different names will not be received from one firm or association.

7. RESPONSIBILITY OF AGENT

Any person signing a proposal as the agent of another or for others may be required to submit satisfactory evidence of his authority to do so.

8. QUALIFICATION OF BIDDERS

Each bidder shall upon request of the City of Edgerton, Kansas, submit on the form furnished for that purpose, a statement of the bidder's qualification, his/her experience record in constructing the type of repairs embraced in this project, his/her organization and equipment available for the work contemplated and when specifically requested by the City of Edgerton, a detailed financial statement. The City of Edgerton shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligations under the Contract and the bidder shall furnish the City of Edgerton all such information and data for this purpose as it may request. Each bidder shall perform at least 50% of the Work without the use of subcontractors. Computation of Subcontractors Work will be consistent with GC-74, Computation of Subcontractors Work.

9. LOCAL CONDITIONS

Bidders shall read the Project Manual, examine the Plans, and make their own estimates of the existing facilities and the difficulties which will attend the execution of the Work called for by the proposed contract, including local conditions, uncertainty of

weather, and all other contingencies. Bidders shall satisfy themselves by personal examination of the location of the proposed Work, and by such means as they may choose, as to actual conditions and requirements. Information derived from the Project Manual, including the Plans, or from the Consulting Engineer, the City Engineer or their assistants shall not relieve the bidder of this responsibility.

10. INTERPRETATION OF CONTRACT DOCUMENTS

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Project Manual, including the Plans and Project Specifications, incorporated therein, he/she may submit to the City Engineer a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt and actual delivery. Any interpretation of the documents included in the Project Manual will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such Contract Documents. The Owner will not be responsible for any other explanations or interpretations of such Contract Documents which anyone presumes to make on behalf of the Owner before expiration of the ultimate time set for the receipt of bids.

11. COMPARISON OF BIDS

All bids shall be totaled for comparison by adding the amounts determined by multiplying the stipulated approximate quantity by the unit price named in the proposal for that item. In the case of alternate items, the Owner will have the ability to accept any or all alternates. If alternates are chosen by the Owner, these bid amounts shall be added to the total defined above with reductions for an "in lieu of" items as may be the case.

12. UNBALANCE OF BIDS

The unbalancing of bids will not be tolerated. Evidence of material unbalancing will be considered cause for rejection. No modification of bids already submitted will be considered unless such modifications are received prior to the hour set for opening.

13. BONDS

The contractor to whom the Work is awarded will be required to furnish the following Surety Bonds:

(a.) Performance Bond - A bond to the City of Edgerton, Kansas in the amount of one hundred percent (100%) of the amount of the Contract, and in accordance with Kansas Statutory requirements, guaranteeing faithful compliance with the terms of the Contract.

(b.) Statutory Bond - A bond to the State of Kansas, as required by statute, to guarantee the payment of labor and material bills.

All bonds shall be executed according to the sample forms hereto attached, signed by a surety company authorized to transact business in the State of Kansas, and acceptable as surety to The City of Edgerton, Kansas. Each bond must be accompanied by a "Power of Attorney." The bonds shall be written by an agent authorized to transact business in the State of Kansas.

14. LIABILITY INSURANCE

Refer to Addendum A, Insurance Requirements, as an addendum to this contract.

15. RETURN OF PROPOSAL GUARANTEE

The bid checks or bonds of the three (3) lowest and best bidders may be retained for a period of not more than sixty (60) days pending the execution of the Contract and bonds by the successful bidder. All other bidders' checks or bonds will be returned immediately after the bids have been tabulated and the three lowest and best bids have been determined. Checks or bonds, which have been retained, will be returned when the contractor to whom the Contract has been awarded has furnished approved bonds and filed the necessary number of signed Contracts with the City of Edgerton, Kansas.

16. REJECTION OF BIDS

The City of Edgerton, Kansas reserves the right to reject any or all bids for any reason and to omit one or more items, or portions of items, of the proposal from the award of the Contract, in its sole discretion.

17. PAYMENTS

Payment for all Work performed under this Contract and material stored on the project site will be made as follows:

Estimates of the work completed will be made on the 25th day of each month after the Contractor commences work on this project. Ninety percent (90%) of the estimate will be paid within 30 days after the approval of the estimate, on the condition that the estimate includes lien waivers for work performed by the Contractor and all subcontractors up to and including 30 days prior to the estimate date. The final estimate will be paid within 30 days after the completion of and the acceptance of the construction by the City Council at a regularly scheduled City Council meeting, upon receipt of final lien waivers, and upon satisfaction of the terms of this Contract.

18. BOUND COPY OF PROJECT MANUAL

None of the documents contained in the Project Manual shall be removed prior to filing same with the City of Edgerton.

19. TAXES AND PERMITS

The Contractor shall secure and pay for all permits necessary for the prosecution of any and all parts of the Work from cities, county, state or other governing bodies having

jurisdiction. The Contractor shall acquaint itself with and conform to the requirements, rules and regulations of said governing bodies.

The Contractor shall pay all taxes, except sales taxes, that may be lawfully assessed against the Owner or Contractor in the execution and performance of the Contract and Work covered thereby. The unit prices in the Proposal shall include all such taxes.

It is the intention of the Owner to secure an exemption certificate for this project permitting the Contractor to purchase materials without payment of the sales or compensating tax. All bidders shall make allowance for this exemption and shall prepare their bids to reflect the exemption from sales or compensating taxes.

The Contractor must furnish each supplier with a properly executed exemption certificate for the supplier's files. All suppliers' invoices for materials to be incorporated in the Work shall include the exemption certificate number. The Contractor must furnish the Owner with a copy of all invoices. When the project is completed, the Contractor shall file with the Owner, a certified statement that all exempt purchases made were entitled to be exempt of Kansas Retailer's Sales or Compensating Tax. The Owner shall file said statement with the State of Kansas.

The Contractor to whom an exemption certificate has been issued shall assume full responsibility for its proper use of the certificate number, and shall pay all costs of any legally assessed penalties relating to its improper use of the certificate number.

20. WITHDRAWAL OF BID

No bidder may withdraw its proposal for a period of 60 days after date and hour set for the opening herewith. A bidder may withdraw its proposal at any time prior to the expiration of the period during which proposals may be submitted by written request of the bidder, which must be signed in the same manner and by the same person who signed the proposal.

21. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors who may be performing work on behalf of the Owner, and workers who may be employed by the Owner, on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage that may be sustained by other contractors or employees of the Owner, because of any fault or negligence on its part, and shall at its own expense, repair or pay for such injury or damage. Any difference or conflict which may arise between the Contractor and other contractors or between the Contractor and the workers of the Owner in regard to their work shall be adjusted and determined by the City Engineer.

If the work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time. Extensions of time will be handled according to provisions in paragraph GC-48, Extensions of Time.

When two or more contracts are being executed at one time, in such manner that work on one contract may interfere with that on another, the City Engineer shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of persons, material or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by the City to the contractor so desiring, to the extent that may be reasonably necessary.

22. NON-DISCRIMINATION, AFFIRMATIVE ACTION & FEDERAL REGULATION

- A. The Contractor shall be an equal opportunity employer as defined by Section 1000 (e) of Chapter 21, Title 42, of the United States Code Annotated, and comply with all Federal Regulations or acts regarding construction or employment when Federal Funds are used on the project.
- B. The Contractor shall observe the provision of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of Work under the present Contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry.
- C. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or a similar phrase to be approved by the Kansas Commission on Civil Rights.
- D. If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, as amended, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated or suspended, in whole or in part, by the Owner.
- E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated or suspended in whole or in part, by the Owner.

The Contractor shall include the provisions of paragraphs (A) through (E) inclusively of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

23. SRF PROVISION

Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.).

DWYER SANITARY SEWER IMPROVEMENTS

P R O P O S A L

To: The Governing Body
City of Edgerton, Kansas
404 East Nelson Street
Edgerton, Kansas 66021

Ladies and Gentlemen:

The undersigned bidder declares that he/she has carefully examined the Project Manual, including the Bidding Documents, Contract Documents and Plans, and that he/she has inspected the actual location of the Work, together with the total sources of supplies, and has satisfied itself as to all quantities and conditions and hereby proposes to furnish all materials, supplies, tools, equipment and plant, perform all necessary labor and construct, install and complete all Work stipulated in, required by, and in conformity with the Project Manual, including the Bidding Documents, Contract Documents and Plans for and in consideration of the Bid Schedule Proposal pages 15 through 18.

The undersigned is prepared to submit a financial and experience statement upon request.

The undersigned hereby agrees to furnish the required bond and to enter into a contract within ten (10) days from and after the acceptance of this proposal, and further agrees to achieve substantial completion of the entire **Base Bid** Work covered by this proposal within **120 calendar days** after notice to proceed. Final completion of the entire **Base Bid** Work shall be complete within **150 calendar days** after notice to proceed. The anticipated notice to proceed date for this project is **May 13th, 2024**.

The undersigned bidder acknowledges that the City has agreed to pay bidder an additional ten thousand dollars (\$10,000.00) should the undersigned achieve substantial completion of the entire Base Bid Work, which for the purposes of this bonus shall mean substantial completion as approved by the City Engineer and the achievement of conveyance of sewage for this project, by August 5, 2024. Any extensions of time of any kind which might otherwise be granted to the undersigned bidder shall not apply in the computation of this bonus, as the undersigned must achieve final completion within the original 150 calendar days from the notice to proceed.

The undersigned hereby agrees that liquidated damages in the amount of \$1,000.00 per Calendar Day, shall be deducted from any moneys due the Contractor for each day that the Work or portion thereof shall remain uncompleted after the expiration of the Working Days provided above.

BID SCHEDULE PROPOSAL

TO: City of Edgerton
 Johnson County, Kansas

The undersigned Bidder hereby proposes to furnish all materials, supplies, transportation, tools, equipment, facilities and to perform all necessary labor and construct, install and complete all work stipulated in, required by, and in conformity with the proposed Contract Documents (including all documents referred to therein) and any and all addenda thereto, for and in consideration of unit prices as follows (**Approx. Quantities** and **Total** are for Bid Comparison Only):

Item #	Description	Quantity	Unit	Unit Price	Total Price
-General					
1.	Contractor Construction Staking	1	L.S.	6,500	6,500
2.	Mobilization	1	L.S.	33,367	33,367
3.	Temporary Erosion Control	1	L.S.	750	750
-Site Prep					
4.	Clearing & Grubbing	1	L.S.	36,796	36,796
5.	Demolition & Removal	1	L.S.	1,250	1,250
-Sanitary Sewer					
6.	8" Sanitary Sewer (PVC)(SDR 26)(In Place)	10	L.F.	85	850
7.	18" Sanitary Sewer (PVC)(PS 115)(In Place)	1,556	L.F.	174	270,744
8.	18" Sanitary Sewer (PVC RJ)(PS 115)(In Place)	239	L.F.	263	62,857
9.	4' Dia. Std. Manhole (0'-6' Deep)	8	Each	6,600	52,800
10.	Extra Depth (4' Dia.)	33.6	V.F.	180	6,048
11.	Connect to Existing Manhole & Reconstruct Invert	1	Each	4,500	4,500
12.	26" Steel Casing (In Place)(Jack & Bore)	223	L.F.	1,155	257,565
-Surfacing					
13.	AB-3 Surfacing (6")	41.7	S.Y.	10	417
-Erosion & Sediment Control					
14.	Storm Water Pollution Prevention	1	L.S.	2,750	2,750
15.	Silt Fence	353	L.F.	2	706
16.	Rock Ditch Check	2	L.F.	1,250	2,500
-Landscaping					
17.	Seed, Fertilize and Mulch	1	L.S.	7,500	7,500
Base Bid Total =					747,900
BASE BID TOTAL (WRITTEN)					
Seven Hundred Forty-Seven Thousand Nine Hundred Dollars					

DWYER SANITARY SEWER IMPROVEMENTS

Enclosed is a (Certified Check) (Cashier's Check) (Bid Bond) in the amount of 32,395 Dollars which the undersigned agrees to be forfeited to and become the property of the City of Edgerton, Kansas as liquidated damages should this proposal be accepted and the Contract be awarded to him/her and he/she fail to enter into a contract in the form prescribed, and to furnish the required bond within ten (10) days as above stipulated. Otherwise the proposal guarantee shall be returned to the undersigned upon the signing of the contract and delivery of the approved bonds to said City of Edgerton, Kansas.

RECEIPT OF ADDENDA:

I/We acknowledge receipt of the following addenda: 1 THROUGH 3

REQUIRED CONTRACT PROVISIONS: The Contractor is required to complete and submit pages 17 and 19 with their proposal. The City of Edgerton, Kansas will reject proposals that fail to contain completed Required Contract Provisions.

COOPERATIVE PURCHASING BY OTHER INSTITUTIONS UNDER THIS CONTRACT

If the City awarded you the proposed Contract, would you sell under the prices and terms of this Contract to any Municipal, County Public Utility, Hospital, or Educational Institution having membership in the Mid-America Council of Public Purchasing and located within the Greater Kansas City Metropolitan Trade Area? Other agencies will be responsible for entering into separate agreements as outlined under the proposed Contract. All work agreed to outside of the proposed contract will be solely at the discretion of the cooperative entity and _____ for all payments of work thereunder. (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract).

(Check one) Yes _____ No X

Initials JS

CERTIFICATION:

I CERTIFY THAT I AM AUTHORIZED TO REPRESENT THE CONTRACTOR IN PREPARING AND PRESENTING THIS PROPOSAL. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING (INCLUDING BUT NOT LIMITED TO THE INFORMATION CONTAINED IN THE REQUIRED CONTRACT PROVISIONS REFERENCED ABOVE) IS TRUE AND CORRECT. EXECUTED ON 04/18/24 (DATE).

Dated in Missouri this 18th day of April 2024.

SIGNATURE OF BIDDER:

(If an Individual): _____ doing business as

(If a Partnership):

By: _____

Member of Firm _____

(If a Corporation):

By: [Signature] _____

Name Joseph D Blecha _____

Title President _____

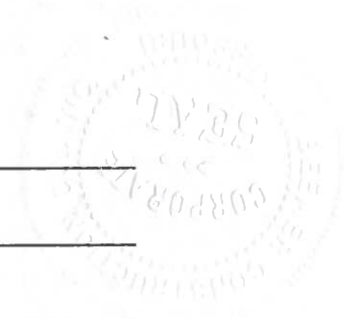
SEAL

Business Address of Bidder: Beemel Construction Co., Inc _____

606 SE Central Drive, Blue Springs, MO 64014

Phone: 816-229-2266 _____

Fax: 816-229-2571 _____



STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he/she desires.

1. Name of Bidder.
Beemer Construction Co., Inc
2. Permanent main office address.
606 SE Central Drive, Blue Springs, MO 64014
3. When organized.
09/04/1973
4. If a corporation or limited liability company, where incorporated.
State of Missouri
5. How many years have you been engaged in the contracting business under your present firm or trade name?
50 years
6. Contracts on hand: (schedule these, showing amount of each contract and appropriate anticipated dates of completion.)
See Attached
7. General character of work performed by your company.
Utility Contractor
8. Have you ever failed to complete or been accused of failing to complete any work awarded to you? If so, where and why?
No
9. Have you ever defaulted or been accused of defaulting on a contract? If so, where and why?
No
10. Have you been sued or sued an Owner within the past ten (10) years? If so, provide the case number and court, including county and state.
No
11. Have you been involved in arbitration in connection with a construction project within the past ten (10) years? If so, describe the project, nature of the arbitration and outcome.
No
12. List the more important projects recently completed by your company, stating the approximate cost of each, and the month and year completed.
See Attached
13. List your major equipment available for this contract.
See Attached
14. Experience in construction work similar in importance to this project.
See Attached

STATEMENT OF BIDDER'S QUALIFICATIONS - QUESTION # 6**BEEMER CONSTRUCTION CO., INC****OPEN CONTRACT SCHEDULE**

JOB #	PROJECT DESCRIPTION	CURRENT CONTRACT AMOUNT	ANTICIPATED DATES OF COMPLETION
2281	BPU 2021 T&M CONTRACT	\$ 1,695,874.03	DEC 2025
2304	TRANS REPAIR RENEWAL NO 4	\$ 1,650,000.00	APR 2024
2321	EMERGENCY WATER MAIN RPL ALONG 350	\$ 3,097,339.00	SEP 2024
307	RAYTOWN SOUTH HIGH SCHOOL	\$ 73,954.00	JUL 2024
1307	RAYTOWN SOUTH HIGH SCHOOL	\$ 215,763.00	JUL 2024
2307	RAYTOWN SOUTH HIGH SCHOOL	\$ 112,332.00	JUL 2024
311	UG PUBLIC FACILITIES #1 - PRIVATE	\$ 96,109.00	MAY 2024
1311	UG PUBLIC FACILITIES #1 - PRIVATE	\$ 798,845.33	MAY 2024
2311	UG PUBLIC FACILITIES #1 - PRIVATE	\$ 299,655.00	MAY 2024
314	UG PUBLIC FACILITIES #1 - PUBLIC	\$ 354,476.00	MAY 2024
1314	UG PUBLIC FACILITIES #1 - PUBLIC	\$ 47,543.00	MAY 2024
315	GI ALLIANCE ENDOSCOPY	\$ 11,746.00	JUN 2024
1315	GI ALLIANCE ENDOSCOPY	\$ 106,076.00	JUN 2024
2315	GI ALLIANCE ENDOSCOPY	\$ 150,120.00	JUN 2024
316	BLUE VALLEY	\$ 322,087.03	JUN 2024
1316	BLUE VALLEY	\$ 1,569,734.06	JUN 2024
320	PARK HILL SCHOOL DIST - ELEM #12	\$ 51,356.00	JUN 2024
1320	PARK HILL SCHOOL DIST - ELEM #12	\$ 359,722.00	JUN 2024
2320	PARK HILL SCHOOL DIST - ELEM #12	\$ 182,248.00	JUN 2024
322	MIDLAND APARTMENTS	\$ 68,792.00	MAY 2024
2322	MIDLAND APARTMENTS	\$ 119,323.00	MAY 2024
323	ANDRETTI IKG	\$ 21,535.00	DEC 2024
1323	ANDRETTI IKG	\$ 56,765.00	DEC 2024
2323	ANDRETTI IKG	\$ 102,230.00	DEC 2024

STATEMENT OF BIDDER'S QUALIFICATIONS - QUESTION # 12**BEEMER CONSTRUCTION CO., INC**

PROJECT DESCRIPTION	CONTRACT AMOUNT	MONTH & YEAR COMPLETED
36-Inch Water Main Extension and Related, NE Vivion Road and N Chouteau Kansas City, Missouri	\$ 4,539,963	OCT 2019
Winterset Sewer Replacement - Construction of approximately 122 LF of 8" diameter, 1,842 LF of 15" diameter, 1,281 LF of 18" diameter, and 41 LF of 24" diameter sanitary sewer, 13 precast manholes of various sizes and depths, and all associated appurtenances.	\$ 1,251,836	JUN 2020
Old 56 Hwy Transmission Main City of Olathe, Kansas	\$ 2,364,939	SEP 2020
South Terminal Discharge Main City of Lee's Summit, Missouri	\$ 1,527,703	NOV 2021
Hillsdale Water Treatment Plant Expansion	\$ 1,745,173	JUN 2021
Stonehaven Loch Lloyd - Storm Sewer/Underdrain, Sanitary Sewer, Water Main/Service	\$ 1,708,097	OCT 2022
Cargo Largo - Installation of site utilities for a large warehouse. Water main extention.	\$ 3,426,633	DEC 2023

STATEMENT OF BIDDER'S QUALIFICATIONS - QUESTION # 13	
BEEMER CONSTRUCTION CO., INC.	
EQUIPMENT LIST	
APRIL 1, 2024	
EXCAVATORS	MISC EQUIPMENT
KOMATSU PC200LC-8	MULTIQUIP GENERATOR
KOMATSU PC350	ALLIED BR2064 HAMMER
KOMATSU PC450	ALLIED BR2577 HAMMER
KOMATSU PC490	KENT KF9QT HAMMER
KOMATSU PC360	MULTIQUIP 185
JOHN DEERE 410K BACKH	DOOSAN LIGHT TOWER
VOLVO ECR145	B-1 TAPPING MACHINE
KOMATSU PC228	ALLIED BR999 HAMMER
KOMATSU PC228	RAMMER BR4099 HAMMER
VOLVO ECR145	RAMMER E68 HAMMER
KOMATSU PC55	BOMAG VIBR ROLLER
KOMATSU PC88	NISSAN FORKLIFT
KOMATSU PC78	SCHONSTEDT MAG LOCAT
VOLVO ECR145	ALLIED BR555
JOHN DEERE 345G	NPK GH-15 HAMMER
	ALLIED RAMMER 4099
LOADERS	GARDNER DENV 85
KOMATSU WA250	MULTIQUIP 180
KOMATSU WA320	AMERICAN AUGER
KOMATSU WA200	6" GORMAN RUPP PUMP
BOBCAT S650	GENERATOR SET
KOMATSU WA150	SULLQIR 100DPQ
BOBCAT T590	MOBILE OFFICE
BOBCAT S-185	TAPPING MACHINE
KOMATSU WA200	4" FLYGT PUMP
CATERPILLAR 963D	FINN STRAW BLOWER
CATERPILLAR 963D	NPK E225 HAMMER
CATERPILLAR 963K	DUETZ 100CFM
TAKEUCHI TL12R2-CR	COMPACTION WHEEL
TAKEUCHI TL12R2-CR	4" FLYGT PUMP
	4" GORMAN RUPP PUMP
	HOTSY PRESSURE WASH
	50' X 10' JOB STORAGE
	TECH SPACE TRAILER
	STONE MIZER BOX
	STONE MIZER BOX
	STONE MIZER BOX
	2 MAGAZINES #40
	HOMEMADE CORE DRILL
	3" FLYGT PUMP
	G90N RAMMER HAMMER
	OKADA HAMMER
	ALLIED HAMMER S27
	LIGHT PLANT - ING RAND

STATEMENT OF BIDDER'S QUALIFICATIONS - QUESTION # 14
BEEMER CONSTRUCTION CO., INC
Beemer Construction has constructed numerous projects of varying size and complexity in our 50 years of business. Contracts with time constraints to satisfy Owner's needs have been done many times, including work which required shifts working around the clock or seven days per week.

STATEMENT OF BIDDER'S QUALIFICATIONS - QUESTION # 15

BEEMER CONSTRUCTION CO., INC

David Beemer - CEO/Estimator/Project Manager

David has worked in the Sanitary Sewer, Storm Sewer, and Water Line construction industry for 38 years. He has managed numerous sanitary sewer and water main repair, replacement, and extension projects. As well as many additional site utility projects. Largest project managed was \$18,632,739.

Joe Blecha, P.E. - President/Estimator/Project Manager

Joe has worked in the Sanitary Sewer, Storm Sewer, and Water Line construction industry for 29 years. He has managed numerous sanitary sewer and water main repair, replacement, and extension projects. As well as many additional site utility projects. Largest project managed was \$13,190,279.

Largest sanitary sewer main extension \$6,725,674.

15. Background and experience of the principal members of your organization, including the officers.

See Attached

16. Credit available: \$ 800,000.00

17. Give bank reference.

BMO Joe Lally 816-729-9513

18. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the City of Edgerton, Kansas?

Yes

19. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Edgerton, Kansas in verification of the recitals comprising this Statement of Bidder's Qualifications.

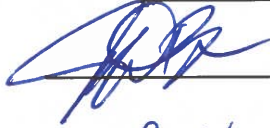
Dated at Missouri this 18th day of April, 2024

Name of Bidder:

Beemer Construction Co., Inc

Joseph D Blecha, President

By:



Title:

President

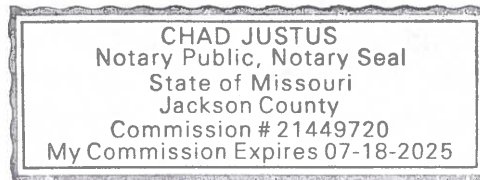
State of Missouri) SS

County of Jackson)

Joseph D Blecha being duly sworn deposes and says that he/she is President of Beemer Construction Co., Inc. (Name of Organization) and that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this 18th day of April, 2024.


Notary Public



My Commission expires 07/18/25, 2025.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal, hereinafter referred to as the "Contractor," and _____ a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, hereinafter referred to as the "Surety," are held and firmly bound unto the City of Edgerton, Kansas, hereinafter referred to as "City," in the penal sum of \$_____, lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

WHEREAS, said Contractor has entered into a written Contract with the City dated _____, 20__, (the "Contract") for furnishing in a good, substantial and workmanlike manner all labor, materials, tools, equipment, appliances, transportation, superintendence and other facilities and accessories for the construction of certain improvements as designated, defined and described in the Contract and the award of Contract relating to the DWYER SANITARY SEWER IMPROVEMENTS in the City of Edgerton, Kansas, all in accordance with the Project Manual, including the detailed Plans incorporated therein, on file in the office of the City Engineer for the City of Edgerton, Kansas; a copy of said Contract is or may be attached hereto and is incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of its terms and conditions, both express and implied.

NOW, THEREFORE, if the Contractor, or the subcontractor or subcontractors of said Contractor, shall and will, in all particulars, well, truly and faithfully observe, perform, abide by and carry out each and every covenant, condition, obligation and part of the Contract and the conditions, specifications, Plans and other Contract Documents thereto attached or by reference made a part thereof, according to the true intent and meaning in each case; and if the Contractor shall protect and save harmless the City from all loss, damage and expense to the construction of said Work, or by or in consequence of any negligence, carelessness or misconduct in guarding and protecting the same, or from any improper or defective materials used in its construction, or any act or omission of the Contractor or its agents, servants, or employees; and if the Contractor shall protect and save harmless the City from all suits and claims of infringement or alleged infringement of patent rights of processes; and if the Contractor, for and during a period of two years from and immediately following the completion of said Contract and the acceptance thereof by the City, shall pay or cause to be paid to the City, all loss, damage and expense which may occur to the City by reason of defective materials used, or by reason of defective workmanship done in the furnishing of materials for and the construction of, the said Work; and if the Contractor shall refill all excavation in such manner that it shall be, and shall remain for the said period of two years, flush

with the surfaces of streets and adjacent property, and shall keep in repair for said period of two years all pavement, walks, curbs and gutters over and adjacent to said Work; and if the Contractor shall save and hold harmless the City from all loss, damage and expense occasioned by any failure whatsoever of the Contractor, then this obligation shall be and become null and void; otherwise it shall be and remain in full force and effect;

PROVIDED, FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed thereunder, or the specifications, Plans and other Contract Documents accompanying the same, shall in any way affect its obligations on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the specifications, Plans and other Contract Documents;

PROVIDED, FURTHER, that whenever the Contractor is declared by City to be in default under the Contract, the City having performed its obligations thereunder, the Surety may promptly remedy the default or promptly notify the City in writing as to which of the following actions it shall take, such actions to be commenced within fourteen (14) days from the date of default notice from the City:

1. Commence completing the Contract in accordance with its terms and conditions, either itself, or through others acting on its behalf, during which time the City shall pay the Surety only those sums which would have been due and payable to the Contractor pursuant to the Contract had the Contractor not been in default; or
2. With the prior written consent of the City, commence the process of obtaining a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the City and the Surety jointly of the lowest and best responsive, responsible bidder, arrange for a contract between such bidder and the City. The City shall pay the completing contractor from its own funds only those sums which would have been due and payable to the Contractor pursuant to the Contract had such Contractor not been in default. To the extent that the City is obligated to pay the completing contractor sums, which would not have been due and payable to the Contractor pursuant to the Contract, the Surety shall pay to the City such sums in a timely manner so that the City may utilize such sums in making timely payment to the completing contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

In addition to the duties set forth above, the Surety shall pay the City costs and expenses resulting from the Contractor's default, but in no event shall the Surety be required to pay any sum in excess of the Penal Sum set forth herein.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at _____ on this, the _____ day of _____, 20__.

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

(Accompany this bond with Attorney-in-Fact's authority form from the surety company certified to include the date of the bond.)

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal, hereinafter referred to as the "Contractor," and _____ a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Kansas, in the penal sum of \$_____ lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has entered into a written Contract with the City of Edgerton, Kansas on the _____, (the "Contract") for furnishing in a good, substantial and workmanlike manner all labor, materials, tools, equipment, appliances, transportation, superintendence and other facilities and accessories for the construction of certain improvements as designated, defined and described in the Contract relating to the DWYER SANITARY SEWER IMPROVEMENTS in the City of Edgerton, Kansas, all in accordance with the Project Manual and the detailed Plans incorporated therein, on file in the office of the City Engineer for the City of Edgerton, Kansas and incorporated herein by reference.

NOW, THEREFORE, if the Contractor or its subcontractor or subcontractors shall pay all indebtedness incurred for supplies, materials, equipment, transportation or labor furnished, used or consumed in connection with or in or about the construction or making of the public improvements described in the above-mentioned Contract, including but not limited to gasoline, lubricating oils, fuel oils, greases and similar items used or consumed directly in furtherance of such public improvement, and shall pay all claims which might be the basis of a mechanic's lien against the property to be improved under the Contract, this obligation shall be void; otherwise, it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract. The Surety further agrees that any person to whom there is due any sum for labor furnished, transportation, materials, equipment or supplies used or consumed in connection with or in or about the construction of said improvements, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after six (6) months from the completion of said public improvement.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand, and the Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do, at _____ on this _____ day of _____, 20__.

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

(Accompany this bond with Attorney-in-Fact's authority form from the surety company certified to include the date of the bond.)

(To be filed by the Contractor with the Clerk of the District Court; filing fee to be paid by the Contractor and proof of filing to be provided to Owner.)

EDGERTON, KANSAS

DWYER SANITARY SEWER IMPROVEMENTS

CONTRACT

This agreement for the construction of the DWYER SANITARY SEWER IMPROVEMENTS (hereinafter referred to as the "Contract"), made and entered into this ____ day of _____, 20__ by and between the City of Edgerton, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas (hereinafter referred to as the "Owner") and _____ of _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, (hereinafter referred to as the "Contractor").

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, Contract Documents, including Project Specifications and Plans, for the Work herein described and has approved and adopted these Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed proposals for furnishing materials, labor and equipment for, and in connection with, the construction of DWYER SANITARY SEWER IMPROVEMENTS, in the City of Edgerton, Kansas, in accordance with the terms of this Contract; and

WHEREAS, the Owner in the manner prescribed by law has publicly opened, examined and canvassed the proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest, responsive, and responsible bidder for constructing said Work, and duly awarded to the said Contractor this Contract therefore for the sum or sums named in the proposal attached to, and made a part of this Contract;

NOW, THEREFORE in consideration of the compensation to be paid to the Contractor, and of the mutual covenants, promises and agreements set forth herein, the parties hereto agree, the Owner for itself and its successors, and the Contractor for itself, its successors and assigns, or executors and administrators, as follows:

ARTICLE I. That the Contractor shall furnish at its own cost and expense all labor, tools, equipment and materials necessary to complete the Work and shall construct and complete in good first class manner the Work as designated, described and required by the Project Manual for the DWYER SANITARY SEWER IMPROVEMENTS. All Work to be done under this Contract shall be under the direct supervision, and to the entire satisfaction of the Owner, and in accordance with the laws of the State of Kansas.

ARTICLE II. That the following documents, which may be attached hereto, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein: the Project Manual, consisting of the Bidding Documents (which shall include the advertisement for bid, instructions to bidders, proposal (including the bid schedule proposal), statement of bidder's qualifications and affidavit) and Contract Documents (which shall include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner), and the Plans.

ARTICLE III. That the Owner shall pay to the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of _____, in cash or its equivalent, for all Work covered by and included in the Contract, in the manner provided in the General Conditions hereto attached.

ARTICLE IV. That the Contractor will commence work on a date to be specified in a written order form from the Owner, and will complete all Work covered by this Contract as set forth in the proposal.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed and made effective the day and year first above written and the Contractor has executed four (4) counterparts of this Contract in the prescribed form and manner.

OWNER
CITY OF EDGERTON, KANSAS

Attest:

By Donald Roberts, Mayor

Alexandria Clower, City Clerk

(SEAL)

Contract Approved as to Form:

Lee Hendricks, City Attorney

CONTRACTOR

Bonds Approved as to Form:

By _____

Lee Hendricks, City Attorney

(SEAL)

ADDENDUM A: INSURANCE REQUIREMENTS

Contractor shall procure and maintain at its sole cost and expense, the following insurance coverage with minimum acceptable limits as follows:

**(1) COMMERCIAL GENERAL
LIABILITY**

\$1,000,000 Per Occurrence
\$2,000,000 Aggregate

Coverage shall be written on ISO occurrence form CG 0001 or equivalent, and shall cover liability arising from premises, operations, independent contractors, products- completed operations, and personal and advertising injury, and include explosion, collapse, and underground coverage. Such coverage shall also contain a "per project" aggregate endorsement. It shall also name City, its officers, employees, Mayor, and City Council Members, and agents as additional insureds on a primary basis, not contributing with any insurance maintained by the additional insured, using ISO additional insured endorsements CG 2010 and CG 2037, or their equivalent, copies of which are required to be attached to the certificate of insurance. Contractor shall maintain this coverage for itself and for all additional insureds for the duration of the project and maintain Completed Operations for coverage for itself and for each additional insured for at least 3 years after completion of the Work. Pollution Liability, if applicable, must also be included or separate policy provided reflecting same limits and terms as above.

(2) AUTOMOBILE LIABILITY
\$1,000,000 Per Accident

Coverage shall apply to all owned, hired, and non-owned automobiles used in the completion of the work set forth in the contract. It shall also name City, its officers, employees, Mayor, and City Council Members, and agents as additional insureds.

**(3) WORKERS COMPENSATION - STATUTORY & EMPLOYERS
LIABILITY**

\$500,000 Each Accident
\$500,000 Policy Limit - Disease
\$500,000 Each Employee – Disease

Coverage shall apply to all workers and employees related to the work, including sole proprietors, partners, members of an LLC, and officers of a

corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage.

(4) UMBRELLA / EXCESS LIABILITY

\$4,000,000 Per Occurrence

\$4,000,000 Aggregate

A combined single limit of excess liability to apply over and above General Liability, Pollution Liability (if applicable), Auto Liability, and Employers Liability, with terms and conditions consistent with those of the underlying coverage, not any more restrictive. It shall also name City, its officers, employees, Mayor, and City Council Members, and agents as additional insureds on a primary basis, not contributing with any insurance maintained by the additional insured.

(5) BUILDERS RISK / INSTALLATION FLOATER

This coverage, is required for building projects in an amount equal to the Replacement Cost of the work or the Contract Amount, whichever is greater. Street and drainage projects will be insured for an amount adequate to provide for removal, repair, or replacement of damaged, unacceptable, or otherwise destroyed work, including labor costs, completed as part of the Contract. It shall include the interest of all entities who are deemed to have an insurable interest in the work and these shall be listed as an insured or additional insured. Coverage shall be "all-risk" and include insurance for loss and damage to the work itself, and materials and equipment in transit. Property of the City in the care, custody and control of Contractor shall also be included in such policy, if applicable. Coverage shall allow for partial utilization of the work by City and shall include testing and startup. Coverage shall be maintained in effect until final payment is made unless otherwise agreed to in writing by the City. Contractor shall be responsible for any deductible or self-insured retention.

(6) WAIVER OF SUBROGATION

Contractor, and in addition, its insurers, through policy endorsement, and to the fullest extent permitted by law, waives all rights against City, its officers, employees, Mayor, and City Council Members, and agents for recovery of damages to the extent that these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per the requirements stated above.

(7) CERTIFICATE OF INSURANCE/MISCELLANEOUS PROVISIONS

Prior to commencing the work, Contractor shall furnish an acceptable certificate(s) of insurance, identifying insurers that write Contractor's coverages, with minimum Best's Guide Rating of A- and Class VIII or better, and authorized to do business in the state of Kansas. Certificate will evidence the required coverage and endorsements stated above, with copies of the additional insured endorsements attached. Should any of the above described policies be cancelled, non-renewed, or be materially altered, which would have an adverse effect on the coverage required by the above terms of this contract, the insurance company(ies) shall notify the City in writing at least 30 days prior to such event. This cancellation provision shall be indicated on the certificate of insurance. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Contractor with reasonable promptness according to the Contractor's information and belief. City also reserves the right to obtain copies of Contractor's policies to validate coverage in effect if certificates are ambiguous. Annually, Contractor agrees to provide City with a new and replacement formal certificate of insurance. Not less than five (5) days prior to the expiration date, Contractor will provide City with renewal certificate and new additional insured endorsements, naming City, its officers, employees, Mayor and City Council Members, and agents as additional insured. If any portion of the work is to be subcontracted, Contractor shall require that the subcontractor(s) shall comply with the same indemnification agreement terms and be required to provide and maintain all insurance coverages and provisions as stated above, with a formal certificate of insurance provided to City evidencing same. Acceptance of any certificate that does not comply with the above requirements shall not operate as a waiver of Contractor's obligations hereunder. And the fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by City shall not be limited by the amount of the required insurance coverage. Contractor shall notify City in writing as soon as possible after any bodily injury or property damage occurrence that could potentially lead to any lawsuit or after it receives notice or knowledge of any demand, claim, cause of action, lawsuit, or action arising out of the work performed under this contract.

GENERAL CONDITIONS

GC-1. SCOPE: The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.

GC-2. CONTRACT DOCUMENTS: It is expressly understood and agreed that the bound volume of Contract Documents, as defined in GC-3, and other drawings and data which may be furnished by the Contractor and approved by the Owner, and such other additional drawings which may be furnished by the Consulting Engineer as are necessary to make clear, and to define in greater detail, the intent of the Contract Documents, are each and all included in this Contract and the Work shall be done fully in accordance therewith.

GC-3. DEFINITIONS: Whenever any word or expression, defined in this Paragraph GC-3, or pronoun used in its stead, occurs in the Contract Documents or the Bidding Documents, it shall have and is mutually understood to have the meaning herein given.

"Bidding Documents" shall mean and include the advertisement for bid, instructions to bidders, proposal (including the bid schedule proposal) and statement of bidder's qualifications.

"Calendar Days" shall be defined as each day falling within a given month, including Saturday, Sunday or Holidays.

"City Engineer" or "Engineer" shall mean the City Engineer of the City of Edgerton, Kansas.

"Consulting Engineer" shall mean the engineer who has been employed by the Owner to provide professional services with regard to this Work or his duly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

"Contract" or "Contract Documents" may be used interchangeably and shall mean and include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner.

"Contractor" shall mean the party entering into contract for the performance of the Work covered by this Contract and his duly authorized agents or legal representatives.

"Date of Signing the Contract" or words equivalent thereto, shall mean the date upon which the Contract, executed by the Contractor, is signed by the Owner.

"Observer" shall mean the Consulting Engineer or technical observer or observers duly authorized by the Consulting Engineer or the Owner, limited to the particular duties entrusted to him/her or them.

"Owner" or "City" shall mean the City Council acting as Governing Body of the City of Edgerton, Kansas.

"Plans" or "The Plans" shall mean and include all drawings which may have been prepared by the Owner as a basis for proposals, all drawings submitted by the successful bidder with its proposal and by the Contractor to the Owner, if and when approved by the City Engineer, and all drawings submitted by the Owner to the Contractor during the progress of the Work, as provided for herein.

"Project Manual" shall mean the Bidding Documents and the Contract Documents.

"Project Specifications" shall mean the general conditions, special conditions, and technical specifications.

"Resident representative" shall mean the qualified technical representative designated by the Consulting Engineer, City Engineer or Owner to observe the Work on a continuous basis and to be present at the site of the Work when required. This term may be synonymous with "Observer".

"Standard Specifications" for this Work shall be the Kansas City Metropolitan Chapter American Public Works Association (APWA) Standard Specifications and Design Criteria latest revision. If any item of work or portion thereof is not covered by the APWA specifications, then the latest edition of the KDOT State Road and Bridge Construction specifications will apply. If an item in the Standard Specifications calls for a bid, and a bid item is not provided for in the Contractor's proposal, such items shall be considered a subsidiary obligation of the various bid items for the Work. When reference is made to a Standard Specification, such specification shall govern as though it were repeated verbatim herein. If any conflict should arise between the Standard Specifications and the Project Specifications, the Project Specifications shall govern.

"Work" shall mean the work to be done and the equipment, supplies, and materials to be furnished under this Contract, unless some other meaning is indicated by the context.

"Working Day" shall be any day the Contractor is not restricted from prosecuting the "Controlling Item of Work" because of KDOT, LPAs or weather as defined in the 2015 KDOT Standard Specifications.

Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used it shall be understood that the order, direction, requirement, permission, or allowance of the Owner and City Engineer is intended.

Similarly the words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect and import, unless otherwise particularly specified herein shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner and City Engineer.

Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties executing the Contract.

GC-4. VERBAL STATEMENTS NOT BINDING: It is understood and agreed that the written terms and provisions of this Contract shall supersede all verbal statements of any and every official and/or other representative of the Owner, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Contract.

GC-5. TITLES AND SUBHEADINGS: The titles or subheadings used in this Contract are understood to be for convenience of reference only, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation thereof.

GC-6. COPIES OF CONTRACT: Sufficient copies of the Contract Documents shall be prepared, each containing the Contractor's proposal as submitted, the bond properly executed, and the Contract signed by both parties thereto. These executed counterparts of the Contract Documents are to be filed with the Owner, Contractor, Consulting Engineer, and the Surety Company executing the bond. The original proposal submitted by the Contractor will be retained by the Owner, in addition to the copy thereof in the Owner's copy of the executed documents.

GC-7. SCOPE, NATURE AND INTENT OF SPECIFICATIONS AND PLANS: The Plans, which are incorporated by reference into the Contract Documents, are intended to supplement, but not necessarily duplicate, the other documents which comprise the Contract Documents. Should anything be omitted from the Plans or the other documents comprising the Contract Documents which is necessary to a clear understanding of the Work, or should it appear that various provisions are in conflict, the Contractor shall secure written instructions from the City Engineer before

proceeding with the construction affected by such omissions or discrepancies. It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning and intent of the Contract Documents.

The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening bids for the work represented thereby, shall not extend beyond the construction in conformity with the cheaper of the said conflicting requirements. Any increase in cost of work required to be done in excess of the cheaper of the conflicting requirements will be paid for as extra work as provided for herein.

GC-8. SILENCE OF CONTRACT DOCUMENTS: The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of these Contract Documents shall be made on the basis above stated.

GC-9. FIGURED DIMENSIONS TO GOVERN: Dimensions and elevations shown on the Plans shall be accurately followed, even though they differ from scaled measurements. No work shown on the Plans, if the dimensions are not indicated, shall be executed until the required dimensions have been obtained from the City Engineer.

GC-10. CONTRACTOR TO CHECK PLANS AND SCHEDULES: The Contractor shall check all dimensions, elevations and quantities shown on the Plans and schedules given thereto by the Consulting Engineer, and shall notify the City Engineer of any discrepancy between the Plans and the conditions on the ground, or any error or omission in Plans, or in the layout as given by stakes, points or instructions, which may be discovered in the course of the Work. The Contractor will not be allowed to take advantage of any error or omission in the Contract Documents, including the Plans. Full instructions will be furnished by the City Engineer should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

GC-11. DRAWINGS TO BE FURNISHED BY CONTRACTOR: The Contractor shall furnish all shop, fabrication, assembly, foundation and other drawings required by the Project Specifications, including but not limited to, drawings of equipment and devices offered by the Contractor for approval of the Consulting Engineer, in sufficient detail to adequately show the construction and operation thereof, drawings showing essential details of any change in design of construction proposed for consideration of the Owner, by the Contractor in lieu of the design or arrangement required by the Contract, or any item of extra work thereunder, and all required wiring and piping layouts.

Not less than two (2) preliminary copies of each such drawing shall be submitted to the Consulting Engineer for his review and approval, together with the same number of copies of each drawing required by the Consulting Engineer to be revised. On final

approval, the Consulting Engineer shall be furnished with a total of not less than five (5) copies, and more when required, of each drawing as finally approved, such number to include any copies of preliminary or revised drawings which are approved as submitted. After due approval in writing by the Consulting Engineer, all such drawings shall become a part of the Contract Documents and the work or equipment shown by such drawings shall be in conformity with said drawings unless otherwise required by the Owner.

No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its subcontractor, be purchased until the drawing or drawings thereto have been approved as stipulated, except at the Contractor's own risk and responsibility.

The Consulting Engineer's check and approval of drawings submitted by the Contractor will cover only general conformity to the Contract Documents and will not constitute a blanket approval of all dimensions, quantities, and details of the material or equipment shown, nor shall such approval relieve the Contractor of its responsibility for errors contained in such drawings.

GC-12. LINES AND GRADES: All work performed under this Contract shall be done to the lines, grades, and elevations shown on the Plans. The Contractor shall keep the City Engineer informed, a reasonable time in advance of the times and places at which it wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the City Engineer, and delay to the Contractor.

GC-13. WORK DONE WITHOUT LINES OR GRADES: Any work done without being properly located and established by base lines, offset stakes, bench marks or other basic reference points located, established, or checked by the City Engineer, may be ordered removed and replaced at the Contractor's cost and expense.

GC-14. CONTRACTOR FURNISHED STAKING: The Contractor shall be responsible for and provide all staking and furnish stakes, labor, and other materials as required for the proper staking out of the work; and in making measurements and surveys; and in establishing temporary or permanent reference marks in connection with said work. The stakes furnished for the staking of the work shall be of such type, size, and quality as to be acceptable to the City Engineer.

All work performed under this contract shall be done to the lines, grade, and elevations shown on the plans.

Any work done without being properly located and established by base lines, off-set stakes, bench marks, or other basic reference points may be ordered removed and

replaced at the Contractor's expense.

The Contractor shall be responsible for all monuments, property corners, bench marks, reference points and stakes, and in case of willful or careless destruction of same, will be charged with the resulting expense of replacement, and he/she shall be responsible for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance. In the event that the loss of stakes causes a delay in the work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments, property corners, or benchmarks that have been moved or destroyed, the Contractor shall furnish at its own expense such materials, surveyors, and assistance as are necessary for the proper repairs of monuments, property corners, or bench marks that have been moved or destroyed.

GC-15. LEGAL ADDRESS OF CONTRACTOR: Both the business address of the Contractor given in the bid of proposal upon which this Contract is founded, and the Contractor's office in the vicinity of the Work, are hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivery at either of the above named addresses, or the depositing in any mail box regularly maintained by the Post Office, of any notice, letter, or other communication so addressed to the Contractor, shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing.

Such addresses may be changed at any time by an instrument in writing, executed by the Contractor and presented and delivered to the City Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or communication upon the Contractor personally.

GC-16. CONTRACTOR'S OFFICE AT SITE OF WORK: During the performance of this Contract, the Contractor may be required to maintain a suitable office at or near the site of the Work which shall be the headquarters of a representative authorized to receive drawings, instructions or other communications or articles from the Owner or the Owner's agents, and any such communication given to said representative, or delivered at the Contractor's office at the site of the Work in the Contractor's absence, shall be deemed to have been given to the Contractor.

GC-17. RESPONSIBILITY OF CONTRACTOR: The Contractor shall furnish all transportation, tools, equipment, machinery and plant, and all suitable appliances, requisite for the execution of this Contract and shall be solely answerable for the same and for the safe, proper and lawful construction, maintenance and use thereof. The Contractor shall cover and protect its work from damage and all injury to the same, before the completion and acceptance of the Work under this Contract. The Contractor shall be solely answerable for all damage to the Owner or the property of the Owner, to other contractors or other employees of the Owner, to the neighboring premises, or to

any private or personal property, due to improper, illegal, or negligent conduct of the Contractor or its subcontractors, employees, or agents in and about said Work, or in the execution of the Work covered by this Contract, or any extra work undertaken as herein provided. The Contractor shall be responsible to the Owner for any defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery or plant.

GC-18. PATENTS: It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the Work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its own cost and expense, defend any and all suits or proceedings that may be instituted at any time against the Owner for infringement or alleged infringement of any such patents involved in the Work, and in case of an award of damages, Contractor shall pay such award; final payment to the Contractor by the Owner will not be made while any such suit or claim remains unsettled. The Contractor, however, shall not be liable for the payment of any damages or other cost in connection therewith, for the infringement or alleged infringement of any patented process required by the Owner in the design of the Work to be done under this Contract.

GC-19. INDEPENDENT CONTRACTOR: The right of general administration of the Owner shall not make the Contractor an agent of the Owner, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms and corporations, and the damages, if any, to them or their property, the Contractor herein is an independent contractor in respect to the Work.

GC-20. RELATIONS WITH OTHER CONTRACTORS: The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner and workers who may be employed by the Owner, on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage that may be sustained by other contractors or employees of the Owner, because of any fault or negligence on its part, and shall at its own expense, repair or pay for such injury or damage. Any difference or conflict which may arise between the Contractor and other contractors, or between the Contractor and the workers of the Owner, in regard to their work, shall be adjusted and determined by the City Engineer. If the Work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the City Engineer shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When territory of one contract is the necessary or convenient means of access for the transportation or movement of men, materials, or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by the City Engineer to the contractor so desiring, to the extent which may be reasonably necessary.

GC-21. DEFENSE OF SUITS: In case an action at law or suit in equity is brought against the Owner, the Consulting Engineer, or any of their officers or agents for, or on account of the failure, omission or neglect of the Contractor to do and perform any of the covenants, acts, matters, or things by this Contract undertaken to be done or performed, or for any injury or damage caused by the negligence or alleged negligence of the Contractor or its subcontractors or their employees or agents, the Contractor shall indemnify and save harmless the Owner, the Consulting Engineer, and their officers and agents, of and from all losses, costs, damages, expenses, judgments, or decrees whatever arising out of such actions or suits as may be brought as aforesaid.

GC-22. METHOD OF OPERATION: The Contractor shall give to the City Engineer full information in advance, as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Contractor's plant or equipment or any of its methods of executing the Work appear to the City Engineer to be inadequate, the City Engineer may order the Contractor to increase or improve its facilities or methods and the Contractor shall promptly comply with such orders but neither compliance with such orders nor failure of the City Engineer or Owner to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of work, and the rate of progress required by the Contract. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment and methods.

The approval by the City Engineer of a plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such approval shall not be considered as an assumption by the Owner, City Engineer, or an officer, agent or employee thereof, of any risk or liability, and the Contractor shall have no claim under this Contract on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered, and shall mean, that the City Engineer has no objection to the Contractor's use or adoption, at the Contractor's own risk and responsibility, of the plan or method so proposed by the Contractor.

GC-23. SUGGESTIONS TO CONTRACTOR ADOPTED AT ITS OWN RISK: Any plan or method of work suggested by the City Engineer, or other representative of the Owner,

to the Contractor, but not specified or required, if adopted or followed by the Contractor, in whole or in part, shall be used at the risk and responsibility of the Contractor, and the City Engineer and the Owner will assume no responsibility therefore.

GC-24. AUTHORITY AND DUTY OF THE CITY ENGINEER: It is mutually agreed by and between the parties to this Contract, that the City Engineer shall act as the representative of the Owner and shall observe, as required, the Work included herein. In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the City Engineer shall in good faith and to the best of his ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that he/she shall determine, where applicable, questions in relation to said Work and the construction thereof; that he/she shall, where applicable, decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that his decisions and findings shall be the conditions precedent to the right of the parties hereto to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract; provided, however, that should the City Engineer render any decision or give any direction which, in the opinion of either party hereto is not in accordance with the meaning and intent of this Contract, either party may file with the City Engineer within thirty (30) days, its written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised to dispute resolution as herein provided.

The City Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto and he/she will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents. The City Engineer will not be responsible for the acts or omissions of Contractor or any subcontractor or any of their agents or employees, or any other person at the site or otherwise performing any of the Work.

GC-25. PROJECT REPRESENTATIVE AND OBSERVATION: It is agreed by the Contractor that the Owner shall be and is hereby authorized to appoint or employ such Resident representatives or Observers as the Owner may deem proper, to observe the materials furnished and the Work performed under this Contract, and to see that said materials are furnished, and said Work performed, in accordance with the Contract Documents. The Contractor shall furnish all reasonable aid and assistance required by the City Engineer or by the Resident representatives for the proper observation and examination of the Work and all parts thereof.

The Contractor shall comply with the directions and instructions of the City Engineer, or a Resident representative or Observer so appointed, when the same are consistent with the obligations of this Contract and the Plans and Specifications thereof. However,

should the Contractor object to any order given by any Resident representative or Observer, the Contractor may make written appeal to the City Engineer for his decision.

Resident representatives, Observers, and other properly authorized representatives of the Owner or Consulting Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the Owner so decides, to terminate the Contract.

Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Contract Documents or modifications thereof as herein provided, and work not so constructed shall be removed and made good by the Contractor at its own expense, and free of all expense to the Owner, whenever so ordered by the City Engineer.

GC-26. NO WAIVER OF RIGHTS: Neither the observation by the Owner or the Owner's officials, employees, or agents, nor any order by the Owner for payment of money, nor a payment for, or acceptance of, the whole or any part of the Work by the Owner, nor any extension of time, nor any possession taken by the Owner or its employees or agents, shall operate as a waiver of any provision of this Contract, or of a power herein reserved to the Owner, or a right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of another or subsequent breach.

GC-27. SUPERINTENDENT OF WORK: The Contractor shall provide and maintain, continually on the site of Work during its progress, adequate and competent superintendents of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative.

The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of subcontractors on portions of the Work shall not relieve the Contractor of its obligation to have a competent superintendent on the Work at all times.

GC-28. ORDERS TO CONTRACTOR'S AGENT: Whenever the Contractor is not present on any part of the Work where it may be desired to give directions, orders may be given by the City Engineer or his representative, and shall be received and obeyed by the superintendent or foreman who may have charge of the particular part of the Work in reference to which such orders are given.

GC-29. PROTECTION OF PROPERTY AND PUBLIC LIABILITY: The Contractor shall assume full responsibility for protection of all public and private property, structures,

sewers and utilities, both above and below ground, along, beneath, above, across or near the site or sites of the Work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property through its negligence or that of its employees.

The Contractor shall indemnify, defend, and save harmless the Owner and the Consulting Engineer against all damages or alleged damages to such property, structures and utilities, together with all claims for damages for personal injury, including accidental death, arising out of its operations in connection with this Contract. All property so damaged shall be repaired or replaced to a condition equal to its condition immediately prior to the time of damage, and to the satisfaction of the Owner.

The Contractor shall give reasonable notice to the owner or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such owner or owners relative to the removal and repairs or protection of such property or utilities.

All permits and licenses required in the prosecution of any and all parts of the Work shall be obtained and paid for by the Contractor.

The Contractor shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits and other facilities, belonging to the owners of the utility involved and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages, including but not limited to, damages due to delays in utility relocation, or extra pay on account of the postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not.

Any claim made against the Contractor, allegedly relating to the Work herein, shall be paid or submitted to Contractor's insurance carrier within ten (10) days of the Contractor receiving notice of said claim.

GC-30. EASEMENTS AND RIGHT-OF-WAY: Permanent and Temporary (Construction) easements will be provided by the Owner as shown on the Plans. The Contractor shall confine its operations to the easements provided and shall carefully note where buildings, structures or other obstructions will limit its working space. In the event that easements are not available or if they have not been secured or if entry to property is denied by court order, injunction, litigation or for any other reason, the Contractor shall cease operations in such area and confine its work to other areas approved by the Owner. In the event of any delay arising from delays in securing easements, the

Contractor shall have no claims against the Owner for damages arising from such delay except for extension of time as provided in paragraph GC-48.

GC-31. INSURANCE: Refer to Addendum A, Insurance Requirements, as an addendum to this contract.

GC-32. MODIFICATIONS AND ALTERATIONS: In executing the Contract, the Contractor agrees that the Owner shall have the right to make such modifications, changes, and alterations as the Owner may see fit, in the line, grade, form, arrangement, dimensions, extent or plan of the Work agreed to be done, or any part thereof, or in the materials to be used therein, either before or after the beginning of the construction thereof, without affecting the validity of the Contract and the performance bond thereunder.

Where such modifications, changes, and/or alterations reduce the quantity of work to be done, they shall not constitute a basis for a claim for damages or for anticipated profits on the work involved in such reduction. Where the amount of work required by the modifications, changes, and/or alterations increase the quantity of work to be performed, and is within the scope of the Specifications under a fair interpretation thereof, such increase shall be paid for, according to the quantity of work actually done, at the unit price or prices therefore where such unit prices are included in the Contract, otherwise such additional work shall be paid for as hereinafter provided for Extra Work.

In case the Owner shall make any modifications, changes, or alterations which would replace or otherwise make useless any work already done under the terms of the Contract, the Owner shall reimburse the Contractor for any material used or labor performed in connection therewith, and for any actual loss occasioned thereby due to actual expenses incurred in preparation for the Work as originally planned, as determined by the City Engineer.

All orders for modifications, changes, or alterations in the Work as herein provided shall be in writing, either by the City Engineer under authority of the Owner or by the Owner direct.

GC-33. EXTRA WORK: The term "extra work," as used in this Contract shall be understood to mean and to include all work that may be required by the City Engineer or Owner to be performed by the Contractor to accomplish any change or alteration in, or addition to, the Work shown by the Plans, or required or reasonably implied by the Project Specifications, which is not covered by the proposal and not otherwise provided under "Modifications and Alterations."

It is agreed that the Contractor shall perform all extra work under the direction of the City Engineer, when and as so ordered in writing by the City Engineer or Owner, and it

is further agreed that the compensation to be paid the Contractor for performing extra work shall be determined by one or more of the following methods:

Method "A" by agreed unit prices, or

Method "B" by agreed lump sum; or

Method "C" If neither Method "A" nor "B" be agreed upon before the extra work is started, then the Contractor shall be paid the actual field cost of the work plus fifteen percent (15%).

Where extra work is performed under Method "C", the term "actual field cost" of such extra work is hereby defined to be and shall include (a) the cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed or used in the performance of the said extra work; (b) any transportation charges necessarily incurred in connection with any equipment authorized by the City Engineer for use on said work and similar operating expenses; (c) all incidental expenses incurred as a direct result of such extra work, including payroll taxes and ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract. The City Engineer may direct the form in which accounts of the actual field cost shall be kept and may also specify in writing, before the extra work commences, the method of doing the extra work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra work under "Method C." In the event that machinery and heavy construction equipment be required for such extra work, the authorization and basis of payment for the use thereof shall be stipulated in the written extra work order.

The fifteen percent (15%) of the actual field cost to be paid to the Contractor shall cover, and be full compensation for, the Contractor's profit, overhead, general superintendents, and field office expense, and all other elements of cost not embraced within the "actual field cost" as herein defined.

No claim for extra work of any kind will be allowed unless ordered in writing by the City Engineer or Owner. In case an order or instructions, either oral or written, appear to the Contractor to involve extra work for which it should receive compensation, the Contractor shall make a written request to the City Engineer for a written order authorizing such extra work. Should a difference of opinion arise as to what does or does not constitute extra work, or concerning the payment thereof, and the City Engineer insists on its performance, the Contractor shall proceed with the extra work after making a written request for a written extra work order and it shall keep an accurate account of the actual field cost thereof as provided for in Method "C" in the foregoing paragraph. The Contractor will thereby preserve the right to submit the matter of payment to dispute resolution as hereinafter provided.

GC-34. EXTRA WORK A PART OF CONTRACT: If extra work orders are given in accordance with the provision of this Contract, such extra work shall be considered a part hereof and subject to each and all of its terms and requirements.

GC-35. DISPUTES: The City and Contractor agree that disputes relative to the Work or this Contract should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis of the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, the Contractor shall proceed with its services under this Contract as though no dispute exists unless otherwise agreed to by the City; and provided further, that no arbitration proceedings shall be initiated by Contractor without the prior written consent of the City.

It is understood and agreed by the parties to the Contract that no requirement or statement herein shall be interpreted as curtailing the power of the City Engineer to determine the amount, quality and acceptability of work and materials.

GC-36. PROVISION FOR EMERGENCIES: In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor without special instruction or authorization from the City Engineer or Owner, is obligated to act, at its discretion, to prevent threatened damage, injury or loss. The Contractor shall give City Engineer prompt written notice of significant changes in the Work or deviations from the Contract Documents caused thereby. A Change Order shall thereupon be issued covering the changes and deviations involved. If Contractor believes that additional work performed in an emergency which arose from causes beyond the Contractor's control entitles it to an increase in the Contract price and an extension of the Contract time, the Contractor may make a claim therefore as provided in GC-32, "Modifications and Alterations," GC-33, "Extra Work," and GC-48, "Extensions of Time."

GC-37. ASSIGNMENT AND SUBLETTING OF CONTRACT: The Contractor shall not assign or sublet the Work, or any part thereof, without the previous written consent of the City Engineer, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like consent of the Owner to be signified in like manner. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him/her, his subcontract shall be immediately terminated by the Contractor upon notice from the Owner. The Contractor shall be as fully responsible to the Owner for

the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the omissions of persons directly employed by the Contractor. Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

GC-38. RIGHT OF OWNER TO TERMINATE CONTRACT: If the Work to be done under this Contract shall be abandoned by the Contractor, or if this Contract shall be assigned otherwise than as herein provided, or if the Contractor should be adjudged as bankrupt, or if a general assignment of its assets be made for the benefit of its creditors, or if a receiver should be appointed for the Contractor or any of its property, or if at any time the City Engineer shall certify in writing to the Owner that the performance of the Work under this Contract is being unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or covenants of this Contract, or that it is executing the same in bad faith or otherwise not in accordance with the terms of said Contract, or if the Work be not substantially completed within the time named for its completion or within the time to which such completion date may be extended, then the Owner may serve written notice upon the Contractor and its surety of said Owner's intention to terminate this Contract and, unless within five (5) days after the serving of such notice a written appeal is received by the Owner, the Contractor shall cease and terminate. In the event of such termination, the Owner shall immediately serve notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and complete the Work, provided however, that if the surety does not commence performance thereof within thirty (30) days from the date of said notice of termination, the Owner may take over the Work and prosecute same to completion, by contract or otherwise for the amount and at the expense of the Contractor, and the Contractor and its surety shall be liable to the Owner for any and all excess cost sustained by the Owner by reason of such prosecution and completion, and in such event the Owner may take possession of, and utilize in completing the Work, all such materials, equipment, tools and plant as may be on the site of the Work and necessary therefore.

GC-39. SUSPENSION OF WORK ON NOTICE: The Contractor shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Owner or City Engineer, and for such periods of time as it or he/she shall require; provided, that in the event of such delay or delays or of such suspension or suspensions, the total days allowed for the Work shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions, but such order of the Owner or City Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the Work shall be stopped by order of the Owner or City Engineer, any expense which, in the opinion and judgment of the City Engineer, is caused thereby shall be paid by the Owner to the Contractor.

GC-40. LOSSES FROM NATURAL CAUSES: All loss or damage arising out of the nature of work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or

existing circumstances either known or unforeseen, which may be encountered in the prosecution of the Work shall be sustained and borne by the Contractor at its own cost and expense.

GC-41. LAWS AND ORDINANCES: The Contractor shall keep itself fully informed of all existing and current regulations of the Owner, and county, state and national laws which in any way limit or control the actions or operation of those engaged upon the Work, or affecting the materials supplied to or by them. The Contractor shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify the Owner and the Owner's officers and agents against any claims or liability arising from or based on any violation of the same.

GC-42. SANITARY REGULATIONS: In general, the operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all of its employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of the same.

GC-43. CHARACTER OF WORKERS: The Contractor shall employ only workers who are competent to perform the work assigned to them, and in the case of skilled labor, who are adequately trained and experienced in their respective trades and who do satisfactory work.

When the City Engineer shall notify the Contractor that any worker on the Work is, in his opinion, incompetent, unfaithful, or disorderly or who uses threatening or abusive language to any person representing the Owner when on the Work, such worker shall be immediately discharged from the Work and shall not be re-employed thereon except with the consent of the City Engineer.

GC-44. SUNDAY, HOLIDAY AND NIGHT WORK: No work shall be done between the hours of 10 P.M. and 7 A.M. nor on weekends or legal holidays, without the written approval or permission of the City Engineer in each case, except such work as may be necessary for the proper care, maintenance and protection of work already done or of equipment, or in the case of an emergency.

Night work may be established by the Contractor, as a regular procedure, with the written permission of the City Engineer. Such permission, however, may be revoked at any time by the City Engineer if the Contractor fails to maintain at night adequate equipment for the proper prosecution and control of the Work and all operations performed thereunder.

GC-45. UNFAVORABLE CONSTRUCTION CONDITIONS: During unfavorable weather, or other unfavorable conditions for construction operations, the Contractor shall pursue

only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the City Engineer, the Contractor shall be able to perform the Work in a proper and satisfactory manner.

GC-46. BEGINNING, PROGRESS AND TIME OF COMPLETION OF WORK: The Contractor shall, within ten (10) days of the date specified in a written notice from the Owner, commence the Work to be done under this Contract; and the rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract on or before the termination of the construction period named in the proposal, subject to any extension or extensions of such time made as hereinafter provided. The Contractor may be required to furnish the City Engineer with a tentative schedule setting forth in detail the sequences it proposes to follow, and giving the dates on which it expects to start and complete separate portions of the Work. If at any time, in the opinion of the City Engineer, proper progress is not being maintained, such changes shall be made in the schedule of operations as the City Engineer shall direct or approve.

GC-47. HINDRANCES AND DELAYS: In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, including, but not limited to, delays caused by adverse weather conditions, delays in securing materials or workers, or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract, except as provided in the paragraph on "Suspension of Work on Notice" of these General Conditions, and no extension of time shall be granted to the Contractor for hindrances or delays from any cause, except as set forth in GC-48, Extensions of Time.

GC-48. EXTENSIONS OF TIME: Except as provided in GC-47, Hindrances and Delays, the right of the Contractor to proceed shall not be terminated, nor will the Contractor be charged with liquidated damages for delays in the completion of the Work if the Contractor has notified the City Engineer, in writing, within seven (7) Calendar Days of the cause of the delay, and the delay arises out of one or more of the following acts, events or causes beyond the control of, and through no fault or negligence of, the Contractor: acts or delays of the Owner or Consulting Engineer, or of any employee of either; acts of any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; employee strikes or lock-outs; extraordinary adverse weather events not reasonably anticipatable; acts of the public enemy; or by any cause which the City Engineer shall decide would justify the delay. Neither adverse weather conditions nor the inability to timely obtain materials or

workers (including subcontractors) shall be considered beyond the control of the Contractor.

In the event one of the aforementioned acts or events causes the Contractor to be delayed in the final completion of the Work, an extension of time sufficient to compensate for such delay in the final completion of the Work shall be granted by the Owner, the amount of such extension to be determined by the City Engineer, in the City Engineer's sole discretion. Each extension of time shall be evidenced by a change order for the period of time caused by such delay.

GC-49. LIQUIDATED DAMAGES: It is mutually understood and agreed by and between the parties to this Contract that time is of the essence of this Contract, and that in the event the Contractor shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Contract binding said parties, after due allowance for any extension or extensions of time which may be granted under the provisions of GC-48 Extensions of Time, the Contractor shall pay unto the Owner, as stipulated liquidated damages and not as a penalty, the sum stipulated therefore in the Special Conditions, Proposal or other Contract Documents for each and every day that the Contractor shall be in default.

In case of joint responsibility for any delay in the final completion of the Work covered by this Contract, where two or more separate contracts are in force at the same time and cover work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such contracts, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the Owner by reason of such delay in completion of the Work, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delay as determined by, and in the judgment of, the Owner.

The Owner shall have the right to deduct said damages from any moneys in its hands, otherwise due or to come due, to said Contractor, or to sue for and recover compensation for damages for non-performance of this Contract at the time stipulated herein and provided for.

GC-50. TEST OF MATERIALS OFFERED BY CONTRACTOR: All specified and required tests for approval of source of material shall be made at the expense of the Contractor by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Owner. Approval of materials based on acceptable tests will apply only while such material as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation, or manufacture of such materials will require new tests and approval thereof. Reports of all tests shall be furnished to the Owner in as many certified counterparts as may be required by the Owner. Any tests specified in the

Contract Documents of finished work or material shall be performed by the Contractor. Failure of such tests shall be deemed evidence of defective work and such work shall be replaced or repaired until satisfactory tests have been secured. All special tests required by law, ordinance, statute or regulations of any public body having jurisdiction shall be performed by and at the expense of the Contractor.

GC-51. WORK IN OR ACROSS STREET OR HIGHWAY RIGHT-OF-WAY: All Work performed and all operations of the Contractor or its employees, and subcontractors, if any, within the limits of street or highway rights-of-way shall be in conformity with the requirements, and be under the control, through the Owner, of the street or highway authority owning, or having jurisdiction and control over such rights-of-way in each case.

GC-52. MAINTENANCE OF TRAFFIC: Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted when necessary and with the prior permission of the City Engineer. Streets may be closed for short periods of time under authority of proper permit issued by the city or authority having jurisdiction. However, the Contractor shall conduct its work so as to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets. The Contractor, before closing of private driveways, shall give proper notification to county and city police and fire units and to the Fire District. The Contractor shall give adequate notice to the owner(s) thereof and, where necessary, shall provide temporary access to private property.

GC-53. BARRICADES AND LIGHTS: All streets, roads, highways, and other public thoroughfares which are closed to traffic, under the authority of a proper permit, shall be protected by means of effective barricades on which shall be placed acceptable warning signs; such barricades, shall be located at the nearest intersecting public highway or street on each side of the blocked section of such public thoroughfare.

All open trenches and other excavations shall be provided with suitable barriers, signs and lights to the extent that adequate protection is provided to the public against accident by reason of such open construction. Obstructions such as material piles and equipment shall be provided with similar warning lights and signs.

All barricades and obstructions shall be illuminated by means of amber lights at night and all lights used for this purpose shall be kept burning from sunset to sunrise. Materials stored upon or alongside public streets and highways shall be so placed, and the Work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights and other protective devices in public rights-of-way shall be installed and maintained in conformity with applicable statutory requirements and as required by the authority having jurisdiction thereover.

GC-54. BORROW AND WASTE AREAS: All borrow material shall be obtained by the Contractor at its own cost and expense. The borrow area and materials shall be approved by the City Engineer, and shall be friable material suitable for compaction.

All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Contractor.

GC-55. PARKING AREAS, DRIVES AND WALKS: All existing parking areas, drives and walks, within the project limits, shall be adjusted to conform to the lines and grades shown on the Plans. Any of the above structures that are removed or damaged during construction shall be reconstructed of materials that will create a quality equal to or better than the condition existing prior to construction.

GC-56. STREET SIGNS AND TRAFFIC AIDS: All existing street signs and traffic aids, within the project limits, shall be carefully removed, stored and as soon as practicable, reset in concrete as directed by the City Engineer, at the Contractor's own cost and expense, except that when traffic, local or through, is to be carried during construction, all stop signs shall be temporarily located at the Contractor's own cost and expense.

GC-57. CLEAN-UP: The project site shall be kept as clean, neat and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners.

GC-58. WATER USED: All water used in the course of the work shall be hauled in or purchased from the local water company's distribution system at the Contractor's own cost and expense.

GC-59. PERMITS: The Contractor shall secure all permits that may be required to construct the Work included in this Contract. All cost in connection therewith shall be borne by the Contractor.

GC-60. RIGHT-OF-WAY LIMITS: The Contractor shall confine its construction operations to right-of-way limits and easements provided for the project. Equipment or materials shall not be stored beyond these limits without the express written approval of the owner of such property. The City Engineer shall be informed as to any arrangements the Contractor makes on its behalf in such matters.

GC-61. TESTING OF COMPLETED WORK: Before final acceptance, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the

expense of the Contractor. All tests of such completed work required under this Contract shall be made in the presence of the City Engineer or his authorized representatives. All unsatisfactory work, all faulty or defective work and all work not conforming to the requirements of the Contract Documents at the time of acceptance thereof, or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective work, whether or not in place may be rejected or corrected.

GC-62. REMOVAL OF REJECTED MATERIALS AND STRUCTURES: The Contractor shall remove from the site of the Work, without delay, all rejected and condemned materials or structures of any kind brought to or incorporated in the Work, and upon the Contractor's failure to do so, or to make satisfactory progress in so doing, within forty-eight (48) hours after the service of a written notice from the City Engineer ordering such removal, the rejected material or structures may be removed by the Owner and the cost of such removal be taken out of the money that may be due or may become due to the Contractor on account of or by virtue of this Contract. No such rejected or condemned material shall again be offered for use by the Contractor under this or any other contract under this project.

GC-63. PLACING WORK IN SERVICE: If desired by the Owner, portions of the Work may be placed in service when completed and the Contractor shall give proper access to the Work for this purpose; but such use and operation shall not constitute an acceptance of the Work, and the Contractor shall be liable for defects due to faulty construction until the entire Work under this Contract is finally accepted and for a period of one year or longer thereafter, as stipulated in paragraph GC-65, Defective Workmanship and Materials, or as stipulated in the Special Conditions.

GC-64. DISPOSAL OF TRASH AND DEBRIS: The Contractor shall not allow the site of the Work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The City Engineer shall have the right to determine what is or is not trash or waste material. On or before the completion of the Work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers or conduits, and shall tear down and remove all temporary structures built by the Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition as determined by the City Engineer.

GC-65. DEFECTIVE WORKMANSHIP AND MATERIALS: During a period of two years, or longer if stipulated in the Special Conditions, from and after the date of the final acceptance by the Owner of the Work embraced by this Contract, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner, shall become necessary during such period. If, within ten (10) days after the mailing of a notice in writing to the Contractor or its agent, the Contractor shall neglect to make or undertake with due diligence to make

the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense, provided however, that in case of an emergency in which, in the judgment of the Owner, delay would cause serious loss, hazard or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

GC-66. EQUIPMENT GUARANTY: All mechanical and electrical equipment and devices, and every part thereof, which are furnished by the Contractor under the terms of this Contract shall be guaranteed by the Contractor and its surety against defective workmanship, faulty design, mechanical and physical defects, leakage, breakage and other damages or failure, under normal operation of the equipment and devices under specified conditions, for a period of two years from and after the date of acceptance thereof by the Owner, and each item of equipment or part thereof, thus proving to be defective within the specified period shall be promptly replaced by and at the expense of the Contractor, when notified by the Owner.

GC-67. MONTHLY ESTIMATES/FINAL PAYMENT: The Contractor will, on the 25th day of each month, make an estimate in writing of the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after completion of the entire Work to the satisfaction of the City Engineer and Owner, except that no amount less than \$500.00 will be so submitted unless the total amount of the Contract remaining unpaid is less than \$500.00. The Contractor shall submit with Contractor's written estimate, lien waivers for work performed up to and including thirty (30) days prior to the estimate date.

Deductions will be made from partial payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed on the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.

The final estimate will be paid within 30 days after the completion of and the acceptance of the construction by the Owner at a regularly scheduled City Council meeting, upon receipt of final lien waivers, and upon satisfaction of the terms of this Contract.

GC-68 COMPLETION FINAL PUNCH LIST: Upon receipt of the final punch list from the Owner or City Engineer, the Contractor shall complete all items listed with 30 calendar days.

GC-69. PHRASEOLOGY: In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.

GC-70. WAIVER: The failure of either party to insist upon the strict performance of any of the terms or conditions of this Contract or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

GC-71. AMENDMENTS: This Contract may not be amended unless such amendment is in writing and signed by both parties hereto.

GC-72. INVALIDITY: In the event that any provision in this Contract shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

GC-73. CASH BASIS AND BUDGET LAWS: The right of the City to enter into this Contract is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1112 and 10-1113), the Budget Law (K.S.A. § 79-2935), and other laws of the State of Kansas. This Contract shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws. Further, the City reserves the right to unilaterally sever, modify, or terminate this Contract at any time if, in the opinion of its legal counsel, the Contract may be deemed to violate the terms of any laws of the State of Kansas.

GC-74. COMPUTATION OF SUBCONTRACTORS' WORK: Prior to the Owner's approval of the Contract bid, the successful bidder shall submit to the Owner a list of names of all subcontractors proposed for each portion of the work and shall designate the entirety of work each is to perform. Compliance with the percentage of work to be performed, as set forth in the Instructions to Bidders, will be determined by the City Engineer by assessing whether the General Contractor or a subcontractor will be performing the major item of work associated with each line item in the proposal. Bid items where the General Contractor will perform the major item of work will be totaled and compared to the bid total to verify compliance with this provision. (Example: If a subcontractor is going to be placing curb and gutter, the total line item amount for curb and gutter will be credited to the subcontractor portion of the work even if subsidiary efforts are performed by the General Contractor)

The City Engineer shall, prior to Owner's approval of the Contract bid, notify the bidder in writing if after due investigation there is reasonable objection to any proposed subcontractor. The Contractor will be allowed to substitute a subcontractor acceptable to the Owner at no additional cost to the Owner.

GC-75. NON-DISCRIMINATION, AFFIRMATIVE ACTION & FEDERAL REGULATION

A. The Contractor shall be an equal opportunity employer as defined by Section 1000 (e) of Chapter 21, Title 42, of the United States Code Annotated, and comply with all Federal Regulations or acts regarding construction or employment when Federal Funds are used on the project.

B. The Contractor shall observe the provision of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of Work under the present Contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry.

C. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Commission on Civil Rights.

D. If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, as amended, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated or suspended, in whole or in part, by the Owner.

E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated or suspended in whole or in part, by the Owner.

The Contractor shall include the provisions of paragraphs (A) through (E) inclusively of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

SPECIAL CONDITIONS

SC-1 GENERAL

1. All pavement, surfacing, driveways, entrances, buildings, utility poles, guy wires, fence, and other surface structures affected by construction operations in connection with performance of the Contract, together with underground sprinkler systems, underground wire pet fence, and private utility lines, sod and shrubs in yards, parks and parking shall be maintained, and if removed or otherwise damaged shall be restored to the original or better condition at no additional cost to the Owner, as determined and approved by the City Engineer.
2. The Contractor shall be held responsible for all damage to roads, highways, streets, curb and gutter, driveways, sidewalks, shoulders, ditches, embankments, bridges, culverts, and other property caused by the Contractor or any of its subcontractors in hauling or otherwise transporting materials to or from the several sites of the Work, regardless of the location of such damage. The Contractor shall make all arrangements for the payment for such damage or for the repair or replacement of such damaged surfaces or structures. Said arrangement shall be satisfactory and acceptable to the owner or owners of such damaged surfaces or structures, or to their legally responsible officers, agents, or other representative, and said payment shall be at the Contractor's own expense, unless otherwise provided by the Contract.
3. Some existing utility lines have been plotted on the Plans from available records, but other installations may be present. The relationship between proposed work and existing facilities, structures, and utilities must be considered approximate, and it is the Contractor's responsibility to determine their exact location and existence. Any and all utility lines, both above ground and underground, shall be protected from damage during the process of the Work. If the Contractor damages existing facilities, structures or utility line, it shall immediately make a report of such damage to the Owner and City Engineer.
4. The Contractor shall submit a phasing and traffic control plan for review and approval to the City Engineer. The Contractor shall maintain access to local residences at all times (except when removing or placing driveways or as noted on the Plans). The Contractor will take necessary measures, such as temporary surfacing, when required, to provide access on streets and drives affected by construction operations. The cost of said measures is considered a subsidiary item in the bid and no separate payment will be made to the Contractor. The Contractor shall notify all property owners by door hanger at least 48 hours in advance of any work impacting access to their property.
5. Traffic control devices and procedures shall meet or exceed the standards required by the latest edition Manual on Uniform Traffic Control Devices

(MUTCD) and shall be approved by the City Engineer prior to beginning work. All signs shall be maintained 24 hours per day throughout the duration of the project. All traffic control shall be paid for per lump sum basis. No payment will be made for additional traffic control.

6. The Contractor shall confine its construction operations within the project area. Equipment and materials shall not be stored beyond the immediate working area without the written approval of the owner of such property. The City Engineer shall be supplied a copy of any such arrangement signed by both parties.
7. The Contractor shall be required to coordinate all work with utilities involved. Some utilities may require relocation in order for the Contractor to complete the Work intended by the Contract Documents. The Contractor shall be responsible for such coordination of Work with each of the utilities, both below and above ground. The Contractor is to fully cooperate with the utilities, even if a delay may occur. Requests for extensions of time relating to such delays will be governed by the provisions of General Conditions GC-48, "Extensions of Time." The Contractor shall not be allowed to make monetary claims for damages caused by utility conflicts.
8. Any delay or extra cost to the Contractor caused by utilities or other obstructions not shown by the Plans, or found in locations different than indicated, or, in the case of pipelines, not of the material as originally anticipated by the Contractor, shall not constitute a claim for extra work, additional payments, extension of time, or damages.
9. Contractor shall keep open trenches properly protected during and after working hours. The Contractor is also responsible for keeping the trench covered to protect against weather so no delay occurs. Contractor shall replace unsatisfactory material, at its expense, if it fails to produce adequate weather protection of open trenches.
10. The Contractor shall review each plan sheet thoroughly to understand the proposed Work. All work not listed as a pay item shall be considered subsidiary to the Contract Documents, therefore, no additional payment will be made.
11. Contractor may be required to remove trees, bushes, shrubs and other vegetation within the limits of the Work area. All trees, bushes, and shrubs shall remain unless absolutely necessary for installation of items shown on the Plans. The Contractor shall attempt to save all trees when adjacent to or near a construction area. The Contractor shall be responsible for trees that die because of any unnecessary root removal or Contractor negligence. Any unnecessarily removed tree, bush or shrub shall be replaced with a nursery plant of similar type. This item of work shall be considered subsidiary to the Contract, therefore there will be no additional payment for this work. All tree removals shall be

approved by the City Engineer prior to commencement of construction.

12. The Contractor shall be required to haul off all pavement to be removed from the Work site as indicated on the Plans. Material to be hauled off shall be taken to an approved dumpsite. All costs for hauling shall be subsidiary to the construction items of the Work.
13. The Contractor shall provide the City Engineer with a proposed work schedule including the days of the week and hours of each day of expected construction operations. The work schedule must be approved prior to beginning of any work on the site. All required material reports must be submitted with the proposed work schedule.
14. Upon award of the Contract, the Contractor shall immediately prepare and submit for approval by the City Engineer, a construction phasing schedule that will ensure completion of the project within the Contract time. The schedule shall be submitted prior to issuance of the notice to proceed. No work on this Contract shall begin until said schedule is approved. The City reserves the right to adjust the Contractor's schedule to coordinate with other projects.
15. The Contractor shall immediately point out any discrepancies, conflicts, errors, or omissions in the Plans or other Contract Documents to the City Engineer and shall not perform any related work until the discrepancy is resolved.
16. Changes in the Work:

Quantity Variations: Where changes in the Work involve a change in the quantity of any bid item, the Contract price shall be revised by extension of the quantities and unit price of all bid items so changed subject to written approval of the City Engineer.

Field Orders: The City Engineer may order minor changes in the Work through field orders, which in no specific, concrete or substantial way increase or decrease the Work; and such minor changes in the Work shall not involve an addition to or deduction from the Contract price.

Clarifications, Modifications or Corrections: From time to time the City Engineer may also issue written orders to Contractor for needed clarifications, modifications or corrections. Should a difference of opinion arise as to whether the order constitutes extra work for which additional compensation is due, and the City Engineer insists on its performance, the Contractor shall proceed with the Work after making a written request for a change order, and it shall keep an accurate account of the actual field cost thereof as provided for in GC-33, "Extra Work." The Contractor will thereby preserve the right to submit a claim therefore.

Additional Time: No change in the Work shall entail additional time unless the City Engineer determines that additional time is required and specifically so provides in the change order. No change in the Work shall entitle the Contractor to delay damages.

Notification to Sureties of Modifications to the Contract: Contractor shall be responsible for notifying its surety(ies) of any modifications to the Contract price or time, and said surety(ies) shall not seek discharge as a result of any failure on Contractor's part to notify surety(ies).

Substantial Changes to the Work: In the event unit prices provided for in the Contract are subsequently altered by a change order that is substantially inequitable to either the Owner or the Contractor, the unit prices shall be re-evaluated and adjusted in accordance with the following:

- a) If the total cost of a particular item of unit price work amounts to twenty-five percent (25%) or more of the Contract price or the variation in the quantity of that particular item of unit price work performed by Contractor differs by more than thirty-three percent (33%) from the estimate quantity of such item indicated in the Contract; and
- b) If there is no corresponding adjustment with respect to any other item of work; and
- c) If Owner believes that the quantity variation entitles it to an adjustment in the unit price and, the parties are unable to agree as to effect of any such variations in the quantity of unit price work performed;

then either Owner or Contractor may request the City Engineer to make an adjustment in the Contract price.

BNSF & KPC Encroachment Agreements: The Contractor, his employees and his SUBCONTRACTORS will be subject to the agreements included in this project manual. The draft agreements are attached and are not anticipated to change. However, if the agreements do change prior to the bid letting, the new agreements will be furnished by addendum to the Contractor.

TECHNICAL SPECIFICATIONS

The specifications that shall govern the materials furnished and work performed in the construction of the project covered by this contract shall be the latest revision of the Kansas City Metropolitan Chapter of APWA Construction and Material Specifications, as though fully set forth herein. If any item of work or portion thereof is not covered by the APWA specifications, then the KDOT "Standard Specifications for State Road and Bridge Construction, Current Edition" and the most current Special Provisions shall apply.

No attempt has been made in the above designated specifications to segregate work to be performed by any trade, contract or proposal item under any one specification section. Any segregation between trade or craft jurisdiction limits and the establishment of subcontract limits will be solely a matter of agreement between the CONTRACTOR and his employees and his SUBCONTRACTORS. The specifications will govern the construction of the entire work, and the provisions thereof will govern each item of the work to which such provisions apply.

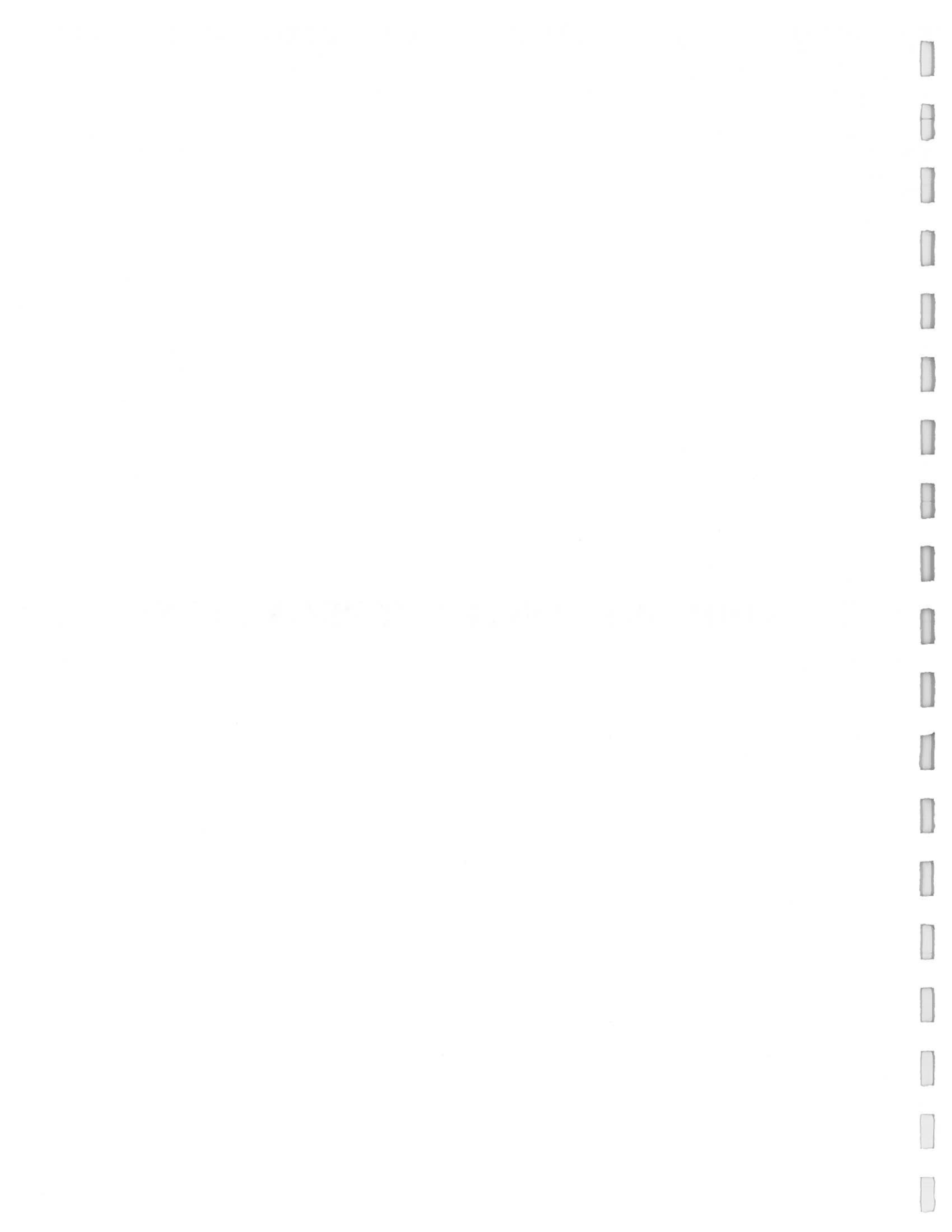
Iron and Steel products must be produced in the United States and certifications of such production must be provided to the Owner prior to installation.

KDHE SRF CONTRACT PROVISIONS

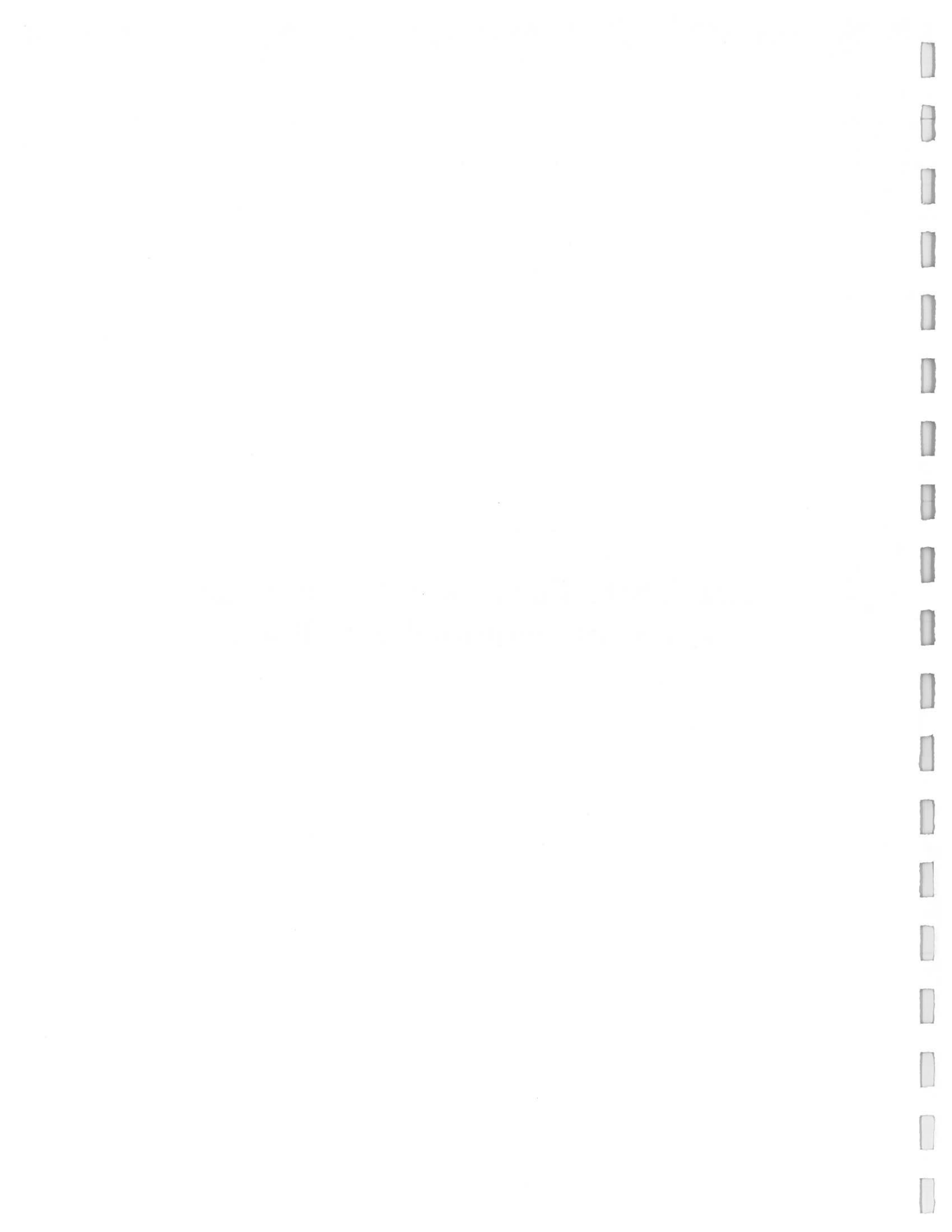
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KDHE SRF CONTRACT PROVISIONS



**KDHE SRF Forms and Certifications
(Must be submitted with Bids)**



STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

Dwyer Sanitary Sewer Improvements Project No. 22-13531

MUNICIPALITY *City of Edgerton, KS*

CONTRACTOR'S
SIGNATURE



TITLE *President*

SRF PROJECT NO. _____

DATE *04/18/24*

Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name Dwyer Sanitary Sewer Improvements

SRF Project No. _____

Prime Contract Bidder/Engineering Firm Beemer Construction Co., Inc.

Address 606 SE Central Drive, Blue Springs, MO 64014

Contact Person: Joseph D Blecha Telephone No. 816-985-6305

The following DBE firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted Precision Boring Technology, Inc

Address PO Box 3570, Olathe, KS 66063

Contact Person: Daniel Smith Telephone No. 913-735-4728

Email dan@pb+k.com Method used to contact (circle one): Phone Mail Fax Email

Is entity also a certified as a MBE _____ or WBE x ? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted Welch Silt Fence & Erosion Control

Address 3003 Cantrell Rd, Harrisonville, MO 64701

Contact Person: Danielle Welch Telephone No. 816-651-7358

Email danielle@welcherosioncontrol.com Method used to contact (circle one): Phone Mail Fax _____

Is entity also a certified as a MBE _____ or WBE x ? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax _____

Is entity also a certified as a MBE _____ or WBE _____ ? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax _____

Is entity also a certified as a MBE _____ or WBE _____ ? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

Comments _____

Prepared By: Chad Justus

Date: 04/18/24

(Use additional copies of this sheet if needed)

KDHE PROJECT #

CERTIFICATION REGARDING LOBBYING

**CERTIFICATION FOR CONTRACTS, GRANTS,
LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

David Beemer Jr. Secretary
Joseph D. Blocha President OHS 4-18-24

Typed Name & Title of Authorized Representative

David Beemer Jr. *04/18/24*

Signature and Date of Authorized Representative

American Iron and Steel Certification

1. Identification of American-made Iron and Steel Products: The Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron and steel products for every component contained in the bid solicitation where such American-made components are required. The term "iron and steel products" means the following products made primarily of iron or steel - lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
2. Verification of U.S. Production: If this bid is accepted, the Bidder agrees that it will provide, to the Owner, reasonable, sufficient, and timely verification of the U.S. production of each Iron and Steel Product incorporated into the project.
3. Documentation Regarding Non-American-made Iron and Steel: The Bidder certifies that for any Iron or Steel Product that is not American-made but was incorporated in the development of this bid, is allowed by waiver of the U.S. Environmental Protection Agency and such waiver is attached to this certification.



Signature

04/18/24

Date

Joseph D Blecha President

Name and Title of Signer (Please Print)

Q & A's, Waiver request instructions, and a list of approved waivers can be found at
http://water.epa.gov/grants_funding/aisrequirement.cfm

KDHE SRF Provisions

Contract Provisions for Equal Opportunity

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Equal Employment Opportunity is **THE LAW**

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

Contract Provisions for the Kansas Act Against Discrimination

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

- (1) Who employs fewer than four employees during the term of such contract; or
- (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

Contract Provisions for right of entry by KDHE

The Contractor shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

Contract Provisions for Historical and Archeological Deposits

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6th Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has

been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

Contract Provisions for NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities

The owner or Contractor must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.

Contract Provisions for Restrictions on Lobbying

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

Contract Provisions for the Trafficking Victims Protection Act of 2000

The Contractor, its employees, sub-contractors, and sub-contractors employees under any SRF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

Contract Provisions for Suspension and Debarment

The Contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions." The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Contractor agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Contract Provisions for Non Discrimination

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

Contract Provisions for Non Segregated Facilities

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; *Provided*, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

Contract Provisions for American Iron and Steel

All of the iron and steel products used in the project must be produced in the United States. The term "iron and steel products" means the following products made primarily of iron or steel - lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. **A Certification form must be submitted with the bid documents.**

The following definitions apply to this provision.

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are access hatches, ballast screen, benches (Iron or Steel), bollards, cast bases, cast iron hinged hatches, square and rectangular; cast iron riser rings, catch basin inlet, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes (boot, inlet), drainage grates, frames and curb inlets, inlets; junction boxes, lampposts, manhole covers, rings and frames, and risers.

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

Mechanical and electrical components, equipment and systems are NOT considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings

(such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

Noncompliance with this provision is only allowed through a waiver issued by the U.S. Environmental Protection Agency. Q&A documents, waiver request instructions, and a list of proposed and approved waivers can be found at http://water.epa.gov/grants_funding/aisrequirement.cfm .

Davis Bacon Wage Rate Contract Provisions

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster

(WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Loan Recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Loan Recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall coordinate with the Department of Labor Wage and Hour Division to approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Loan Recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Loan Recipient (s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the Loan Recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer award official or will notify the contracting officer award official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Loan Recipient(s) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security

number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Loan Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the Loan Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls.

Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Loan Recipient (s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Loan Recipient (s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage

determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Loan Recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(11) Contract Provision for Contracts in Excess of \$100,000.

(a) The following provisions apply to all contracts that are in excess of \$100,000. As used in these provisions, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The municipality, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in (a)(3), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Disadvantaged Business Enterprise Contract Provisions

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

A Disadvantaged Business Enterprise (DBE) includes Women's Business Enterprises, (WBE) Minority Business Enterprises (MBE), a Small Business Enterprises (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

The contractor must also adopt a fair share objective of awarding 4.1/% of the contract amount to Minority Business Enterprises (MBE's) and 6.9% of the contract amount to Women's Business Enterprises (WBE's). This fair share objective is not a quota and the contractor cannot be penalized for failure to meet this objective.

The contractor is required to make the Good Faith Efforts and apply the administrative requirements listed below for any subcontracts.

Good Faith Efforts

1. Ensure DBEs are made aware of subcontracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the prime contractor;
 - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

DBE Administrative Requirements

The contractor:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.

Determination of Compliance

If Prime contractors award any subcontracts, they must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

**PREVAILING
WAGES**

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

**REQUEST FOR AUTHORIZATION OF
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX
 SERVICE CONTRACT
 CONSTRUCTION CONTRACT

OMB Control Number: 9000-0066
Expiration Date: 5/31/2025

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0066. We estimate that it will take .5 hours to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: U.S. General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

1. TO: ADMINISTRATOR, WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, DC 20210	2. FROM: (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
----------------------	---------------------------

5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SERVICE CONTRACT ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY, AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (<i>Service contracts only</i>) <small>(Use reverse or attach additional sheets, if necessary)</small>	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
---	---

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
--	-------	---

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SERVICE CONTRACT LABOR STANDARDS) OR FAR 22.406-3 (CONSTRUCTION WAGE RATE REQUIREMENTS))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
(Send 3 copies to the Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NUMBER	DATE SUBMITTED
---	--	-----------------------

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS USABLE

STANDARD FORM 1444 (REV. 4/2013)
Prescribed by GSA-FAR (48 CFR) 53.222(f)

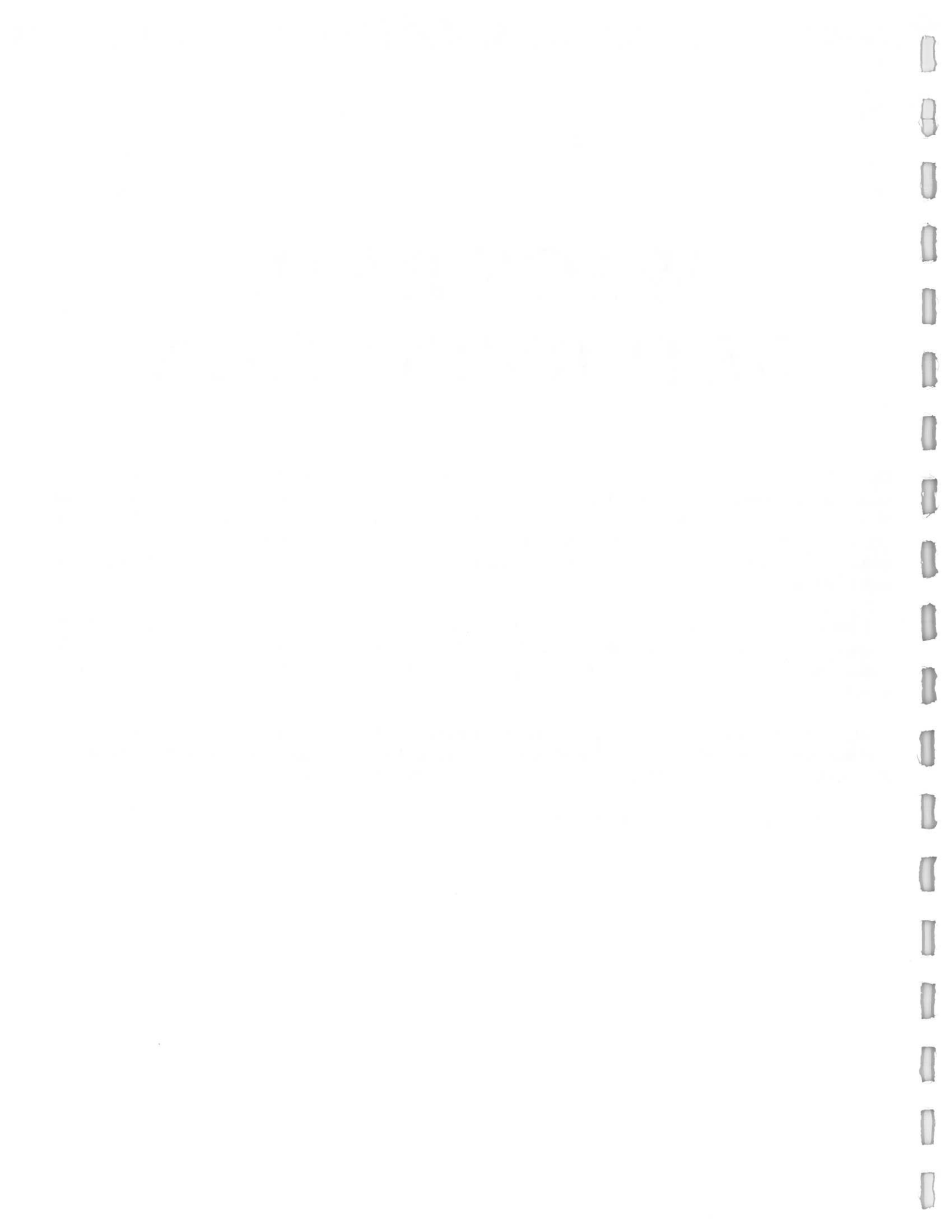
WAGE RATE DETERMINATION

The wage rate determination found on the following pages must be utilized for the duration of the contract. Each class of workers (including workers in subcontracts) must be paid at least the indicated hourly rate and fringe for such class. If worker compensation includes fringe benefits recognized by the U.S. Department of Labor, then verification of payment of these benefits must be made to the Municipality (Owner) with the first submitted payroll report. If worker compensation does not include fringe benefits then workers must be paid the indicated fringe rate in cash.

If a particular class of worker is not listed on the wage rate determination, but is utilized for the project, Standard Form 1444 must be completed by the contractor and submitted to the Municipality (Owner). The U.S. Department of Labor will determine if the wage rate indicated on the submitted Standard Form 1444 is acceptable.

Workers must be paid weekly. Any worker who works more than 40 hours a week must be paid one and one-half times the base pay plus all fringe benefits. Weekly payroll reports shall be submitted to the Municipality (Owner) for every week until the job is complete even if no work is performed.

The Contractor is responsible for all subcontractor compliance and reporting.



Superseded General Decision Number: KS20230153

State: Kansas

Construction Type: Heavy

County: Johnson County in Kansas.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">◆ Executive Order 14026 generally applies to the contract.◆ The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">◆ Executive Order 13658 generally applies to the contract.◆ The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/05/2024

	Rates	Fringes
CARPENTER.....	\$ 43.28	21.25

 ELEC0271-006 12/01/2023

	Rates	Fringes
ELECTRICIAN.....	\$ 36.67	17.57

 ELEC0304-001 07/02/2023

	Rates	Fringes
LINE CONSTRUCTION (Lineman).....	\$ 48.43	23.88

 ENGI0101-037 04/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Backhoe/Excavator/Trackhoe..	\$ 39.02	21.44
Bobcat/Skid Steer/Skid		
Loader.....	\$ 39.02	21.44
Bulldozer.....	\$ 39.02	21.44
Forklift.....	\$ 39.02	21.44
Grader/Blade.....	\$ 39.02	21.44
Loader.....	\$ 39.02	21.44
Roller.....	\$ 39.02	21.44

 IRON0010-002 04/01/2022

	Rates	Fringes
IRONWORKER.....	\$ 36.50	33.38

 LAB01290-003 04/01/2023

	Rates	Fringes
LABORER (Pipelayer).....	\$ 35.36	17.06

 PLAS0518-003 04/01/2023

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 36.57	18.30

 SUKS2022-006 09/15/2022

	Rates	Fringes
CARPENTER, Excludes Form Work....	\$ 24.72	4.11
LABORER: Common or General.....	\$ 28.48	16.33
OPERATOR: Crane.....	\$ 34.41	11.22
TRUCK DRIVER: Dump Truck.....	\$ 32.95	19.49

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all

rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

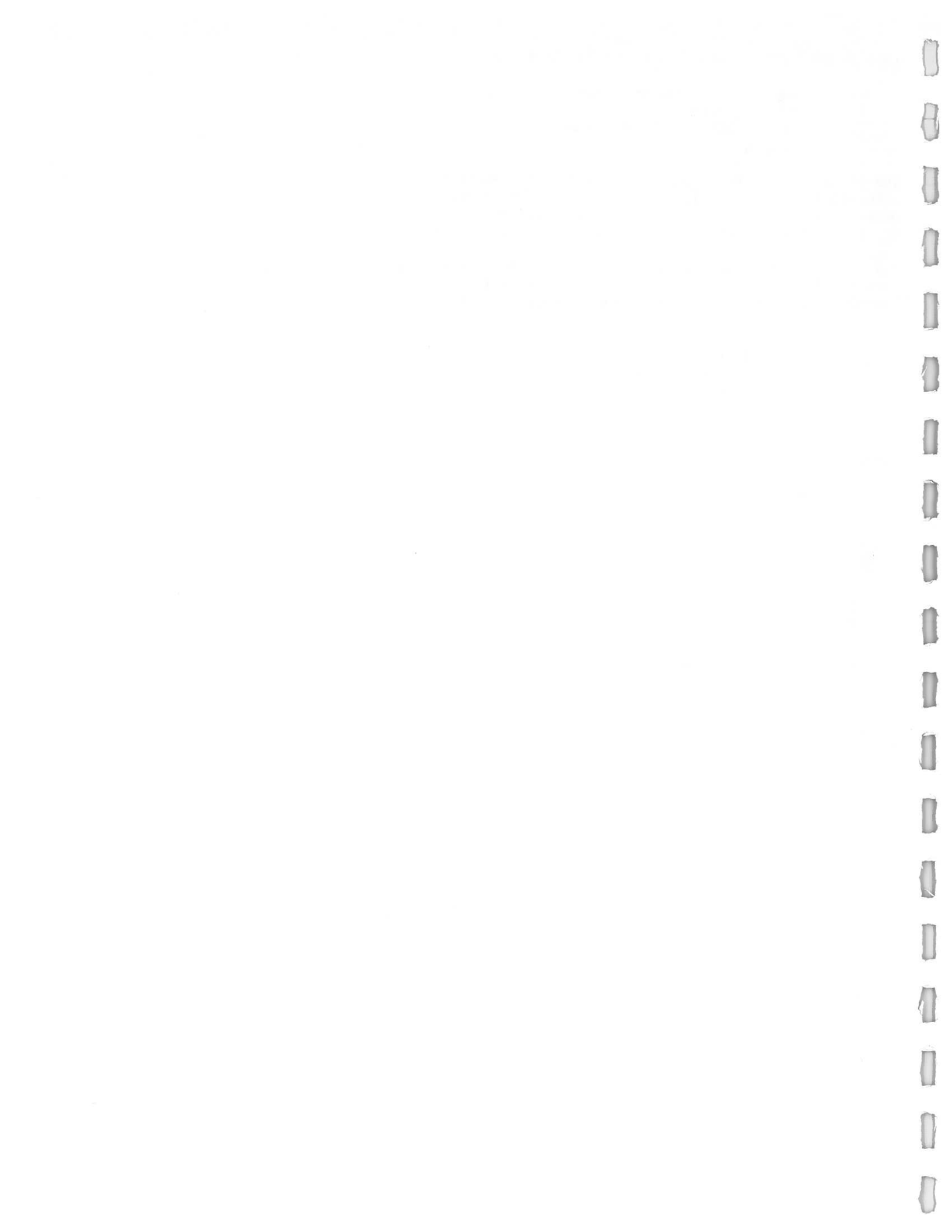
The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION"



BNSF PERMIT





Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive – MOB-2
Fort Worth, Texas 76131
tel +1 817-352-1011

August 8, 2023

City of Edgerton, Kansas
Attention: Mr. Dan Merkh
404 E. Nelson Street
Edgerton, Kansas 66021

23W-17762

Dear Mr. Merkh:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please execute and **return to me via email** for completion on part of BNSF Railway Company ("BNSF"). Submit applicable fees through BNSF.railpermitting.com and reference your tracking number.

Contract fees in the amount of \$5,824.00

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. Email your certificate of insurance to BNSF@certfocus.com and reference your tracking number in the subject line.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1899.00 with your check.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Sincerely,

Annette Jenkins

Annette Jenkins
Sr. Manager Permits
Attachment



PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2023 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF EDGERTON, KANSAS**, a Kansas corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline[s], Eighteen (18) inches in diameter inside a Twenty-Six (26) inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Edgerton, County of Johnson, State of Kansas, Line Segment 7100, Mile Post 40.95 as shown on the attached Drawing No. 87972, dated June 15, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry Sanitary Sewage, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Five Thousand Eight Hundred Twenty-Four and No/100 Dollars (\$5,824.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**

11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster Bradford Gallatin at telephone (630) 341-7250 or bradford.gallatin@bnsf.com, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
 - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1899.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all

Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter

promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

DISCLAIMER OF WARRANTIES

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.

- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensors or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensors may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensors for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensors has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensors, provide a bill of sale in a form acceptable to Licensors conveying the Pipeline and the other Improvements to Licensors for no additional consideration.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensors and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensors, which consent may not be unreasonably withheld or delayed by Licensors. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensors in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSORS, SUCH CONSENT TO BE IN LICENSORS'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

- 26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.
27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.
- If to Licensor: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive – MOB-2
Fort Worth, Texas 76131
Attn: Permits/Licenses
- with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131
Attn: Senior Manager Real Estate
- If to Licensee: City of Edgerton, Kansas
404 E. Nelson Street
Edgerton, Kansas 66021
28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.
29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive – MOB-2
Fort Worth, Texas 76131

By: _____
Patricia Villegas
Title Vice President Permits _____

LICENSEE:

CITY OF EDGERTON, KANSAS, a KANSAS corporation

By: _____
Title: _____

EXHIBIT "A"

SCALE: 1 IN = 100 FT
 KANSAS DIV.
 EMPORIA SUBDIV.
 L.S. 7100 MP: 40.95
 DATE: 6/15/2023

SECTION: 18
 TOWNSHIP & RANGE:
15S 22E
 MERIDIAN: 6PM



Source: Esri, Maxar, Earthstar Geographics, IGN, and the GIS User Community

● NEW MANHOLE

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	18"	26"	LENGTH ON R/W:	260'	156'
CONTENTS:	SANITARY SEWER		WORKING PRESSURE:	0 PSI	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		13.5'
SPECIFICATIONS / GRADE:	C900 DR 18	SCH 10	BURY: NATURAL GROUND		7.5'
WALL THICKNESS:	1.08"	0.375"	BURY: ROADWAY DITCHES		7.5'
COATING:	-	-	CATHODIC PROTECTION		YES

VENTS: NUMBER ___ SIZE ___ HEIGHT OF VENT ABOVE GROUND ___

NOTE: CASING TO BE JACKED OR DRY BORED ONLY
 CARRIER TO BE INSTALLED BY TRENCH

NEAR EDGERTON
 COUNTY OF JOHNSON

STATE OF KS

KFH



KPC ENCROACHMENT AGREEMENT

1950-1951



When Recorded Return to:

KPC Pipeline LLC
19970 West 161st Street
Olathe, Kansas 66062

ENCROACHMENT AGREEMENT

THIS AGREEMENT made and entered into between **KPC PIPELINE LLC**, a Delaware limited liability company, ("Permitter"), located at 19970 West 161st Street, Olathe, Kansas 66062, and **City of Edgerton Kansas, A Municipal Corporation**, ("Permittee"), whose address is **404 East Nelson, Edgerton Kansas 66021**.

The Permitter has completed its encroachment oversight review relative to Permittee's **construction and installation of a sanitary sewer encroaching into the KPC Pipeline easement and set back area** (the proposed "Improvements") in the vicinity of, and relative impact upon, Permitter's existing steel high pressure natural gas pipelines (the "Pipelines"). Permitter hereby grants Permittee, including designated contractors, conditional approval to proceed with the proposed construction of such Improvements, subject to the Permittee agreement to the following conditions:

WITNESSETH:

WHEREAS, Permitter is the current owner of two steel high pressure natural gas pipelines, (1-8" pipeline and 1-10" pipeline) both laid within a defined pipeline easement ("easement") under terms of Right of Way Contract, filed of record in the Johnson County, Register of Deeds Office (the "Right of Way Agreement"); and amendments thereto, located in Johnson County, State of Kansas, to-wit:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 15 SOUTH, RANGE 22 EAST OF THE 6TH P.M. JOHNSON COUNTY, KANSAS, PREPARED BY AL DIEBALL, P.S. 758 ON DECEMBER 9, 2022, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Legal Description of Sanitary Sewer Encroachment into Pipeline Easement

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 18; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 18 S.01°52'27"E. (BEING AN ASSUMED BEARING) 491.32 FEET; THENCE N.88°07'33"E. 35.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF EDGERTON ROAD AND THE POINT OF BEGINNING; THENCE ; N.88°11'01"E. 94.30 FEET; THENCE; S.72°06'16"E. 196.59 FEET; THENCE ; S.83°53'45"E. 401.11 FEET; THENCE ; S.65°50'54"E. 133.48 FEET TO THE EAST LINE OF A TRACT CONVEYED TO GREG HAMMON RECORDED IN BOOK 201106 ON PAGE 6701 AND THE WEST LINE OF A TRACT CONVEYED TO LARRY SHOWALTER RECORDED IN BOOK 3143 ON PAGE 722 IN THE JOHNSON COUNTY REGISTER OF DEEDS; THENCE ALONG THE EAST LINE OF SAID HAMMON TRACT AND THE WEST LINE OF SAID SHOWALTER TRACT; S.01°52'27"E. 31.17 FEET; THENCE ; S.09°10'58"W. 144.99 FEET; THENCE ; S.22°08'42"E. 36.69 FEET TO THE SOUTHEAST LINE OF SAID HAMMON TRACT; THENCE ALONG THE SOUTHEAST LINE OF SAID HAMMON TRACT S.33°03'33"W. 48.71 FEET; THENCE ; N.22°08'42"W. 75.71 FEET; THENCE N.09°10'58"E. 154.49 FEET; THENCE ; N.65°50'54"W. 102.60 FEET; THENCE ; N.83°53'45"W. 398.89 FEET; THENCE ; N.72°06'16"W. 193.77 FEET; THENCE S.88°11'01"W. 87.31 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID EDGERTON ROAD; THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF SAID EDGERTON ROAD N.01°52'27"W. 40.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.94 ACRES.

Dwyer Sanitary Sewer Improvement Project with Final Plans Attached

Design Engineer: BG Consultants

Date of Approved Plan Sheet:

WHEREAS, Permittee has requested Permitter to allow Permittee, to encroach into, over and across a portion of KPC's easement with the construction of a 18-inch Sanitary sewer, (collectively the "Encroachment"); and

WHEREAS Permitter is willing to permit the Encroachments to be placed and maintained into, over, under and across portions of its easement subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto mutually agree as follows:

1. The permitted Encroachment shall be installed as a 18-inch PCV sanitary sewer traversing said pipelines. Construction will be open cut excavation under existing pipelines. No borings or additional improvements will be permitted other than a sanitary sewer. During excavation and construction activities it is agreed that pipeline personnel will be onsite during all related activities.
2. Except for the Encroachment expressly permitted hereunder, Permittee shall not erect, create, plant, install, construct or maintain any additional engineering works or other obstruction of any kind, including but not limited to the planting of trees, fencing, landscaping, within Permitter's defined easement and shall not cause or permit the same to be done by others.
3. **Permittee shall release, defend, indemnify, and hold Permitter, its parent company, subsidiaries, affiliates, successors and assigns, and their respective officers, directors, employees, agents and representatives, harmless from and against any and all claims, demands, damages, liabilities, costs, expenses, actions and causes of action of whatsoever nature, for loss of or damage to any property or constructed improvements on right of way, (including, but not limited to, environmental damages), or injury to or death of any persons in any way arising out of or resulting from the construction, presence, maintenance, use, damages, repair or removal of the Encroachments permitted under this Agreement or the presence of Permittee, or Permitter's guests or invitees, servants or employees, contractors or agents, or their servants and employees on, over, and across the right of way covered by the easement, regardless of how the same may occur.**
4. All construction activities across and over the Pipeline shall be performed in a good and workmanlike manner and in compliance with the General Encroachment Guidelines attached hereto and incorporated herein.
5. Specific encroachment compliance shall include:
 - a) All underground utility crossings being placed under the Pipelines shall: (i) have a minimum clearance of 24" to 26"; (ii) cross, as reasonably practicable, at 90 degrees to the Pipelines, but in no event less than 45

degrees; (iii) be encased in a minimum Schedule 40 PVC; and (iv) if open cut, be covered with a red concrete slab a minimum of 4" thick and 24" wide and over pipelines for a distance of 10 feet on both sides of the Pipelines.

- b) Permittee shall provide additional compacted cover to a total depth of 5 feet above ground over the Pipeline at all road and temporary crossing points. Additionally, crane crossing mats shall be utilized on site and used any time heavy equipment crosses the Pipeline. All fill material will be dumped and bladed into place as not to allow any additional surface pressure on the existing pipelines as are currently buried in place. All fill material will be suitable for compaction and will be clean fill material prohibiting rock and other unclassified fill over pipelines. No vibrating equipment will be utilized for compaction of fill over pipelines.
6. Prior to the commencement of construction activities, specifically including, but not limited to, utility and road grade buildup, crossings or other work, and digging or construction in the vicinity of the Pipelines, Permittee shall: (i) notify ONE CALL a minimum of 72 hours in advance of any such activity, and (ii) notify Permitter a minimum of 5 business days in advance of any such activity, in each case identifying the location of the activities so that a representative of Permitter may be on site to observe and inspect said activities. The notice required by this paragraph shall be by telephone contact as follows:

Kansas ONE CALL: Dial 811 or (800) 382-554

KPC:

Robert Clover

Operations Manager

Office: (913) 764-6015

Cell: (913) 522-7501

7. Permittee shall reimburse Permitter at the rate of \$800 per day in connection with Permitter's observation and inspection of construction activities as referred to in paragraph 3 above. Permitter will invoice Encroachment's owner on monthly billing cycles for such inspection services. **Reimbursement will be required if activities**

require full 8-hour day inspections.

8. Permittee acknowledges that the Pipelines are cathodically protected, and hereby covenants and agrees: (a) that Permittee shall operate and maintain the Improvements in the vicinity of the Pipelines in such a manner as not to interfere in any way with the Pipeline's cathodic protection; and (b) that Permittee assumes the risk of any injury to the Improvements which may occur due to the proximity to or existence of Permitter's cathodic protection system, and shall indemnify, defend and hold Permitter harmless of and from any and all claims in connection with any such injury to the Improvements.
9. **PERMITTEE FURTHER HEREBY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY AND FOREVER HOLD HARMLESS Permitter, ITS PARENT, SUBSIDIARY, AND AFFILIATED COMPANIES, AS WELL AS THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES"), FROM AND AGAINST EACH AND EVERY CLAIM, DEMAND, LIABILITY, INJURY, DAMAGE, ACTION, AND/OR CAUSE OF ACTION ARISING FROM OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION ACTIVITIES, IMPROVEMENTS AND OPERATIONS CONTEMPLATED HEREBY, EXCEPT TO THE EXTENT CAUSED SOLELY BY THE INDEMNIFIED PARTIES' NEGLIGENCE OR WILLFUL MISCONDUCT.**
10. No poles, towers, and vertical structures will be located at the edge of the existing pipeline right of way. All vertical structures will be a distance of 125% of its overall height away from said pipeline.
11. A safety meeting will be required before work can commence. This includes all contractors and subcontractors working in close proximity to said pipeline.
12. All pipeline crossings will be designated with above ground markers. Permanent above ground markers identifying the crossing pipeline or utility shall be installed and maintained at the limits of Permitter's Easement and/or at the crossing.

13. **Temporary Road Crossings.** Temporary fence to be installed 150 feet either side of the access road in a perpendicular angle to identify the approved crossing point. Pipeline crossings will require 5 feet of padding over existing pipeline. The 5 feet will be above existing ground elevation. All fill material will be of clean and compactable fill over pipeline. Padding and fill will continue 10 feet past each pipeline. Fill will be maintained and graded throughout the course of the project. A surface grade of clean gravel or geo grid mat material may be utilized if needed. Access road must be maintained to keep compaction and not allow pumping of fill material of super impressed loading over pipelines. When crossing the pipeline, no equipment over 15,000 pounds will cross without the installation of crane mats or a larger dirt berm to pad the pipelines. This includes all vehicles, concrete trucks, dump trucks, and misc. machinery, etc. All fill material will be dumped and bladed into place as not to allow any additional surface pressure on the existing pipelines that are now in place. All fill material will be suitable for compaction and be clean fill material prohibiting rock and other unclassified fill over pipelines. All equipment to be used on this project will be listed and supplied to KPC with make, model, weight, number of axles, including gross vehicle weight fully loaded.

14. Permittee agrees to immediately contact Permitter in the event of any incident involving, or potentially involving, the pipelines at the following number:

Robert Clover
Operations Manager
Office: (913) 764-6015
Cell: (913) 522-7501

15. Mechanical excavation will cease once the earth has been removed to within 2 to 4 feet of Permitter's pipeline. Shovels must be used to manually clean the area above and below the pipeline. After the pipeline has been initially located, the pipeline shall be kept visible to the equipment operator during the excavation process. Permitter may require shoring or another type of support to protect the pipeline's integrity. All backfill on Permitter's easement or pipeline corridor shall be mechanically compacted to acceptable compaction ratios. No vibrating compactors are allowed within 75 feet of the pipeline(s).

16. Permittor will require each line be potholed to verify depth at centerline of proposed crossing point. Vacuum Excavation will be performed to locate pipelines. A Pipeline Company representative must be onsite during excavation. All Excavation costs will not be incurred by Permittor.
17. Identify pipeline alignment on plan sheets with size of pipeline, identify pipeline with owner's name, KPC Pipeline, LLC (Company Name), and (product) Caution High Pressure Natural Gas Pipeline. Show pipelines on all drawings including Grading plan, Drainage plan, construction Plan and Profile, Cross Sections, Landscaping plan, etc.
18. Permittor shall not be responsible for any repair or restoration of any such fences or other installations of any type within our right-of-way. In the event the Permittee requires the temporary or permanent removal of such fences or fencing said replacement installations will be at their expense. But will not obstruct pipeline right of way with any fencing efforts.
19. All improvements shall be constructed and maintained to comply with all applicable laws, rules, regulations, ordinances, and codes, pertaining to the State of Kansas and in accordance with pipeline industry standards.
20. This Agreement will be enforced by Permittor to adhere to all pipeline safety standards and to preserve all pipeline integrity standards during the course of this project. In the event of any noncompliance with any of the requirements, conditions, or specifications of this Agreement a written notice to Permittee will be issued to comply immediately. A stop work order will be issued with any noncompliance by KPC.
21. No adverse drainage will be diverted over pipeline corridor to cause erosion. Approved concrete flumes, concrete ditch liners, will be used for drainage swales and are considered on a case-by-case basis.
22. No excavation activities within pipeline corridor without pipeline representative be present at all times.
23. List emergency contact numbers on plans and Caution High Pressure Natural Gas Pipeline.

24. Permittee and all subcontractors will agree to allow a safety meeting to be conducted with all contractors and subcontractors and all personnel prior to construction over and or near the pipeline.
25. Permittee and/or its contractor shall furnish Permittor satisfactory evidence of insurance coverage or a Certificate of Insurance prior to beginning work across or near the Pipeline. Coverage must be in a form acceptable to Permittor prior to granting approval to commence construction. In the event of construction under the Pipeline, Permittor must be named as an additional insured on such insurance policies. Any rights of subrogation or recovery will be waived in favor of Permittor.
26. Permittee has the right to obtain a sanitary sewer easement for sewer project, that said easement is subservient to the existing easement rights in place of the Permittor. The Agreement and each covenant, term and condition contained herein is intended to be binding upon the heirs, successors, and assigns of the parties hereto and will run with the land perpetually.
27. No blasting within 800 feet of the pipeline and no blasting will exceed 1.0 on certified and approved seismograph. A seismograph is required on all blasting within 600 feet of pipelines. Seismograph will be place adjacent to the pipeline nearest to the blast for accurate measurement.
28. No pipeline crossings will be allowed except those authorized by Permittor designees.
29. One equipment crossing will be allowed as part of this project. When pipeline crossings are built it will be inspected by Permittor designees for integrity and safety.
30. No fences, trees, landscaping, or sheds will be allowed within the existing pipeline easement area. No above ground structures, construction of hard surfaces except as permitted herein, nor any engineering works of art will be permitted or allowed in the existing pipeline easement.
31. Permittee will supply Permittor the most current construction plans and all plans

relating to the encroachment of the pipeline right of way. The plans will be submitted with the execution of this agreement on behalf of Company. No plan changes relating to the pipeline corridor will be made without supplying adequate documentation to Permittor, including addition construction techniques and the justification for the improvements of the desired plan change(s) to be justified.

32. Additional design drawings and construction drawings may be hereto attached as Exhibits "B".
33. Permittee and City of Edgerton will give advance written notice prior to scheduled work activities crossing the pipelines. In the event of an emergency all public safety concerns will be adhered to protect the public and the integrity of the pipeline.

Any waiver of any specific portion of the above must be in writing and in no way waives any other part of this Agreement.

Please process encroachment agreement to establish acceptance of the foregoing terms and provisions by executing below and returning the three signed originals.

Permitter
KPC Pipeline, LLC

By: _____
Lee W.C. Bullock
President

STATE OF KANSAS §
 §
COUNTY OF SEDGWICK §

On this _____ day of _____, 2022, before me, the undersigned NOTARY PUBLIC, personally appeared **LEE W.C. BULLOCK**, known to me (or satisfactorily proven) to be the person whose name is subscribed as **PRESIDENT, of KPC PIPELINE LLC**, and acknowledged that he, as such being **PRESIDENT** authorized so to do, executed the foregoing instrument as the act of his principal for the purposes therein contained, by signing the name of the said **KPC PIPELINE LLC**, by himself as **PRESIDENT**.

My Commission Expires:

Notary Public

Permittee
City of Edgerton

By: _____

Printed Name _____

Title _____

STATE OF KANSAS §

§

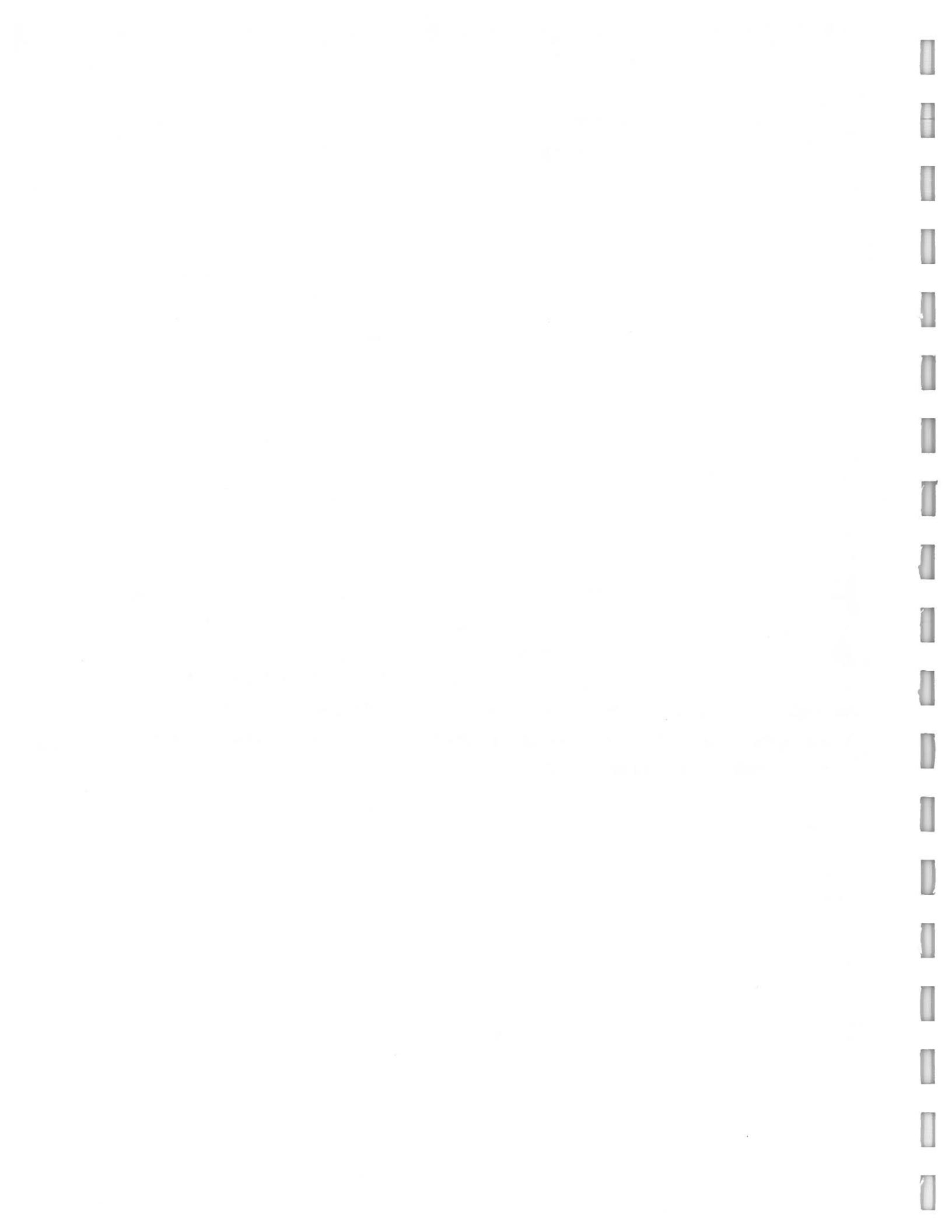
COUNTY OF JOHNSON §

On this _____ day of _____, 2022, personally appeared _____, to me personally known, who, being duly sworn did say that he / she is the _____ **OF THE CITY OF EDGERTON, KANSAS**, a municipal corporation in the State of Kansas and acknowledged to me that he / she executed the foregoing instrument on behalf of said corporation as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

My Commission Expires:

Notary Public

Printed Name _____





BG CONSULTANTS
ENGINEERS · ARCHITECTS · SURVEYORS

April 23, 2024

Dan Merkh
Public Works Director
City of Edgerton
404 E Nelson
Edgerton, KS 66021

Re: Dwyer Sanitary Sewer Improvements
Edgerton, Kansas
22-1353L

Dear Dan:

The bid letting for the Dwyer Sanitary Sewer Improvements was conducted April 18, 2024. Six (6) bids were received. The bids ranged from \$747,900.00 to \$1,147,388.70. The engineer's opinion of probable cost for the project was \$1,200,652.60. Beemer Construction Co., Inc. submitted the low bid.

After reviewing the bid and discussing the project with City Staff, we are recommending that the City award the project to Beemer Construction Co., Inc. contingent upon KDHE approval. We have previous experience with the contractor. In our opinion, Beemer Construction Co., Inc. is qualified to complete this project.

Please find attached the bid tabulations for this project. If you have any questions or need additional information, please call.

Sincerely,

BG CONSULTANTS, INC.

David J. Hamby, P.E., CFM
Vice President

Attachments

BID TABULATIONS
Dwyer Sanitary Sewer Improvements
Edgerton, Kansas
Bid Letting April 18, 2024
22-1353L

Item #	Description	Quantity	Unit	Engineer's Estimate		Beemer Construction Co., Inc.		Redford Construction, Inc.		Legacy Underground Construction, Inc.		VF Anderson Builders, LLC		Abay Construction, Inc.		Nowak Construction Company, Inc.	
				Unit Price		Unit Price		Unit Price		Unit Price		Unit Price		Unit Price		Unit Price	
Base Bid																	
1.	Contractor Construction Staking	1	L.S.	\$ 11,500.00	\$ 11,500.00	\$ 6,500.00	\$ 6,500.00	\$ 10,000.00	\$ 10,000.00	\$ 7,100.00	\$ 7,100.00	\$ 9,200.00	\$ 9,200.00	\$ 3,624.00	\$ 3,624.00	\$ 6,195.00	\$ 6,195.00
2.	Mobilization	1	L.S.	\$ 78,000.00	\$ 78,000.00	\$ 33,367.00	\$ 33,367.00	\$ 10,000.00	\$ 10,000.00	\$ 38,966.00	\$ 38,966.00	\$ 23,000.00	\$ 23,000.00	\$ 36,719.00	\$ 36,719.00	\$ 100,000.00	\$ 100,000.00
3.	Temporary Erosion Control	1	L.S.	\$ 1,500.00	\$ 1,500.00	\$ 750.00	\$ 750.00	\$ 3,500.00	\$ 3,500.00	\$ 1,500.00	\$ 1,500.00	\$ 3,300.00	\$ 3,300.00	\$ 5,206.00	\$ 5,206.00	\$ 12,000.00	\$ 12,000.00
4.	Clearing & Grubbing	1	L.S.	\$ 7,500.00	\$ 7,500.00	\$ 36,796.00	\$ 36,796.00	\$ 15,000.00	\$ 15,000.00	\$ 16,000.00	\$ 16,000.00	\$ 56,000.00	\$ 56,000.00	\$ 31,163.00	\$ 31,163.00	\$ 30,200.00	\$ 30,200.00
5.	Demolition & Removal	1	L.S.	\$ 7,500.00	\$ 7,500.00	\$ 1,250.00	\$ 1,250.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 35,000.00	\$ 35,000.00	\$ 6,039.00	\$ 6,039.00	\$ 6,550.00	\$ 6,550.00
6.	8" Sanitary Sewer (PVC)(SDR 26)(In Place)	10	L.F.	\$ 375.00	\$ 3,750.00	\$ 85.00	\$ 850.00	\$ 90.00	\$ 900.00	\$ 125.00	\$ 1,250.00	\$ 134.00	\$ 1,340.00	\$ 82.00	\$ 820.00	\$ 272.00	\$ 2,720.00
7.	18" Sanitary Sewer (PVC)(PS 115)(In Place)	1556	L.F.	\$ 400.00	\$ 622,400.00	\$ 174.00	\$ 270,744.00	\$ 180.00	\$ 280,080.00	\$ 220.00	\$ 342,320.00	\$ 147.00	\$ 228,732.00	\$ 207.00	\$ 322,092.00	\$ 311.00	\$ 483,916.00
8.	18" Sanitary Sewer (PVC RJ)(PS 115)(In Place)	239	L.F.	\$ 225.00	\$ 53,775.00	\$ 263.00	\$ 62,857.00	\$ 250.00	\$ 59,750.00	\$ 225.00	\$ 53,775.00	\$ 186.00	\$ 44,454.00	\$ 269.00	\$ 64,291.00	\$ 339.00	\$ 81,021.00
9.	4' Dia. Std. Manhole (0'-6' Deep)	8	Each	\$ 10,000.00	\$ 80,000.00	\$ 6,600.00	\$ 52,800.00	\$ 7,500.00	\$ 60,000.00	\$ 7,500.00	\$ 60,000.00	\$ 7,625.00	\$ 61,000.00	\$ 8,191.00	\$ 65,528.00	\$ 15,100.00	\$ 120,800.00
10.	Extra Depth (4' Dia.)	33.6	V.F.	\$ 600.00	\$ 20,160.00	\$ 180.00	\$ 6,048.00	\$ 150.00	\$ 5,040.00	\$ 250.00	\$ 8,400.00	\$ 250.00	\$ 8,400.00	\$ 1,162.00	\$ 39,043.20	\$ 372.00	\$ 12,499.20
11.	Connect to Existing Manhole & Reconstruct Invert	1	Each	\$ 3,000.00	\$ 3,000.00	\$ 4,500.00	\$ 4,500.00	\$ 1,500.00	\$ 1,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,200.00	\$ 3,200.00	\$ 7,594.00	\$ 7,594.00	\$ 3,500.00	\$ 3,500.00
12.	26" Steel Casing (In Place)(Jack & Bore)	223	L.F.	\$ 1,200.00	\$ 267,600.00	\$ 1,155.00	\$ 257,565.00	\$ 1,400.00	\$ 312,200.00	\$ 1,100.00	\$ 245,300.00	\$ 1,443.00	\$ 321,789.00	\$ 1,781.00	\$ 397,163.00	\$ 1,232.00	\$ 274,736.00
13.	AB-3 Surfacing (6")	41.7	S.Y.	\$ 38.00	\$ 1,584.60	\$ 10.00	\$ 417.00	\$ 20.00	\$ 834.00	\$ 10.00	\$ 417.00	\$ 30.00	\$ 1,251.00	\$ 121.00	\$ 5,045.70	\$ 35.00	\$ 1,459.50
14.	Storm Water Pollution Prevention	1	L.S.	\$ 5,500.00	\$ 5,500.00	\$ 2,750.00	\$ 2,750.00	\$ 6,000.00	\$ 6,000.00	\$ 4,000.00	\$ 4,000.00	\$ 2,700.00	\$ 2,700.00	\$ 1,329.00	\$ 1,329.00	\$ 2,000.00	\$ 2,000.00
15.	Silt Fence	353	L.F.	\$ 11.00	\$ 3,883.00	\$ 2.00	\$ 706.00	\$ 3.00	\$ 1,059.00	\$ 2.00	\$ 706.00	\$ 2.00	\$ 706.00	\$ 2.00	\$ 706.00	\$ 8.00	\$ 2,824.00
16.	Rock Ditch Check	2	L.F.	\$ 4,000.00	\$ 8,000.00	\$ 1,250.00	\$ 2,500.00	\$ 800.00	\$ 1,600.00	\$ 150.00	\$ 300.00	\$ 600.00	\$ 1,200.00	\$ 661.00	\$ 1,322.00	\$ 634.00	\$ 1,268.00
17.	Seed, Fertilize and Mulch	1	L.S.	\$ 25,000.00	\$ 25,000.00	\$ 7,500.00	\$ 7,500.00	\$ 8,000.00	\$ 8,000.00	\$ 5,800.00	\$ 5,800.00	\$ 4,400.00	\$ 4,400.00	\$ 7,247.00	\$ 7,247.00	\$ 5,700.00	\$ 5,700.00
Base Bid Total =				\$	1,200,652.60	\$	747,900.00	\$	785,463.00	\$	799,334.00	\$	805,672.00	\$	994,931.90	\$	1,147,388.70

City Council Action Item

Council Meeting Date: May 9, 2024

Department: Public Works

Agenda Item: Consider a Contract with KDHE to Accept Award of the KDHE Waste Tire Grant of \$24,791.36 for the Glendell Acres Park Improvements Project.

Background/Description of Item:

In January of 2024 City Council approved the submission of an application to the Kansas Department of Health and Environment (KDHE) Waste Tire Grant Program. The application was submitted for the poured in place playground and fitness scape surfacing material made from recycled tires for the Glendell Acres Park Improvement Project.

In April 2024 Edgerton was informed that our grant application was approved for funding of \$24,791.36 that would cover approximately half the cost of supplies, labor, shipping, and equipment for the surfacing. Additional community outreach regarding recycling and waste reduction will be incorporated into our upcoming events including the bulk item drop off, Summer Block Party, Movie night, and on our city website.

On February 22, 2024 City Council approved an update to the project budget and contract with CM Concrete for construction of the improvements at Glendell Acres Park. Construction is currently underway. City Staff is working with CM Concrete and the playground surfacing supplier to coordinate all grant administration requirements for the KDHE Grant Tire Program.

City Staff recommends accepting this award pending City Attorney and insurer review.

Related Ordinance(s) or Statue(s):

Funding Source: Park Impact Fee, General Fund

Budget Allocated: \$1,140,867

x Karen E. Kindle

Finance Director Approval:

Karen Kindle, Finance Director

Recommendation: Approval to Sign Contract with KDHE to Accept Award of the KDHE Waste Tire Grant of \$24,791.36 for the Glendell Acres Park Improvements Project.

Enclosed:

KDHE Waste Tire Grant Contract

Prepared by:

Holly Robertson, P.E. CIP Project Manager

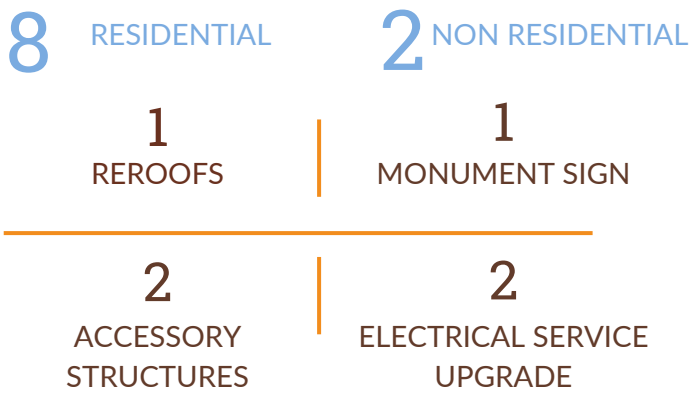


Community Development Quarterly Report

Quarter 1:
Jan-Mar 2024

Building

Building Permits Issued



\$4,932,918 TOTAL PERMIT VALUATION

\$96,620 Residential Valuation

\$4,836,298 Non-residential Valuation

Building Inspections



Planning News

Comprehensive Plan Update

During Q1 of 2024, the City Council held a Joint Workshop with the Planning Commission to discuss the Envision Edgerton Comprehensive Plan update, and the Planning Commission held a public hearing on March 12 to review the plan and accept public comment. The Envision Edgerton Comprehensive Plan was later adopted on April 11 by the Planning Commission.



Edgerton Crossing

Staff received the first Final Site Plan application for a building within the Edgerton Crossing development in Q1 - Maverik is proposing to construct a 5,982 square foot gas station with gasoline and diesel pumps at the northwest corner of the intersection of Homestead Lane and 200th Street. The Planning Commission approved the Final Site Plan with stipulations following a public hearing on April 9. Building permit plans have not yet been submitted at this time.



Trails Master Plan

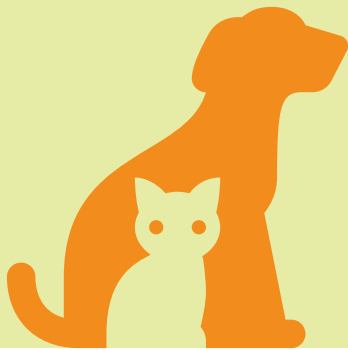
Staff is currently working with SWT Design on creating a Trails Master Plan. An informational Open House was held on March 30, 2024 at the Edgerton City Lake, where staff and the consultant presented information on the City's existing conditions, and gathered feedback from interested parties. The plan is currently in draft phase, and should will be presented before City Council later this year.



Community Development Quarterly Report

Quarter 1:
Jan-Mar 2024

Animal Control



49

LOOSE
ANIMALS

2

BARKING
COMPLAINTS

5

DECEASED
ANIMALS REMOVED

2

UNREGISTERED
PET VIOLATIONS

3

NEGLECT
INVESTIGATIONS

0

CHICKEN PERMITS
& INSPECTIONS

0

DANGEROUS
DOG

0

DOG BITE CASES

1

CITATION ISSUED

Boat/RV	11
Inoperable Vehicles	26
Trash/Exterior Conditions/Storage	26
Public Safety	3
Parking	0
Signage	0
Tall Grass/Weeds	1
Environmental	0
Zoning	0

CODE ENFORCEMENT

67

VIOLATION LEVEL
CASES

78%

OFFICER DRIVEN

3

CITATIONS ISSUED

22%

RESIDENT DRIVEN

The Community Development Department strives to create a livable, resilient, and safe City by enhancing and guiding our community's neighborhoods and commercial areas through City planning, building supervision, code enforcement, and animal control.