

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
June 23, 2016**

**Call to Order**

1. **Roll Call** \_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Crooks \_\_\_\_ Troutner \_\_\_\_ Brown \_\_\_\_ Crist
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. Agenda Approval
5. Approve City Council Meeting Minutes June 9, 2016

**Regular Agenda**

6. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
7. **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.
8. Presentation from Johnson County regarding the ¼-cent public safety sales tax to fund construction of a new county courthouse and a coroner facility
9. Presentation from Miami County Conservation District regarding grant for Hillsdale Lake Water Conservation and Awareness Grant
10. Discussion regarding Beekeeping within the City Limits

**Business Requiring Action**

**11. CONSIDER LEASE PURCHASE AGREEMENT FOR STREET SWEEPER**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**12. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**RECONVENE INTO OPEN SESSION**

**13. CONSIDER AN AGREEMENT WITH BURNS & MCDONNELL/CAS CONSTRUCTION ON THE BASIS OF A STIPULATED PRICE**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**14. CONSIDER AN AGREEMENT WITH BG CONSULTANTS FOR CONSTRUCTION ADMINISTRATION AND OBSERVATION SERVICES FOR THE EDGERTON WASTEWATER TREATMENT PLANT PUMP STATION AND FORCE MAIN**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**15. Report by the City Administrator**

**16. Report by the Mayor**

**17. Future Meeting/Event Reminders:**

- June 25<sup>th</sup> 8:00 PM – Downtown Summer Movie Night (Minions)
- June 30<sup>th</sup> 7:00 PM – City Council Budget Work Session
- July 3<sup>rd</sup> 6:00 PM (Fireworks 9:45 PM) – Community Picnic and Firework Show (rainout day July 5<sup>th</sup>)
- July 4<sup>th</sup> – City Offices CLOSED
- July 12<sup>th</sup> 7:00 PM – Planning Commission Meeting
- July 14<sup>th</sup> 7:00 PM – City Council Meeting

**18. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

City of Edgerton, Kansas  
Minutes of City Council Regular Session  
June 9, 2016

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on June 9, 2016. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

**1. ROLL CALL**

Charlie Troutner	present
Darius Crist	present
Cindy Crooks	present
Jody Brown	present

Clay Longanecker	absent
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With a quorum present, the meeting commenced.

Staff in attendance:	Community Development Director Kenny Cook
	City Attorney Patrick Reavey
	Utilities Superintendent Mike Mabrey
	Public Works Superintendent Trey Whitaker
	Parks & Recreation Coordinator Tegan Meadors
	Johnson County Sheriff Dept. Representative

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**MAYOR ROBERTS INTRODUCED BATTILION CHIEF KELLER TO PRESENT INFORMATION ABOUT THE NEW FIRE TRUCKS THAT THE DISTRICT HAS PURCHASED. THEY HAVE THE NEW EDGERTON TRUCK HERE TONIGHT AND WOULD LIKE TO SHOW IT OFF. MAYOR ROBERTS RECESSED THE MEETING FOR FIFTEEN MINUTES. MEETING RECESSED AT 7:03, AND CALLED BACK TO ORDER AT 7:18 PM.**

**CONSENT AGENDA**

4. The agenda for June 9, 2016 was considered.
5. City Council meeting Minutes of May 26, 2016 was considered.

Motion by Crooks, seconded by Brown, to approve the consent agenda.

Motion was approved, 4-0.

**6. PUBLIC COMMENTS**

NONE

**7. DECLARATION**

None

**8. PRESENTATION FROM SOUTHWEST JOHNSON COUNTY ECONOMIC DEVELOPMENT CORPORATION REGARDING THE 2017 BUDGET.**

Greg Martinette, Southwest Johnson County Economic Development Corporation was present to review the 2017 Budget. There was discussion about how many dollars to put in the budget for 2017. The past three years we have budgeted \$35,000.00 and this year they are asking for more. The general consensus of the city council was to budget \$45,000 - \$50,000.

**9. PRESENTATION FROM GARDNER EDGERTON CHAMBER OF COMMERCE REGARDING 2017 BUDGET.**

Jason Camis, President of Gardner Edgerton Chamber of Commerce was here to present information regarding the 2017 budget. He explained about the community guide and the map, as well as the membership fee. The community guide would need \$2000.00 from the City of Edgerton, and the Map would be an additional \$1000.00. It was a decision of the council to do an agreement for fees and what the chamber does for us and to have one amount for Economic Development. The total amount to be budgeted is \$50,000.00.

**BUSINESS REQUIRING ACTION**

**SPECIAL USE PERMIT FOR TORNADO ALLEY/DOGS**

**10. SPECIAL USE PERMIT FOR TORNADO ALLEY HUNDESPORT WAS CONSIDERED.**

Beth Linn, City Administrator introduced Tegan Meadors, Park and Recreation Coordinator, who explained about the use of the soccer field for Tornado Alley Hundesport. Tornado Alley Hundesport is a local club that has used the soccer field at Martin Creek Park for several years to host dog training practices and competitions. Based on concerns staff requested that Tornado Alley apply for a special event permit for their requested use of the park. The special event permit is for two types of use of the park, practice held weekly on Saturday and Sunday afternoons and an event held twice per year that would actually reserve the soccer field. The conflicts and concerns from staff are dogs being off leash during the exercises/training is violation of city code as they are on public property, The nature of the training/exercises is a concern, and The lack of insurance provided by the club for this type of activity on city property. The recommendation of the staff is to deny the request for special use permit for Tornado Alley Hundesport, including weekly training events and competitions.

Motion by Crooks, seconded by Troutner, to deny the request for special use permit for Tornado Alley Hundesport.

Motion approved 4-0.



**RESOLUTION NO. 06-09-16A**

- 11. RESOLUTION NO. 06-09-16A CONSENTING TO THE ASSIGNMENT OF A BASE LEASE, LEASE AGREEMENT AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC I, LLC PROJECT), SERIES 2013 WAS CONSIDERED.**

The City of Edgerton issued industrial revenue bonds for the ELHC 1 project on September 30, 2013. ELHC 1, LLC leased the Project to the City and the City subleased the project back to ELHC 1, LLC. Flexsteel Industries, Inc. acquired the project from ELHC in a 1031 exchange in September 2014. ELHC 1 LLC transferred its interest in the project to Eagle Exchange with the consent of the City. Flexsteel is now requesting that the project be transferred from Eagle Exchange to Flexsteel.

Motion by Crooks, seconded by Troutner to approve Resolution NO 06-09-16A.

Motion approved 4-0,

**ORDINANCE NO 1017 IRB'S**

- 12. ORDINANCE NO. 1017 AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (TRANSPAC LESING INCORPORATED PROJECT ) SERIES 2016, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$19,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND EQUIPPNG A COMMERCIAL PROJECT, CONSISTING OF A SURFACE CONTAINER STORAGE LOT, INCLUDING BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE CITY TO ENTER INTO A TRUST INDENTURE WITH SECURITY BANK OF KANSAS CITY, AS TRUSTEE; AUTHORIZING THE CITY TO ENTER INTO A BASE LEASE AND A LEASE AGREEMENT WITH TRANSPAC LEASING INCIRPORATED; AUTHORIZING THE CITY TO ENTER INTO A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE BONDS, AND AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS AND THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS WAS CONSIDERED.**

Transpac Leasing Incorporated LLC Project at the southwest corner of 191<sup>st</sup> and Waverly Road in Edgerton, Kansas will be both the lessee on the project and the owner of the bonds. The Ordinance authorizes the City to enter into the following documents: Trust Indenture, Base Lease Agreement, Lease Agreement and Bond Purchase Agreement whereby Transpac Leasing Incorporated agrees to acquire the Bonds.

Motion by Brown, seconded by Crist, to approve Ordinance #1017.

Motion approved 4-0.

**ORDINANCE NO. 1018 IRB'S**

- 13. CONSIDER ORDINANCE NO. 1018 AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (CY EDGERTON LLC PROJECT) SERIES 2016, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$8,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND**

**EQUIPPING A COMMERCIAL PROJECT, CONSISTING OF A SURFACE CONTAINER STORAGE LOT, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE CITY TO ENTER INTO A TRUST INDENTURE WITH SECURITY BANK OF KANSAS CITY, AS TRUSTEE; AUTHORIZING THE CITY TO ENTER INTO A BASE LEASE AND A LEASE AGREEMENT WITH CY EDGERTON LLC; AUTHORIZING THE CITY TO ENTER INTO A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE BONDS, AND AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS AND THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS WAS CONSIDERED.**

This Ordinance No. 1018 authorizes the City to issue industrial revenue bonds for the project. CY Edgerton will be both the lessee on the project and the owner of the bonds. CY Edgerton is constructing a surface container storage lot and making improvements to buildings currently located at the project site at 32355 W. 191<sup>st</sup> Street in Edgerton, Kansas.

Motion by Crooks, seconded by Crist to approve Ordinance No 1018.

Motion approved 4-0.

#### **STREET SWEEPER**

#### **14. REPLACEMENT OF STREET SWEEPER WAS CONSIDERED**

Trey Whitaker, Public Works Superintendent was present to provide information to Mayor and Council about our current street sweeper. It is a 1992 Elgin Pelican with 11,534 miles and 4957 hours. The public works staff has demoed and thoroughly looked at all the proposed machines. A selection committee of the equipment operators reviewed the proposed bids, identified the pros and cons of each respective machine and with this date they made their selection. The recommendation from the staff is a new Elgin Broom Badger mounted on an Isuzu NRR Cab and Chassis, and their suggestion is that the new machine is wrapped in a city approved logo, which would be provided to the city at no additional cost.

Motion by Crooks, seconded by Troutner, to approve the lease to purchase of a new street sweeper subject to approval of lease agreement.

Motion approved 4-0.

#### **BURNS & MCDONNELL/CAS CONSTRUCTION**

#### **15. AGREEMENT WITH BURNS AND MCDONNELL/CAS CONSTRUCTION ON THE BASIS OF A STIPULATED PRICE WAS CONSIDERED.**

This agreement is about the new pump station in place of the Edgerton Wastewater Treatment Plant. There was conversation back and forth about the changes in the project cost. Jeff Keller outlined the prices and the items that were cut to lower the price, however the council put a couple of items back in for safety reasons. They had conversation about the warranty period and how long it would be.

Motion by Crooks, seconded by Crist, to add the VFD's and the HVAC back in to the price and table this item until the next meeting with the changes made.

Motion approved 4-0

Mayor offered thanks to Kevin O'Brien for being present to answer any insurance questions.

**16. REPORT BY THE CITY ADMINISTRATOR**

City Administrator, Beth Linn talked about the need to remove some playground equipment at the Glendall Acres Park. On May 31, 2016 city staff conducted a Playground Safety Audit at all city parks to determine if the play areas were compliant with ASTM F1487 (the safety standards for all playground equipment and protective surfacing). Through the inspection staff found hazards that need to be removed.

Motion by Troutner, seconded by Brown, to remove the two pieces of equipment that have been identified as a hazard.

Motion carried 4-0.

**17. REPORT BY THE MAYOR**

Mayor advised that the ribbon cutting for the Waverly Road Project will be on u-tube. The Mayor also advised that we have three new cranes at the BNSF Intermodal facility. Reminders about the Festival on the Trails and Frontier Days, a booth will be set up at both to sign cards for Judy Hart.

**18. FUTURE MEETING/EVENT REMINDERS:**

June 14<sup>th</sup> 7:00 pm – Planning commission

June 15<sup>th</sup> Noon- Senior Lunch

June 17-18 – Frontier Days

June 23<sup>rd</sup> 7:00 pm City Council Meeting

June 25<sup>th</sup> 8:00 pm Downtown Summer Movie Night (Minions)

June 30<sup>th</sup> – City Council Budget Work Session

July 3<sup>rd</sup> 6:00 pm (Fireworks 9:45) – Community Picnic and Firework Show (rainout date July 5<sup>th</sup>)

**19. RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (B) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR.**

No executive session was necessary.

**20. ADJOURN** Motion: Troutner Second: Brown Vote 4-0

Meeting adjourned at 9:30 pm.

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Janeice L. Rawles, CMC

City Clerk

Approved by the Governing Body on \_\_\_\_\_



## 2017 City of Edgerton Funding Request: \$2,500

June 20, 2016

Prepared By: Lesley Rigney, District Manager

The conservation district, in its 70th year, is adapting to the changing needs of the area and has successfully pursued and secured additional resources for both Johnson and Miami County's valuable water and agricultural resources. Please consider joining the two counties and the other cities in the watershed to raise the local match for this three-year project.

In addition to traditional conservation district activities, such as administering cost-share programs and promoting/facilitating conservation practices, this district has stepped outside of the box in several ways.

- Eastern Kansas Prescribed Burn Association: Formed to safely facilitate prescribed burns in the county to enhance grasslands and control woody encroachment.
- **Hillsdale Lake Watershed Restoration and Protection Strategy (WRAPS) Grant:** Three-year grant to do monitoring, education and conservation practices in the watershed, specifically aimed at reducing the amount of phosphorous entering the lake. Total project cost: \$387,152 (\$232,291 grant, \$154,861 local match).
- School Programs: Designed in cooperation with local science teachers to enhance curriculum with hands-on education. Quote from local teacher (Louisburg):

*"I can't thank the Conservation District enough for the educational opportunities they provided for my students. The pollinator garden was such a neat experience for the kids. They got to sort their plant seeds, using magnifying glasses. Once the seeds were sorted, each child was able to choose what flower they wanted to plant. They planted their seeds, watered them, and watched their daily growth. The fun didn't stop there. Planter boxes were built outside of our classroom. The kids got to fill the planter with dirt and plant their starter plants. Our flowers look awesome and we enjoy watching them change and grow, daily. This was an experience that they still talk about and many wrote it down as their favorite memory from Fifth grade. Thank you for providing a fun, hands-on, cross-curricular educational experience for my students."*

## Miami County Conservation District

### Board Members:

Lyle Wobker, Chair - Farmer, livestock producer and former county commissioner. Serves in leadership capacity on numerous water resources and conservation boards in the area.

John Nichols, Vice-Chair - Farmer, livestock producer and retired FFA teacher. Certifies Conservation Reserve Program (CRP) stands for local Farm Service Agency (FSA).

Dwayne Beckford, Treasurer - Landowner and retired FFA teacher. Spearheading local prescribed burn association to re-claim grasslands from cedar and other woody invasion.

Merle Kaiser, Member - Farmer and livestock producer. With family, earned numerous awards for agricultural and livestock-related conservation practices.

Pansy Bigley, Member - Farmer, livestock producer and retired teacher. As a new member is promoting more thoughtful management of grasslands and CRP buffers.

### Staff:

Lesley Rigney, District Manager - Watershed/environmental planner with 10+ years' experience, Master's Degree in Public Administration (MPA), and from a local farming family. Dedicated to conservation principles, to educating others and to responsible stewardship of public funding.

Robert Allen, NRCS Technician - Local conservation technician with over 30 years' experience designing, managing and inspecting cropland and livestock practices. Trusted by producers in the county, an asset to the conservation efforts.

Jose Mendoza, NRCS Supervisory District Conservationist - Area soil health, no-till and cover crop expert. Experienced with federal cost-share programs - EQIP, CSP and special initiatives - that will enhance the effectiveness and affordability of conservation practices in the county.

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Discussion regarding Beekeeping within the City Limits

**Department:** Community Development

**Background/Description of Item:** During a City Council meeting, Council Member Troutner requested that beekeeping within the city limits be added to a future council meeting agenda. City Council directed staff to research industry standards, any relevant state statutes, best practices from other communities, etc.

Please find enclosed with the packet a memo of research compiled by staff regarding beekeeping including a recent article from the League of Kansas Municipalities magazine and a model ordinance from the state of Louisiana.

Additionally, staff has arranged to have members of the Northeastern Kansas Beekeepers Association (NEKBA) present at the June 23, 2016 City Council meeting to serve as experts with regard to beekeeping and answer questions from City Council. For more information about NEKBA, please see their website at <http://www.nekba.org/>.

Enclosure: Memo to City Council  
League of Kansas Municipalities article regarding Municipal Regulations on beekeeping  
Model Beekeeping Ordinance from Louisiana

**Related Ordinance(s) or Statute(s):**

**Recommendation:**

**Funding Source:** N/A

Prepared by: Beth Linn, City Administrator  
Date: June 20, 2016

# The Buzz About Bees: Effective Municipal Beekeeping Regulations

by Helen Clemens



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**I**n early 2007, beekeepers and researchers alike began to notice a significant problem of widespread losses of honey bee colonies throughout the country.<sup>1</sup> This problem, termed “Colony Collapse Disorder” (CCD), entailed the failure of more than 30% of hives across the United States during the winter of 2006-2007,<sup>2</sup> without any evidence or symptoms of known causes of colony death.<sup>3</sup> Losses were observed at a slightly higher rate the following year,<sup>4</sup> and by 2009, CCD had become a widely recognized problem not only inside the beekeeping and agricultural research communities, but also in mainstream media coverage.<sup>5</sup> Because the honey bee pollinates 80% of all flowering crops, which equates to one-third of food consumed in the United States,<sup>6</sup> this CCD phenomenon produced much cause for alarm. Several different companies produced educational and fundraising campaigns in support of honey bees<sup>7</sup> and Congress required the USDA to research causes and solutions to CCD.<sup>8</sup> To date, there is no confirmed explanation for this disappearance of honey bees.

Interestingly, in the time since CCD became a known problem for honey bees, there has been an incredible rise in backyard apiculture.<sup>9</sup> In fact, the backyard beekeeper provides an important service in caring for and cultivating bees that allows them to thrive and pollinate throughout the local ecosystem. Not only do bees help to safeguard local food sources, some scientists believe that healthy, strong local bees may help to strengthen the species,<sup>10</sup> which is particularly important in this time of crisis.

In response to this rising interest in beekeeping, many cities have introduced new regulations to permit beekeeping in residential areas.<sup>11</sup> This paper will survey and analyze different models for municipal beekeeping regulations (looking to examples from Melbourne, Florida; Hillsboro, Oregon; Savannah, Georgia and Baton Rouge, Louisiana) and balance the competing interests of the beekeeper, neighbors, and the municipal government; and will propose a model policy for municipal governments to adopt in order to best protect each of these interests.



## Part I: Relevant Facts and Information about Honey Bees

As with any effort to regulate, the local government must first understand what it is regulating and how regulations may affect the activity being regulated. In terms of beekeeping, we need to understand the nature of bees and the art and science of beekeeping.

Beekeeping has been described as, “[an] art... to guide bees’ natural behavior into patterns of activity desired by the beekeeper.”<sup>12</sup> Beekeepers may induce bees to produce excess amounts of honey or provide them with food sources during nectar dearth, they may inspect hives to notice if the colony is threatened by an infection or parasite, and they may choose to introduce a new queen to ensure quality eggs are being laid.<sup>13</sup> However, bees are largely left on their own. A beekeeper can provide resources, but the beekeeper cannot control the activities of the 60,000 bees that may occupy the hive during the months when the colony is most productive.<sup>14</sup>

Wild, or feral honey bees exist naturally throughout the United States. Honey bees will commonly fly up to four miles away from their hive to forage for nectar and honey.<sup>15</sup> This is significant in terms of making decisions about beekeeping regulations, because bees will continue to move throughout any area in a municipality, whether or not they have keepers in residential areas.

An important component of apiology relevant to the regulation of hives, is that bees create flight patterns (“flyways” or “bee lines”) to and from the hive.<sup>16</sup> These patterns can be manipulated by the manner in which the hive is situated on a property and what structures or impediments are near the hive.<sup>17</sup> To an individual who observes a hive for any length of time during the busy nectar season, these patterns are almost immediately obvious, and can be likened to a runway at an airport where planes take off to and land from various locations.

It is a common misconception that bees are dangerous or threatening when they swarm, and will become aggressive and attack an unknowing passerby. Numerous depictions of bees include the image of a killer swarm attacking someone running away. When bees swarm however, they are generally docile,<sup>18</sup> as they have no hive or home to defend when they swarm. An additional concern in the popular conscience is the idea of “killer bees.” Killer bees are a name given to the Africanized honey bee, which is admittedly more aggressive than the European varieties, reacting to disturbances ten times faster than other varieties of bees.<sup>19</sup>

In addition to the biological and behavioral aspects of bees, nuisance issues have a tendency to percolate around the keeping of bees—in other words, neighbors with real or perceived reasons to complain require the local government to have some sort of regulatory function for beekeeping in residential areas. Neighbors may lodge various complaints about bees.<sup>20</sup> Of these, the most serious (and perhaps most obvious) are the considerations of those individuals who have an allergy to bee stings. The incidence of immediate systematic allergic reactions to insect stings is estimated to be between 1-7% of the population,<sup>21</sup> and a low estimate of annual

deaths caused by anaphylactic shock following a sting published by the World Allergy Organization postulates one per every ten million.<sup>22</sup> Once individuals are aware that they have an immediate reaction to bee stings, they should be certain to guard against future stings by having a plan to use an adrenaline auto-injector (epi pen) in the event that an insect does sting them in the future.<sup>23</sup>

(Local governments will be called upon to address issues of nuisance in terms of regulating beekeeping while the issues of importing and exporting different types of bees and tracking bee borne diseases will most likely be left to the state and federal governments putting the characteristics of bees relevant to that type of regulation outside the scope of this article).

The legal intersection between beekeeping and neighbors seeking to enjoy their respective property rights and local government regulation has a long history. Over one hundred years ago, Arkadelphia, a city in Arkansas, sought to address the issue by prohibiting beekeeping as a nuisance. After being challenged, the city lost when the court concluded that beekeeping cannot be regulated as a nuisance:

Neither the keeping, owning or raising of bees is, in itself, a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case. The ordinance under consideration undertakes to make each of the acts named a nuisance without regard to the fact whether it is so or not, or whether bees in general have become a nuisance in the city. It is, therefore, too broad, and is invalid.<sup>24</sup>

However, in 1938, a California court concluded that the City of Los Angeles’ regulation of beekeeping, including a prohibition in some areas of the city but not others, survived constitutional challenge:

The Hadacheck decisions, above cited, sufficiently demonstrate that the facts appearing herein justify the ordinance prohibiting beekeeping within the city except in the designated areas, and that the ordinance is not unconstitutional for any reason. (See, also, *Brown v. City of Los Angeles*, 183 Cal. 783 [192 Pac. 716]; *Reiman v. Little Rock*, 237 U.S. 171, 176 [35 Sup. Ct. 511, 59 L. Ed. 900].)<sup>25</sup>

In the same year that the Arkansas court decided the Arkadelphia case concluding that beekeeping cannot be legislatively defined as a nuisance, a New York court confirmed an injunction issued against a beekeeper in a case where a jury found beekeeping to be a nuisance.<sup>26</sup> Close to 70 years later, a Pennsylvania court concluded

that beekeeping is not a nuisance *per se* and denied an injunction that the township sought:

The keeping of bees in a residential neighborhood is not a nuisance *per se* and the strong arm of the chancellor should not be exerted to eliminate a legitimate business or occupation unless compelling reasons require it, that is, that the injury caused is real and substantial: [cited cases omitted.]<sup>27</sup>

These cases illustrate the varying approaches to regulation, geographical and temporal development of judicial philosophy and the continuing likelihood for neighborly (or not) interaction between beekeepers and adjacent property owners. As time has passed, the development of zoning laws and a greater tendency to support governmental police powers no doubt have allowed many communities to regulate beekeeping in various ways that may be at odds with these cases from the distant past. What follows are some examples of different regulatory approaches to beekeeping.

## **Part II: Municipal Approaches to Beekeeping**

Cities and counties have adopted a variety of different approaches to the question of how to manage the presence of beekeepers and their hives within their communities. While this article cannot begin to encompass the entirety of approaches within the approximately 20,000 municipal governments in the country,<sup>28</sup> the following examples provide illustrations of the different general approaches that municipalities may elect to take in the regulation of beekeeping.<sup>29</sup> These include a prohibition on beekeeping, requiring permission of neighbors to be able to keep bees, state preemption of municipal regulation of bees, and a robust regulatory scheme at the city and county government level.

### **Outright Ban on Beekeeping: Melbourne, Florida**

The city of Melbourne, Florida is located on the eastern central coast of the Florida peninsula stretching across to a barrier island. About an hour away from the Kennedy Space Center,<sup>30</sup> Melbourne has a population of 76,354.<sup>31</sup> Melbourne also has an outright ban on beekeeping. The city code states, "It shall be unlawful for any person to operate an apiary or otherwise maintain bees within the city limits, except in an agricultural estate use (AEU) zoning district, or as may otherwise be provided in this article."<sup>32</sup> The exceptions, however, must be related to medical or educational purposes, rendering backyard beekeeping essentially illegal:

#### **Sec. 10-53-Exceptions to section 10-52**

(a) Nothing contained in section 10-52 shall prohibit the maintenance of one hive of bees under the following conditions:

(1) Upon the premises of any public or private educational institution for use by students for educational purposes.

(2) Upon such premises as may be required for medical research or scientific purposes.

(3) Upon the premises of a building or residence, provided that the person seeking to maintain the hive upon the premises shall first make application for permit to maintain such hive. No application for permission to maintain such hive shall be granted unless the use for educational purposes is clearly established.

(b) The use of bees for educational, medical or scientific purposes, as provided for herein, shall be permitted so long as no hazard or nuisance, public or private, is created.<sup>33</sup>

Thus, the backyard beekeeper, or a resident who is interested in helping the environment by maintaining a beehive has no options in Melbourne.

This means the concerns of any individuals with allergies to bees, or neighbors who would prefer not to live near a beehive are almost fully met; should any individual try to keep bees without a scientific or educational permit, the neighbor need only report the instance to the city government, who will rule it illegal. But a prohibition on beekeeping does not necessarily equate to a lack of bees in a city, because feral honey bees require no license or permit to exist anywhere.

Melbourne's approach does nothing to address the CCD problem. As backyard beekeepers can play an important role in helping the local ecosystem, a complete prohibition on the practice during this period of expansive colony collapse could be harmful. Obviously, each community must measure its regulatory mission by its residents' wishes and in Melbourne, at least so far, instead of balancing the interests of property owners the community has concluded it is best served by a complete ban.

### **Neighborhood Permission: Hillsboro, Oregon**

The city of Hillsboro, Oregon, population 93,340<sup>34</sup> and located about a thirty minute drive east<sup>35</sup> of the state's largest city, Portland, has adopted a more nuanced approach to the regulation of beekeeping within the municipal limits. The city code includes regulations for the maintenance of beekeeping equipment, total number of hives, and instructions as to where the beehive may be located on an individuals' property. Most significantly, before a hive can be registered, any neighbors who live within 300 feet

**"As backyard beekeepers can play an important role in helping the local ecosystem, a complete prohibition on the practice during this period of expansive colony collapse could be harmful"**

of the residence must be notified of the plan to have a colony near their homes.<sup>36</sup> With adequate medical certification of a bee sting allergy, at-risk individuals may request that hives be removed from a neighbor's property.<sup>37</sup>

The clarity and cohesiveness of this particular portion of the code merits a review of the language itself:

#### **6.20.080 Bees**

A. Keeping Bees. Bees may be kept in the city consistent with the following standards:

1. The keeper is in compliance with HMC 6.20.080(B);
2. Bee hives/colonies may only be kept on single family residential property;
3. No more than three bee hives / colonies may be kept;
4. Bee hives/colonies may not be kept when a person who has a medically certified allergy to the sting of bees resides within 300 feet of the hives/colonies and has submitted to the city medical documentation and a written request that the hives/colonies be removed;
5. Products generated, such as honey, may not be sold from a residential property;

6. Bees must be contained consistent with the following standards:

- a. All portions of the hives/colonies enclosure must be located behind the front building plane of the dwelling; and
- b. All portions of the hives/colonies must either be located a minimum of 10 feet from any property line unless there is no barrier, such as a fence or hedge, that is at least six feet in height on all relevant property lines, in which case a minimum of 15 feet applies.

7. Beekeeping equipment must be kept consistent with the following standards:

- a. All portions of the hives/colonies enclosure must be kept and maintained in a clean and sanitary condition at all times to prevent any condition which may be dangerous or detrimental to the health of the public or animals or constitute a nuisance; and
- b. Unused equipment may not be in the open or otherwise accessible to bees.

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B. Notification Process. Prior to keeping bees, a person must:

1. Prepare a notice stating intent to keep bees and the type of bee kept and mailing list, utilizing city approved templates;
2. Mail notice to adjacent property owners within 300 feet of the site two weeks prior to commencing bee keeping; and
3. Submit a written declaration to the city of compliance with the notification requirements in HMC 6.20.080(B)(1) and (2).<sup>38</sup>

These regulations have several important implications. First, because a neighbor with a bee allergy can seek relief from the government to avoid living in proximity to beehives, the concerns of those with allergies are entirely met.<sup>39</sup> The notice process is quite clearly stipulated on the city's website; a copy of a form letter that the prospective beekeeper must send out states specifically: "[I am] considering keeping bees on this property. This notice is to allow person(s) with a medically certified allergy the opportunity to submit a written request that hives not be located on this site."<sup>40</sup> This letter, sent with an attachment listing the full text of Hillsboro's code regulating bees leaves no ambiguity. In order to have a beehive on one's property, the individual must alert neighbors to their right to have that action stopped or prevented. Additionally, the beekeeper does not have full flexibility to use any portion of a property to keep bees: hives must be situated 10-15 feet away from any property lines. This limits a beekeeper's ability make best use of the landscape or situate the bees in the best manner possible. Furthermore, this will do little to contain the bees to the beekeeper's property, as bees will fly as far as four miles away from their hives in the search for nectar.<sup>41</sup>

Examining these regulations from the perspective of the benefits that bees bring to the environment, Hillsboro beekeepers may legally keep bees and help to promote their presence in Oregon, but these interests may be trumped by those of an individual with a bee sting allergy. Furthermore, the restrictions on where a beehive may be placed within a yard may make beekeeping impossible based on the size of the yard and its relation to the home on the property.

#### ***State Control: Savannah, Georgia***

Savannah, Georgia is a coastal city in the Deep South, with a population of 142,772.<sup>42</sup> A beekeeper in Savannah does not need to apply for registration or be subject to any regulation by the city's government. The State of Georgia preempted local control over beekeeping:

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution prohibiting, impeding, or restricting the establishment or maintenance of honeybees in hives. This

Code section shall not be construed to restrict the zoning authority of county or municipal governments.<sup>43</sup>

Thus, local governments in Georgia cannot address the concerns of their residents about beekeeping.<sup>44</sup>

Although Georgia preempts local regulation, it allows local governments to impose zoning regulations that can help to alleviate nuisance and on one occasion proved problematic for beekeepers. Specifically, the code states, "This Code section shall not be construed to restrict the zoning authority of county or municipal governments (emphasis added)."<sup>45</sup> This proved problematic for Nicholas Weaver, a hobby beekeeper from the age of 13, residing in Forsyth County.<sup>46</sup> After a decade of backyard beekeeping, with a total of six hives on his own and neighbors' properties, Weaver received a notice from the Forsyth County government stating that he had to remove his bees.<sup>47</sup> Absent any zoning regulations for beekeeping, the county had determined that the bees were livestock,<sup>48</sup> and that Weaver's residence was not zoned for that use. Ultimately the problem was resolved when Weaver worked with the local authorities and was granted a reprieve;<sup>49</sup> yet this illustrates that even when the state law directly preempts local governments from prohibiting bees, a neighbor's complaint (which triggered Forsyth County's response),<sup>50</sup> can still cause some problems for beekeepers.

#### ***Permission with Explicit and Nuanced Requirements: Baton Rouge, Louisiana***

Baton Rouge, Louisiana, has a population of 229,169.<sup>51</sup> The Baton Rouge Municipal Code includes a variety of incredibly nuanced requirements for backyard beekeepers, based on the state's Model Beekeeping Ordinance for Louisiana Local and Municipal Governments.<sup>52</sup> These provisions on beekeeping, (§§ 6:660- 6:671 of the Baton Rouge Municipal Code) are too lengthy to reproduce here, but include the following regulations: annual registration of all honeybee hives with the Louisiana Department of Agriculture and Forestry,<sup>53</sup> stipulations on what kind of hive beekeepers may use (Langstroth<sup>54</sup> hives),<sup>55</sup> requirements for where the colony may be located on the beekeeper's property (at least 25 feet from the property line),<sup>56</sup> requirements for the creation of a fence or barrier to deflect the bee line,<sup>57</sup> provision of water for the colony,<sup>58</sup> limits to the number of hives that may be on a property based on its size,<sup>59</sup> requirements for signage near the apiary<sup>60</sup> and procedures for non-compliance with the section.<sup>61</sup> Notably, the Baton Rouge Municipal Code does not require notification of neighbors nor does it provide protections for nearby residents with bee sting allergies. Baton Rouge may not include each regulation that other cities have employed, but it demonstrates how a city can provide instruction for beekeepers on how they must conduct their activities.

Other local governments include regulations that address the species of bees that a beekeeper may keep within a municipality<sup>62</sup> and the requirement of a firebreak<sup>63</sup> to address the beekeepers' use of smokers to calm the bees prior to working the hives.<sup>64</sup> While

other regulatory features may exist, those discussed in this article highlight regulatory trends and patterns that different municipalities around the country take regarding bees.

### **Part III: Best Practices for Municipal Regulation of Beekeeping.**

After reviewing the practice of bee keeping and how local governments have addressed the issue, this article proposes that in order to best capture the needs of the beekeeper and the community, the following measures should be incorporated into municipal regulations for beekeeping. As the individual needs of each community may require specific tailoring, these are presented as principles for best practices. As an initial point, all should adopt measures addressing beekeeping rather than prohibiting it, especially as the popularity of this activity rises; this will help to avoid any gray areas and unnecessary, costly litigation surrounding beekeeping.<sup>65</sup>

#### **1. Legalize Beekeeping.**

Little rationality exists in a complete prohibition on beekeeping. Wild honey bees will exist, roam and pollinate in communities despite regulations to prohibit either commercial or hobby bee keeping. Although legalizing beekeeping may make bees more commonplace, the option of prohibition provides only a false sense of security since there is no safe way to completely eradicate the presence of bees. Beekeeping provides many benefits for the environment and local community; if it is not encouraged, it should at least be permitted. Beekeeping can be conducted safely even in the densest of municipalities, such as New York City, and laws that prohibit beekeeping ought to be changed to provide a reasonable regulatory environment for the activity.

#### **2. Municipalities should require the registration of beehives with the local government, and make this list available to citizens upon request (in addition to any state registration requirements).**

Although bees exist in the wild and cannot be eradicated, both the government and public benefit from knowing where bees are kept. This serves several purposes. First, any individual who suffers from a bee allergy, or has a child who does, clearly benefits from information as to where a bee colony or small apiary exists. This improves the goals inherent in the system enacted by Hillsboro, Oregon, because it looks not only at the immediate area surrounding the residence of someone with a bee sting allergy, but instead at a neighborhood or city as a whole. Children especially are known to play outside well beyond an arbitrary setback such as the 300 foot radius of their home. Parents can better focus on the areas in which they may instruct their young children to avoid, and may be certain to have epi pens available at locations at which their kids regularly play

that are near beehives (for instance, at a friend's home). For those adults that are affected with an allergy, by noting which properties contain beehives, they can conduct their activities to avoid these locations. Ideally, if the resident is concerned about new hives, the municipality could set up a notification list, such that individuals may request to be informed of any new colony registrations and installations. If a municipality keeps this kind of registry, individuals bear the burden of responsibility for informing themselves about where bee colonies exist, instead of placing an unreasonable burden or prohibition on the beekeeper.

Not only does this system better serve the needs of those with bee sting allergies, it protects the rights of individuals who would like to keep bees on their property. The Hillsboro code provisions that

*A Kansas Bee Keeper checking on his bees. Photo by Andrey Ukrazhenko.*



allow individuals with a bee allergy to prevent their neighbors from keeping bees poses a high burden without a clear indication that the measure provides sufficient protection to the allergic individuals. Notably, a feral bee colony may occupy a tree, stump or log—all without the property owners' or the neighbors' knowledge. Those with allergies to bee stings must be alert regardless of whether they live close to a bee keeper's hive or a feral hive, but only the bee keeper's hive will be regulated based on the neighbors' concerns.

Furthermore, though most inspection of beehives relating to disease occurs by a state agency, with the diseases and parasites that plague the American honey bee, it would be helpful to require beekeepers to notify other beekeepers nearby if their hives have been affected by any of these problems through a locally required notification system. A locally maintained register of all bee colonies would help with this goal, and generally to make the beekeeping community aware of all other beekeepers in their vicinity. As some states, like Georgia, do not require registration of bee colonies if they are not commercial entities, this also provides a localized list that is useful outside of traditional state purposes.

### **3. Avoid stipulations regarding setbacks; make them available to neighbors' as a right only on demonstration of need.**

A beekeeper should be able to situate a beehive on the bee keeper's property in the area that is best suited for the colony; the mandate that there be a setback rests on a presumption that the beehive is an inherent nuisance to neighbors and that separation from the property line provides some protection. In fact, a prudent beekeeper will not want to keep a hive near a property line that borders a nosy dog, or that allows people to easily interfere with the hive and the bees' activities. And, depending on the set up of a yard a location close to the property line may be the safest place for the bees to

be maintained. However, if a neighbor is able to demonstrate a compelling reason to move or relocate a hive, the local government should be able to impose a setback requirement based on the specific facts including the lot size, location within the neighborhood, bee line and other localized concerns.

While neighbors ideally should be able to work together without municipal intervention, if that cooperation fails, neighbors ought to be able to request a setback based on individualized concerns and specific facts. By requiring individualized and specific facts to govern the decision, the law will not create an unintended prohibition on beekeeping by making it impossible to locate a hive on a small property without much yard space.

### **4. Enact a Flyway Requirement.**

As mentioned above, a particular feature of bees is their "bee line" to and from the hive. This phenomenon is something around which municipalities should provide some regulatory framework, as it poses the most likely reason that regular human-bee interaction can be negative. If the bee line from the entrance of the hive to the flowering plants nearby is situated so that the public or neighbors may regularly interrupt this flight path, the location is not ideal (both for the beekeeper and the people walking between these spaces).

By requiring the beekeeper to have a flyway barrier, this will help to eliminate routine contact that would be out of the ordinary in a feral hive of bees. This can be flexible: a fence, shrubbery or other arrangement can prevent bees from establishing a flight pattern that causes this unnecessary contact. By putting the height requirement at about six feet, this will eliminate most possibilities for a bee to encounter (and perhaps sting) a human. If the beekeeper can demonstrate that the flight pattern of the bees will cause insignificant public contact based on where the hive sits on their property, this

*A look inside the beehive. Photo by Andrey Ukrazhenko.*




should serve in place of satisfying the flyway requirement. Should a beekeeper violate this flexibility, substantial penalties and abatement orders can apply.

## 5. Regulations Regarding the Species of Bees.

A municipality should ban Africanized honey bees (especially if the state has not done so). These bees are more aggressive and their prohibition will help to alleviate the neighbors' concerns and provide an added protection against Africanized honey bees mating with the European varieties that occupy most of the United States.

## Conclusion

Honey bees add much value to communities and municipalities should adopt an inclusive series of regulations to clarify the rights of beekeepers and their neighbors, following the principles described above. This is particularly important in light of the increased popularity of backyard beekeeping, urban agriculture and in response to Colony Collapse Disorder.

 *Helen Clemens is a recent graduate of the George Washington University Law School, where she served as SBA President and was an Associate of the George Washington University Law Review. She has gained legal experience serving as a law clerk for the National District Attorneys Association, the Senate Judiciary Committee, and the Office of the Attorney General of the Commonwealth of Virginia. Prior to attending law school, she received her M.Phil in International Peace Studies from Trinity College, Dublin and her B.A. in Political Science and Romance Languages from the University of Georgia.*

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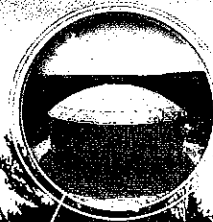
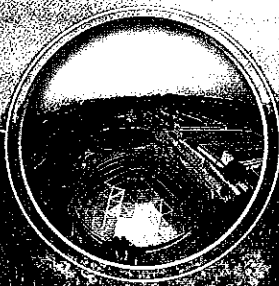
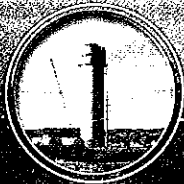
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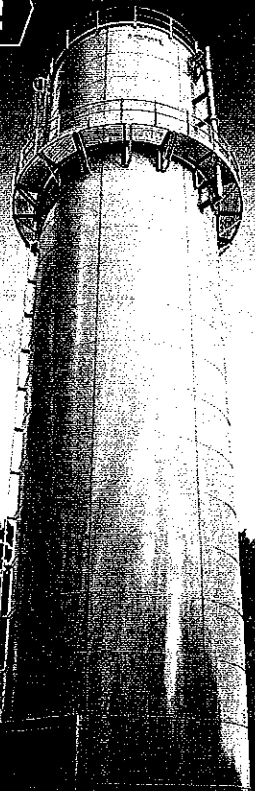
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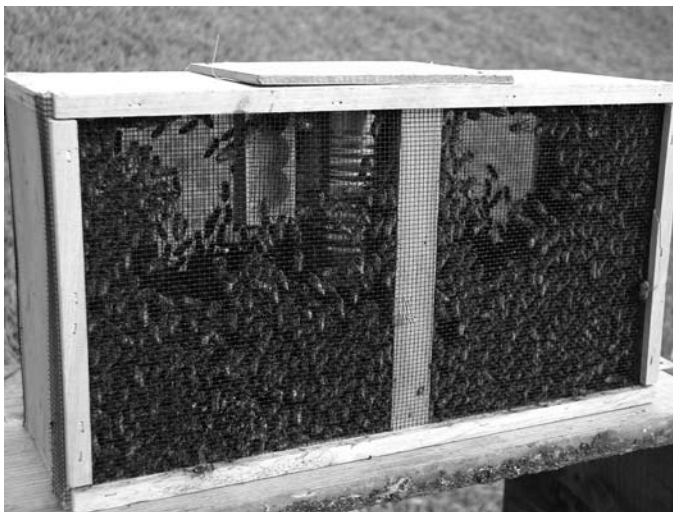
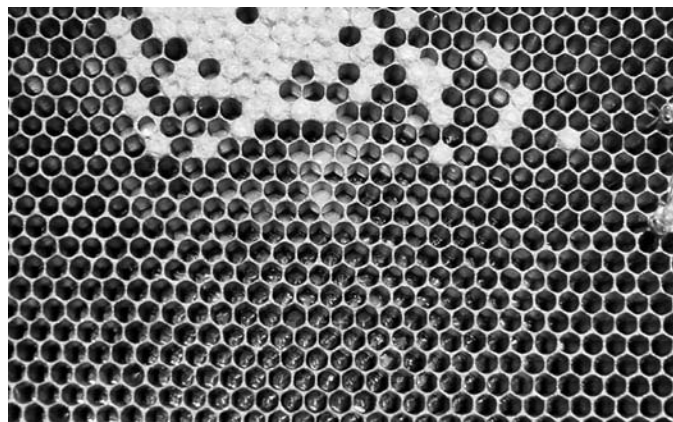






# Model Beekeeping Ordinance

*for Louisiana Local and  
Municipal Governments*



This publication is intended to help local and municipal governments address potential concerns or problems between the public and beekeepers. It was adopted from the Texas beekeeping ordinance and modified by the Louisiana Beekeepers Association, the Louisiana Department of Agriculture and Forestry (LDAF), the USDA/ARS Honey Bee Breeding Genetic and Physiology Lab and the Louisiana Cooperative Extension Service. Because the honeybee industry is vital to Louisiana agriculture, the four organizations are willing to assist any local, municipal state government in the use or implementation of this program.

# Proposed Model Beekeeping Ordinance for Louisiana Local and Municipal Governments

**Whereas**, honeybees are of benefit to mankind, and to Louisiana in particular, by providing agriculture, fruit and garden pollination services and by furnishing honey, wax and other useful products; and

**Whereas**, Louisiana is among the leading states in honey production and agricultural byproducts associated with beekeeping throughout the United States; and

**Whereas**, domestic strains of honeybees have been selectively bred for desirable traits, including gentleness, honey production, tendency not to swarm and nonaggressive behavior, characteristics that are desirable to foster and maintain; and

**Whereas**, gentle strains of honeybees can be maintained within populated areas in reasonable densities without causing a nuisance if the bees are properly located and carefully managed and maintained;

***Now, Therefore, Be It Ordained and Enacted By***

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(Insert name of governmental entity)

**Section 1.** That the findings contained in the preamble of this ordinance are hereby adopted as a part of this ordinance.

**Section 2.** That Chapter No. \_\_\_\_\_ (Health) of the Code of Ordinances,  
\_\_\_\_\_, (city), \_\_\_\_\_ (state), is hereby  
amended by adding a new article No., which reads as follows:

## Definitions

As used in this article, the following words and terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

1. "Apiary" means the assembly of one or more colonies of bees at a single location.
2. "Beekeeper" means a person who owns or has charge of one or more colonies of bees.
3. "Beekeeping equipment" means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.
4. "Colony" or "hive" means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and at times many drones, including brood, combs, honey and the receptacle inhabited by the bees.
5. "Honeybee" means all life stages of the common domestic honey bee, *Apis mellifera* species.
6. "Tract" means a contiguous parcel of land under common ownership.
7. "Undeveloped property" means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial,

church, park, school or governmental facilities or other structures or improvements intended for human use occupancy and the grounds maintained in association therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

## Certain Conduct Declared Unlawful

- (a) The purpose of this article is to establish certain requirements of sound beekeeping practice that are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.
- (b) Notwithstanding compliance with the various requirements of this article, it shall be unlawful for any beekeeper to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others or interfere with the normal use and enjoyment of any public property or property of others.

## Hive Registration

All honey bee colonies shall be registered annually with the Louisiana Department of Agriculture and Forestry. IT IS THE LAW!

## Hive Type

All honey bee colonies shall be kept in Langstroth-type hives with removable frames, which shall be kept in sound and usable condition.

## Fencing of Flyways

In each instance in which any colony is situated within 25 feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least 6 feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends 10 feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least 6 feet above ground level over the property lines in the vicinity of the apiary. It is a defense against prosecution under this section that the property adjoining the apiary tract in the vicinity of the apiary is undeveloped property for a distance of at least 25 feet from the property line of the apiary tract.

## Water

Each beekeeper shall ensure that a convenient source of water is available to the bees at all times during the year so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths or other water sources where they may cause human, bird or domestic pet contact.

## General Maintenance

Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

## Queens

All colonies shall be maintained with marked queens. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, it shall be the duty of the beekeeper to promptly re-queen the colony with

another marked queen. Queens shall be selected from European stock bred for gentleness and nonswarming characteristics.

## Colony Densities

- (a) It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:
  1. One-quarter acre or less tract size – two colonies.
  2. More than one-quarter acre but less than one-half acre tract size – four colonies.
  3. More than one-half acre but less than 1 acre tract size – six colonies.
  4. One acre or larger tract size – eight colonies.
  5. Regardless of tract size, where all hives are situated at least 200 feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.
  6. Regardless of tract size, so long as all property other than the tract upon which the hives are situated – that is, within a radius of at least 200 feet from any hive – remains undeveloped property, there shall be no limit to the number of colonies.
- (b) For each two colonies authorized under Colony Densities [subsection (a)] there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8 inch depth 10-frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within 30 days after the date is acquired.

## Marking Hives, Presumption of Beekeeping

- (a) In apiaries the beekeeper shall conspicuously post a sign setting forth his name and telephone number. In addition, the beekeeper's registration yard marker, provided by the LDAF, shall be posted on a sign within the apiary. It is a defense against prosecution under this subsection that a colony is kept upon the same tract upon which the owner resides.
- (b) Unless marked in accordance with subsection (a) it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address and telephone number of the other person who is acting as the beekeeper.

# Inspection

The health officer shall have the right to inspect any apiary between 8 a.m. and 5 p.m. Where practicable, prior notice shall be given to the beekeeper if he resides at the apiary or if his name is marked on the hives.

# Compliance

- (a) Upon receipt of information that any colony situated within the city is not being kept in compliance with this article, the director shall initiate an investigation. If he finds grounds to believe that one or more violations have occurred, he will have a written notice of a hearing issued to the beekeeper.
- (b) The notice of a hearing shall set forth:
1. The date, time and place at which the hearing will be conducted.
  2. The violation(s) alleged.
  3. That the beekeeper may appear in person or through counsel, present evidence, cross-examine witnesses and request a court reporter as provided by Rule No. \_\_\_\_\_ of the city council's rules of procedure.
  4. That the bees may be ordered destroyed or removed from the city if the hearing officer finds that they have been kept in violation of this article. Notices shall be given by certified U. S. mail or personal delivery. If the health officer is unable to locate the beekeeper, however, the notice may be given by publication one time in a newspaper of general circulation at least five days before the date of the hearing.
- (c) The hearing shall be conducted by the director or a designated health officer. The burden shall be on the city to demonstrate by a preponderance of credible evidence that the colony or colonies have in fact been kept in violation of this article. If the hearing officer finds that the colony or colonies have been kept in violation of this article, he may order that the bees be destroyed or removed from the city, not to exceed 20 days and that bees not thereafter be kept upon the tract for a period of two years.
- In instances where the hearing officer finds that the violations were not intentional and that the beekeeper has taken corrective actions to cure the alleged violations, he may issue a warning in lieu of ordering the bees destroyed or removed. Upon failure of the beekeeper to comply with the order, the health officer may cause the bees to be destroyed and the hive structures to be removed. In each instance in which a bee colony is destroyed, all usable components of the hive structure that are not damaged or rendered unhealthy by the destruction of the bees shall upon the beekeeper's request be returned to the beekeeper, provided that the beekeeper agrees to bear all transportation expenses for their return.

- (d) The decision of the hearing officer may be appealed in accordance with the provision of Rule No. of the city council's rules and procedures by filing a notice of appeal with the city secretary within 10 days following the date that the hearing officer announces his decision, or if the decision is not announced at the conclusion of the hearing, within 15 days following at the date the hearing officer places written notice of his decision in the mail to the beekeeper. An appeal shall not stay in the hearing officer's decision, and it shall not be the responsibility of the beekeeper to remove the bees from the city pending the determination of the appeal.
- (e) The provisions of this section shall not be construed to require the conduct of a hearing for the destruction of (1) any bee colony not residing in a hive structure intended for beekeeping or (2) any swarm of bees or (3) any colony residing in a standard or man-made hive, which by virtue of its condition, has obviously been abandoned by the beekeeper.

**Section 3.** If any provisions, section, subsection, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be servable for the purpose.

**Section 4.** This ordinance shall become effective at \_\_\_\_\_ (hour) on \_\_\_\_\_ (date).

**Section 5.** There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the mayor; therefore, this ordinance shall be passed finally on such date and shall take effect as provided in Section 4, above.

Passed and approved this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
(Mayor)

Author: Dale K. Pollet, Specialist (Entomology)

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Pub. 2524

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9/09 Rev.

The LSU AgCenter provides equal opportunities in programs and employment.



## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Lease Purchase Agreement for Street Sweeper

**Department:** Administration

**Background/Description of Item:**

In the Vehicle & Equipment Replacement Plan the street sweeper is planned to be replaced using a five-year lease purchase. The purchase of the street sweeper was approved by Council on June 9, 2016. At that time, it was agreed that staff would research lease options and bring a recommendation to the Council at the June 23, 2016 meeting.

Staff solicited lease purchase proposals from Arvest Bank, Central Bank and Commerce Bank. Staff compared the total cost for the leases. The lowest cost lease proposal is the proposal from Commerce Bank.

Staff recommends accepting the lease purchase proposal from Commerce Bank, subject to the approval of the lease agreement documents by the City Attorney. In addition, staff recommends making the first lease payment at closing since lease payments were programmed for 2016 for the street sweeper, and making the first payment at closing secures a slightly lower interest rate.

Enclosure: Comparison of Lease Proposals  
Lease documents for Commerce Bank

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve the five-year lease purchase with Commerce Bank, for the option of the first payment being made at closing.

**Funding Source:** Equipment Reserve Fund

Prepared by: Karen Kindle, Accountant  
Date: June 20, 2016

City of Edgerton  
Summary of Least Proposals - Street Sweeper  
First Payment Due at Closing

Bank	Term	Payments	Bank Qualified Rate	Rate Expiration	Payment Amount	Total Interest	Issuance/ Underwriter Fee	Escrow Fee	Documentation Fee	Total Lease Cost
Arvest Bank	5 years	semi-annual	2.15%	8/1/2016	\$ 19,663.47	\$ 9,188.56	\$ -	\$ -	\$ -	\$ 9,188.56
Central Bank	5 years	semi-annual	2.55%	9/1/2016	\$ 20,048.71	\$ 11,040.96	\$ 2,000.00	\$ -	\$ 350.00	\$ 13,390.96
Commerce Bank	5 years	semi-annual	1.81%	7/29/2016	\$ 19,513.64	\$ 7,690.26	\$ -	\$ 250.00	\$ -	\$ 7,940.26



8000 Forsyth Boulevard  
St. Louis, Missouri 63105-1797  
(314) 746-3678

06/15/2016

Karen Kindle  
Accountant  
City of Edgerton, KS  
404 East Nelson  
Edgerton, KS 66021

Dear Ms. Kindle:

On behalf of Commerce Bank, we would like to offer the following lease-purchase proposal for your consideration:

<b>Type of Financing:</b>	A tax-exempt, State and Municipal Lease/ Purchase Agreement (the "Lease").
<b>Lessor:</b>	Commerce Bank
<b>Lessee:</b>	City of Edgerton, KS
<b>Equipment:</b>	New Street Sweeper
<b>Total Finance Amount:</b>	\$187,446.14
<b>Commencement Date:</b>	On or before 07/29/2016
<b>Base Term:</b>	5 years (60 months)
<b>Interest Rate:</b>	1.81% fixed, rate locked until 07/29/2016
<b>Payment Amount:</b>	\$19,513.64 (10 payments, first due at closing)
<b>Payment Frequency:</b>	Semi-Annual/Advance <i>*The First Payment is due at closing.</i>
<b>Interest Rate Adjustment:</b>	The above quoted interest rate is based on a spread over the Five (5) year Interest Rate Swap as quoted in the Federal Reserve Statistical Release H.15 (the "Index"). For Purposes of this proposal, the Five (5) year interest rate swap as of 06/14/2016 is 1.12%.  In the event the transaction does not close by 07/29/2016, Lessor reserves the right, but has no obligation, to adjust the Interest Rate after 07/29/2016 based on changes in the Index between the Quote Date and the Commencement Date. The adjustment, if made, would preserve Lessor's original lease investment assumption on a nominal pre-tax yield basis.
<b>Documentation:</b>	Shall be provided by Lessor. Funding of the Lease is contingent, in part; upon receipt and review by Lessor of executed Lease documentation in form acceptable to Lessor and Lessee.



<b>Early purchase Option:</b>	In the event Lessee desires to prepay this lease, they may do so in whole, but not in part at a premium of the then current outstanding principal balance, calculated as follows; 3% in year (1), 2% in year (2), and 1% in each year thereafter until maturity. Provided however, that the Lessee is using internally generated funds to prepay the lease, the prepayment penalty would be waived and there would be no prepayment penalty on the agreement.
<b>General Terms:</b>	This financing structure, rate and payment are based on the Transaction being designated as Tax Exempt and Bank Qualified under the IRC Section 103 and 265 b (3). The Lessee does not intend to issue more than \$10 million dollars in tax-exempt obligations in the current calendar year.
<b>Titles/Liens:</b>	Lessor shall have a perfected security interest in the Equipment. Titled equipment will require a 1 <sup>st</sup> lien position on the MSO and Title.
<b>Non-appropriation:</b>	The Lease shall provide for Lessee to terminate the agreement at the end of any fiscal period if insufficient funds are available to make the scheduled Rental Payments due in the following fiscal period, as per Kansas Statutes.
<b>Bank Qualified:</b>	The Transaction is expected to be designated Bank Qualified.
<b>Escrow:</b>	Upon closing, funds shall be disbursed into an escrow account to be maintained by Commerce Trust as escrow agent. Upon final delivery and acceptance of all of the equipment, and receipt of Lessee's authorization to release funds, escrow agent shall disburse payment to the vendors. Terms, conditions, and procedures regarding escrow and escrow agreement are subject to mutual approval by Lessee and Lessor. It is intended that the interest earnings on un-disbursed funds shall accrue for the benefit of Lessee. An escrow account shall be established at Commerce Trust. There is a <b>\$250.00 fee</b> for the escrow account. Commerce Trust does assess a cash management fee which is deducted from the Escrow Earnings
<b>Net Lease:</b>	The lease shall be a net lease in all respects, and Lessee shall be responsible for all fees, charges, assessments or other costs and expenses of every nature whatsoever arising from the lease of the Equipment.
<b>Not a Commitment:</b>	The terms set forth herein reflect a proposed, preliminary structure and are subject to final credit approval by Commerce Bank and the negotiation of mutually acceptable documentation. These terms are being provided to the Lessee with the understanding that neither the terms nor their substance shall constitute a definitive agreement or an exhaustive statement of all terms and conditions which may ultimately be included in a transaction among Lessee and Lessor. This is a proposal only and not a commitment to lend. Final approval and funding of the transaction is based on a formal credit review by Lessor, including final lease documentation acceptable to both Lessee and Lessor.

This proposal is not intended to, and does not create, in any way, a legally binding or any other type of commitment or obligation on the part of Commerce Bank, or any of its/their subsidiaries, and/or any of its/their employees. Information regarding this proposal, including the financial statements of Lessee necessary to complete the credit process, may be provided to third party funding sources in either written or electronic format.



The representative shown below is "not" a Municipal advisor, financial advisor, agent or fiduciary to any person or entity. The Bank and its representatives are responding to an RFP issued by the Lessee. Lessee acknowledges that it is entitled to engage municipal advisory services should it elect to do so. Commerce Bank is acting for its own loan account; this communication consists solely of general information under which Commerce Bank may be willing to fund a loan. Thank you for the opportunity to offer this proposal. We appreciate your consideration and look forward to your favorable response. Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank D. Hill". The signature is fluid and cursive, with the first name "Frank" being the most prominent.

Frank D. Hill

Senior Vice President, Tax Exempt-Leasing

Phone: 785-587-1541

[frank.hill@commercebank.com](mailto:frank.hill@commercebank.com)

Compound Period: Semiannual

Nominal Annual Rate: 1.810%

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	7/29/2016	187,446.14	1		
2 Payment	7/29/2016	19,513.64	10	Semiannual	1/29/2021

## AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	7/29/2016				187,446.14
1	7/29/2016	19,513.64	0.00	19,513.64	167,932.50
2016 Totals		19,513.64	0.00	19,513.64	
2	1/29/2017	19,513.64	1,519.79	17,993.85	149,938.65
3	7/29/2017	19,513.64	1,356.94	18,156.70	131,781.95
2017 Totals		39,027.28	2,876.73	36,150.55	
4	1/29/2018	19,513.64	1,192.63	18,321.01	113,460.94
5	7/29/2018	19,513.64	1,026.82	18,486.82	94,974.12
2018 Totals		39,027.28	2,219.45	36,807.83	
6	1/29/2019	19,513.64	859.52	18,654.12	76,320.00
7	7/29/2019	19,513.64	690.70	18,822.94	57,497.06
2019 Totals		39,027.28	1,550.22	37,477.06	
8	1/29/2020	19,513.64	520.35	18,993.29	38,503.77
9	7/29/2020	19,513.64	348.46	19,165.18	19,338.59
2020 Totals		39,027.28	868.81	38,158.47	
10	1/29/2021	19,513.64	175.05	19,338.59	0.00
2021 Totals		19,513.64	175.05	19,338.59	
Grand Totals		195,136.40	7,690.26	187,446.14	



COMMERCE BANK

STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT

Lease Number: 1000000-000/5000000-000

This State and Municipal Lease/Purchase Agreement (the "Lease") is made and entered into on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Commerce Bank with offices at 8000 Forsyth Boulevard, St. Louis, Missouri 63105 (herein called the "Lessor"), and \_\_\_\_\_ with its principal address at \_\_\_\_\_ (herein called the "Lessee"), wherein it is agreed as follows:

1. **LEASE OF EQUIPMENT:** Lessee hereby requests Lessor to acquire the equipment described in Schedule A attached hereto and made a part hereof. Subject to the terms and conditions hereof, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the equipment described in Schedule A, with all replacement parts, repairs, additions and accessories incorporated therein or affixed thereto (herein collectively called the "Equipment").
2. **DELIVERY AND ACCEPTANCE:** Lessee agrees to order the Equipment from the supplier of such Equipment, but will not be liable for specific performance of this Lease or for damages if for any reason the supplier delays or fails to fill the order. Lessee will cause the Equipment to be delivered at the location specified in Schedule A (the "Equipment Location"). Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery and installation of the Equipment. Any delay in such delivery will not affect the validity of this Lease. Lessee will accept the Equipment as soon as it has been delivered and is operational, or as soon as any manufacturer or vendor preacceptance test period has expired. Lessee will have no more than thirty (30) days from the date of delivery of the Equipment to accept such Equipment. In the event the Equipment is not accepted by Lessee within thirty (30) days from the date of its delivery, Lessor, at Lessor's sole option, will have the right to terminate this Lease. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a delivery and acceptance certificate in the form of Schedule B attached hereto and made a part hereof (the "Acceptance Certificate"). Lessee hereby authorizes the Lessor to add to this Lease and to any other description of the Equipment the serial number of each item of Equipment when available.
3. **TERM:** This Lease will become effective upon the execution hereof by Lessee and Lessor. The initial term of this Lease will commence on the earlier of the date Lessee executes the Acceptance Certificate or the date funds sufficient to purchase the Equipment are deposited with a bank or trust company in an escrow fund (the "Start Date") and will extend through the end of Lessee's fiscal year containing the Start Date. Unless earlier terminated as expressly provided for in this Lease, the term of this Lease will be automatically renewed on a year-to-year basis for the number of annual fiscal periods necessary to comprise the lease term as set forth in Schedule C attached hereto and made a part hereof (the "Lease Term").
4. **RENT:** Lessee agrees to pay Lessor or any Assignee (as defined in Section 22 below), the rental payments for the Equipment as set forth in Schedule C (the "Rental Payments"). A portion of each Rental Payment is paid as and represents the payment of interest as set forth in Schedule C. The Rental Payments will be payable without notice or demand, at the office of Lessor (or such other place as Lessor or any Assignee may designate in writing, from time to time) and will commence on the Start Date or as otherwise set forth in Schedule C, and the remaining Rental Payments will be payable on the same day of each consecutive month or quarter or semiannual or annual period thereafter (as designated in Schedule C) for the duration of the Lease Term. Any notice, invoicing, purchase orders, quotations or other forms or procedures requested by Lessee in connection with payment will be fully explained and provided to Lessor or any Assignee sufficiently in advance of the payment due date for the completion thereof by Lessor or any Assignee prior to such payment date, but none of the foregoing will be a condition to Lessee's obligation to make any such payment. If Lessee fails to pay any monthly rental payment or any other sums under the Lease within ten (10) days when the same becomes due, Lessee shall pay to Lessor (in addition to and not in lieu of other rights of Lessor) a late charge equal to the greater of five (5%) percent of such delinquent amount or Twenty-Five Dollars (\$25.00), but in any event not more than the maximum permitted by law. Such late charge shall be payable by Lessee upon demand by Lessor and shall be deemed rent hereunder. Lessee acknowledges and agrees that the late charge (i) does not constitute interest, (ii) is an estimate of the costs Lessor will incur as a result of the late payment and (iii) is reasonable in amount. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee and will not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 HEREOF, THE RENTAL PAYMENTS SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND WILL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

Notwithstanding the foregoing, in the event that Lessee, by its use of the Equipment or by its actions or omissions or by any means whatsoever, causes any interest payments as set forth in Schedule C to be included in Lessor's gross income, Lessee agrees that the interest portion of the Rental Payments on Schedule C will be adjusted commencing with the first day of the next



succeeding fiscal year of the Lessee, but only if this Lease is renewed for such fiscal year, and thereafter, so that Lessor, its Assignees and any participants with such, will be in the same after-tax position they would have been in had such payment been excluded from the gross income of Lessor, its Assignees and any participants with such under Section 103 of the Code.

5. **AUTHORITY AND AUTHORIZATION:** Lessee represents, warrants and covenants that (a) it will do or cause to be done all things necessary to preserve and keep in full force and effect (i) its existence, and (ii) subject to Section 8 hereof, the Lease; (b) it has complied with all bidding and budgeting requirements where necessary and by due notification has presented this Lease for approval and adoption as a valid obligation on its part and that all requirements have been met and procedures have been followed to ensure the enforceability of the Lease; (c) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal year period; (d) no event has occurred and no condition exists which, upon the execution of this Lease or with notice or the passage of time or both, would constitute a default under any debt, revenue or purchase obligation which it has issued or to which it is a party (the "Obligation") nor has it been in default under any Obligation at any time during the past five (5) years, and (e) no lease, rental agreement or contract for purchase, to which Lessee has been a party, at any time during the past five (5) years, has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal period.
6. **LESSEE CERTIFICATION:** Lessee warrants and covenants that (i) it is a state, or a political subdivision thereof, within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the related regulations and rulings thereunder; (ii) subject to Section 8 hereof, Lessee's obligation under this Lease constitutes an enforceable obligation issued by or on behalf of a state, or political subdivision thereof, such that any interest income derived under this Lease and due Lessor or its Assignee, including, but not limited to, those amounts designated as interest in Schedule C, will not be includable in the gross income of Lessor, its Assignee or any participants with such for the purposes of federal income taxation; (iii) this Lease represents a valid deferred payment obligation of Lessee for the amount herein set forth; (iv) Lessee has the legal capacity to enter into this Lease and is not in contravention of any state, county, district, city or town statute, rule, regulation or other governmental provision; (v) during the Lease Term, the Equipment will not be used in a trade or business of any other person or entity; (vi) Lessee will complete and file on a timely basis, Internal Revenue Service form 8038G or 8038GC, as appropriate, in the manner set forth in Section 149(e) of the Code; and (vii) Lessee will not take any action or permit the omission of any action reasonably within its control which action or omission will cause the interest portion of any Rental Payment hereunder to be includable in gross income for federal income taxation purposes.
7. **APPROPRIATIONS AND ESSENTIAL USE:** Lessee reasonably believes that sufficient funds can be obtained to make all Rental Payments during the Lease Term. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain funds from which the Rental Payments, including any Rental Payments required by Section 4 hereof, may be made, including making provisions for such payments, to the extent necessary, in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Lease for any subsequent annual fiscal period is solely within the discretion of the then current governing body of Lessee. It is Lessee's current intent to make the Rental Payments for the full Lease Term if funds are legally available therefore, and in that regard Lessee represents that (a) the use of the Equipment is essential to its proper, efficient, and economic functioning or to the services that it provides to its citizens; (b) Lessee has an immediate need for and expects to make immediate use of substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future; and (c) the Equipment will be used by the Lessee only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority.
8. **NONAPPROPRIATION OF FUNDS:** In the event no funds or insufficient funds are appropriated and budgeted or otherwise made available for Rental Payments, including any Rental Payments required by Section 4 hereof, for any fiscal period in which the Rental Payments for the Equipment are due under this Lease, then, without penalty, liability or expense to Lessee, this Lease will thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, except as to (i) the portions of the Rental Payments herein agreed upon for which funds have been appropriated and budgeted or are otherwise available and (ii) Lessee's other obligations and liabilities under this Lease relating to, accruing or arising prior to such termination. Lessee will, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Lessor and any Assignee of such occurrence, but failure to give such notice will not prevent such termination. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the day of such termination, packed for shipment in accordance with manufacturer's specifications and eligible for manufacturer's maintenance, and freight prepaid and insured to any location in the continental United States designated by Lessor, all at Lessee's expense, Lessor or its Assignee may exercise all available legal and equitable rights and remedies in retaking possession of the Equipment.
9. **EXCLUSION OF WARRANTIES; LIMITATIONS OF LIABILITY; DISCLAIMER OF CONSEQUENTIAL DAMAGES:** LESSEE HAS SELECTED BOTH THE EQUIPMENT AND THE VENDOR(S) FROM WHOM LESSOR IS TO PURCHASE THE EQUIPMENT IN RELIANCE HEREON. LESSEE ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS OF A SIZE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSOR IS NOT A MANUFACTURER, VENDOR, DISTRIBUTOR OR LICENSOR OF SUCH EQUIPMENT, AND THAT LESSOR LEASES THE EQUIPMENT AS IS AND HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE



**PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO INCLUDING ANY WARRANTIES OF TITLE OR AGAINST INFRINGEMENT OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR PRACTICE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY LESSOR AND IN NO EVENT SHALL LESSOR BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO THE SALE, LEASE, USE, PERFORMANCE OR MAINTENANCE OF THE EQUIPMENT, INCLUDING INTERRUPTION OF SERVICE, LOSS OF DATA, LOSS OF REVENUE OR PROFIT, LOSS OF TIME OR BUSINESS, OR ANY SIMILAR LOSS, EVEN IF ANY SUCH PERSON IS ADVISED IN ADVANCE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES AND EVEN IF LESSEE ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS LEASE.**

Lessee acknowledges that neither the original vendor nor licensor of the Equipment (including the salespersons of any of them) is an agent of Lessor, nor are they authorized to waive or alter any terms of this Lease. Lessee hereby waives any claim (including any claim based on strict or absolute liability in tort) it might have against Lessor or any assignee of the Lessor for any loss, damage or expense caused by or with respect to the Equipment. Lessor hereby assigns to Lessee during the Lease Term, to the extent permitted by law, all manufacturer's warranties, if any, that it may have with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense. Lessor authorizes Lessee, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer. Lessor assumes no responsibility for shipment, delivery, installation or maintenance, and all claims of Lessee with respect thereto, whether for delay, damage or otherwise, will be made against the manufacturer. Lessor, at its option, may provide in its purchase order that the manufacturer agrees that any of such claims may be made by Lessee directly against the manufacturer. The obligation of Lessee to pay the Rental Payments as defined in Section 4 will not be abated, impaired or reduced by reason of any claims of Lessee with respect to the Equipment, including but not limited to its condition, quality, workmanship, delivery, shipment, installation, defects or otherwise.

- 10. TITLE, SECURITY INTEREST:** Title to the Equipment is deemed to be in Lessee so long as no Event of Default pursuant to section 19 below has occurred and/or this Lease has not been terminated pursuant to the provisions of Section 8 above. Upon the earlier of (i) termination of this Lease in accordance with Section 8 above or (ii) the occurrence of an Event of Default by Lessee pursuant to Section 19 below, title will immediately revert to Lessor free of any right, title or interest of Lessee unless Lessor elects otherwise. In order to secure all of Lessee's obligations hereunder, Lessee hereby (a) to the extent permitted by law, grants to Lessor a first and prior security interest in any and all rights, titles and interest of Lessee in the Lease, the Equipment and in all additions, attachments, accessions, accessories, replacements, improvements and substitutions thereto, now or hereafter acquired, together with all rents, issues, income, profits and proceeds thereof, including insurance proceeds; (b) agrees that financing statements evidencing such security interest may be filed; and (c) agrees to execute and deliver all certificates of title and other instruments necessary or appropriate to evidence and perfect such security interest. Lessee further agrees that the Uniform Commercial Code will apply as between the parties hereto and Assignees of Lessor.
- 11. PERSONAL PROPERTY:** The Equipment is, and will remain, personal property and will not be deemed to be affixed or attached to real property or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish to Lessor landlord or mortgagee waiver with respect to the Equipment.
- 12. USE; REPAIRS:** Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and will comply with all laws, ordinances, insurance policies and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of, its possession, use or maintenance. Lessee, at its sole costs and expense, will maintain the Equipment according to the manufacturer's recommended guidelines or the equivalent and meet any and all recertification requirements and will furnish proof of such maintenance, if requested by Lessor and will furnish all needed servicing and parts, which parts will become part of the Equipment. If the Equipment is such as is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement with a party satisfactory to Lessor.
- 13. ALTERATIONS:** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent, and any permitted alteration or attachment which cannot be readily removed without damaging the Equipment's originally intended function or value will become part of the Equipment.
- 14. LOCATION; INSPECTION:** The Equipment will not be removed from, or if the Equipment consists of rolling stock, its permanent base will not be changed from the Equipment Location without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operations.
- 15. LIENS AND TAXES:** Lessee will keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee will pay, when due, all charges and taxes (federal, state and local) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor will have the right, but will not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is responsible or liable under this Lease, Lessee will, upon demand, reimburse Lessor therefor.



- 16. RISK OF LOSS; DAMAGE; DESTRUCTION:** Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment will relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair (the proceeds of any insurance recovery will be applied to the cost of such repair). If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessor, will (a) replace the same with like equipment in good repair; or (b) on the next Rental Payment date pay to Lessor (i) all amounts owed by Lessee under this Lease, including the Rental Payment due on such date, and (ii) an amount not less than the balance of the Rental Payments then remaining unpaid hereunder. In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Rental Payment and the balance of the Rental Payments then remaining unpaid hereunder, as applicable, to be made by Lessee with respect to the Equipment which has suffered the event of loss.
- 17. INSURANCE:** Lessee will, at its expense, maintain at all times during the Lease Term (a) fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as will be satisfactory to Lessor. In no event will the insurance limits be less than the greater of (i) an amount equal to the balance of the Rental Payments then remaining for the Lease Term or (ii) any minimum required by any co-insurance provisions of such insurance, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the state in which Lessee is located. Each insurance policy required by clause (b) of the preceding sentence will name Lessee as an insured and Lessor or its assigns as an additional insured and loss payee, as appropriate, and each insurance policy required by the preceding sentence will contain a clause requiring the insurer to give Lessor or its Assignee at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its assigns, as their interest may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice hereof and make available to Lessor all information and documentation relating thereto. Notwithstanding the foregoing, with Lessor's prior written consent, Lessee may self-insure against any and all risks for which insurance is required.
- 18. INDEMNIFICATION:** To the extent permitted by law, and solely from legally available funds, Lessee agrees to indemnify Lessor against, and hold Lessor, its Assignees, or any participants with such, harmless from, any and all claims, actions, proceedings, expenses, damages, liabilities or losses (including, but not limited to, attorneys' fees and court costs) arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation or return and the recovery of claims under insurance policies thereon.
- 19. EVENTS OF DEFAULT:** The Term "Event of Default" as used in this Lease, means the occurrence of any one or more of the following events: (a) Lessee fails to make any Rental Payment (or any other payment) as it becomes due in accordance with the terms of this Lease, and any such failure continues for ten (10) days after the date thereof; (b) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within ten (10) days after written notice thereof by Lessor; (c) the discovery by Lessor that any statement, representation or warranty made by Lessee in this Lease or in any document delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (d) Lessee becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or substantial part of its assets, a petition for relief is filed by Lessee under federal bankruptcy, insolvency or similar laws, or a petition in a proceeding under any bankruptcy, insolvency or similar laws, is filed against Lessee and is not dismissed within thirty (30) days thereafter; (e) Lessee suffers an adverse material change in its financial condition or operations from the date hereof and, as a result, Lessor deems itself insecure; or (f) Lessee is in default under any other agreement executed at any time with Lessor, its affiliates or Lessor's Assignee or under any other agreement or instrument by which it is bound.
- 20. REMEDIES:** Upon the occurrence of an Event of Default, Lessor may, at its option, exercise any one or more of the following remedies: (a) by written notice to Lessee, declare an amount equal to all amounts then due under this Lease and all remaining Rental Payments which will become due during the then current fiscal year of Lessee to be immediately due and payable, whereupon the same will become immediately due and payable; (together with interest on such amount at the lesser of one and one-half (1 ½ %) percent per month or the maximum permitted by law from the date on which Lessor has declared this Lease to be in default; (b) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly return the Equipment to Lessor in the manner set forth in Section 8 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same without liability to Lessor or its agents for such entry or for damage to property or otherwise; (c) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for (i) all Rental Payments and other payments due to the effective date of such selling, leasing or subleasing, and (ii) for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such sale, lease or sublease and the remaining amounts payable by the Lessee through the end of the then current fiscal year of Lessee hereunder; and (d) exercise any other right, remedy or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Lease, (ii) recover damages for the breach of this Lease, and (iii) rescind this Lease as to any or all of the Equipment.



In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

- 21. EARLY PURCHASE OPTION:** Lessee may, upon sixty (60) days prior written notice to Lessor, and provided Lessee has fully paid and performed all other obligations hereunder and provided no Event of Default has occurred and is continuing, pay to Lessor the applicable amount set forth on Schedule C attached hereto, whereupon title to the Equipment will become unconditionally vested in Lessee, and Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, where is, without warranty, express or implied, except that Lessor will warrant to Lessee that the Equipment is free and clear of any liens created by Lessor.
- 22. ASSIGNMENT:** Except as expressly provided herein, Lessee will not (a) assign, transfer, pledge, hypothecate or grant any security interest in, or otherwise dispose of, this Lease or the Equipment or any interest in this Lease or the Equipment or (b) sublet or lend the Equipment or permit the Equipment to be used by anyone other than Lessee or Lessee's employees unless Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor that such action will not adversely affect the exclusion of the interest portions of the Rental Payments from gross income for federal income tax purposes.

Lessor, without the consent of Lessee, may assign all or any portion or portions of its right, title and interest in and to this Lease, the Equipment and any other documents executed with respect to this Lease, and/or grant or assign all or any portion or portions of its security interest in this Lease and the Equipment, in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that the Lessor or the Assignee will act as a collection and paying agent for owners of certificates of participation in this Lease, or may provide that a third-party trustee or agent will act as collection and paying agent for any Assignee, provided that any such trustee or agent will maintain registration books as a register of all persons who are owners of certificates of participation or other interest in Rental Payments and Lessee receives written notification of the name and address of the trustee or agent and a copy of the pooling and fractionalization agency or trustee agreement, if any. Any such Assignee will have all of the assigned rights of Lessor under this Lease. Subject to the foregoing, this Lease will inure to the benefit of and will be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Any assignment or reassignment of any of Lessor's right, title or interest in this Lease or the Equipment will be effective upon receipt by Lessee of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee and, where applicable, to whom further payments hereunder should be made. During the Lease Term, Lessee covenants that it will keep a complete and accurate record of all assignments in form necessary to comply with Section 149(a) of the Code and the regulations, proposed or existing, from time to time promulgated thereunder. Lessee agrees to acknowledge in writing any assignments if so required.

Lessee agrees that, upon notice of assignment, if so instructed it will pay directly to the Assignee, or its Trustee or Agent without abatement, deduction or setoff all amounts which become due hereunder. Lessee further agrees that it will not assert against any Assignee, Trustee or Agent any defense, claim, counterclaim or setoff on account of any reason whatsoever with respect to any Rental Payments or other amounts due hereunder or with respect to any action brought to obtain possession of the Equipment pursuant to this Lease.

- 23. FINANCIAL STATEMENTS:** Each year during the term of this Lease, Lessee hereby agrees to deliver to Lessor a copy of: (i) annual audited financial statements within one hundred twenty (120) days of Lessee's fiscal year-end; and (ii) within a reasonable period of time, any other financial information Lessor requests from time to time.
- 24. NATURE OF AGREEMENT:** Lessor and Lessee agree that upon the due and punctual payment and performance of the installments of Rental Payments and other amounts and obligations under this Lease, title to the Equipment will vest permanently in Lessee as provided in this Lease, free and clear of any interest, lien or security of Lessor therein.
- 25. AMENDMENTS:** This Lease may be amended or any of its terms modified for the purpose of adding Equipment, with the written consent of the parties hereto. In such event, additions to or additional schedules or exhibits attached hereto will be executed by Lessee. All other amendments or modifications of the terms of this Lease (except for the addition or serial numbers for the Equipment as set forth in the Acceptance Certificate) must be accomplished by written consent of Lessee and Lessor, or its Assignee, if any; provided, however, that no amendment of this Lease will operate to reduce or delay any Rental Payments to be made hereunder without the consent of Lessor, or its Assignee, at the time of such amendment.
- 26. NOTICES:** All notices to be given under this Lease must be made in writing and mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice will be deemed to have been received five (5) days subsequent to mailing.
- 27. SECTION HEADINGS:** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
- 28. GOVERNING LAW:** This Lease will be governed by the provisions hereof and by the laws of the State of Kansas.



- 29. FURTHER ASSURANCES:** Lessee will deliver to Lessor (i) an opinion of counsel in substantially the form of Schedule D attached hereto or as Lessor may otherwise request; and (ii) if applicable, a certificate of a duly authorized official as to designation as a qualified tax-exempt obligation. Moreover, Lessee will execute or provide, as requested by Lessor, any documents and information that are reasonably necessary with respect to the transaction contemplated by this Lease.
- 30. ENTIRE AGREEMENT:** This Lease, together with the schedules attached hereto and made a part hereof and other attachments hereto and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the lease of the Equipment, and this Lease will not be modified, amended, altered or changed except with the written consent of Lessee or Lessor.
- 31. SEVERABILITY:** Any provision of this Lease found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.
- 32. WAIVER:** The waiver by Lessor of any breach by Lessee of any term, covenant or condition, hereof will not operate as a waiver of any subsequent breach hereof.
- 33. CERTIFICATION AS TO ARBITRAGE:** Lessee hereby represents as follows:
- (a) The estimated total costs of the Equipment will not be less than the total principal amount of the Rental Payments.
  - (b) The Equipment has been ordered or is expected to be ordered within six months of the effective date of this Lease, and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within one (1) year of the effective date of this Lease.
  - (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of Rental Payments.
  - (d) The Equipment has not been, and is not expected to be, sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the final Rental Payment.
  - (e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.
- 34. ELECTRONIC TRANSACTIONS.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT, ARE NOT ENFORCEABLE. TO PROTECT YOU (LESSEE(S) AND US (LESSOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

**BY SIGNING BELOW, YOU AND WE AGREE THAT THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN US.**

LESSOR: Commerce Bank

LESSEE:

DATE:

DATE:

BY: (PRINTED NAME AND TITLE)

BY: (PRINTED NAME AND TITLE)

Authorized Signature and Title:

Authorized Signature and Title:



SCHEDULE A TO  
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT  
Lease No. \_\_\_\_\_

Description of Equipment

DESCRIPTION OF LEASED EQUIPMENT (Make, Kind, Model Number, Serial Number, Any other pertinent identification)

TOTAL

\$

Location of Equipment

Street Address:

City:

County:

State:

Zip Code:

Lessee hereby certifies that the description of the property set forth above constitutes an accurate account of the Equipment as referred to in the Lease.

LESSEE:

BY: (AUTHORIZED SIGNATURE) | (PRINTED NAME & TITLE)

X

DATE:

SCHEDULE B TO  
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT  
Lease No. \_\_\_\_\_

DELIVERY AND ACCEPTANCE CERTIFICATE

TO: Commerce Bank

Reference is made to the State and Municipal Lease/Purchase Agreement between the undersigned \_\_\_\_\_ ("Lessee"), and Commerce Bank ("Lessor"), dated \_\_\_\_\_ ("Lease") and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment
4. The serial number for each item of Equipment which is set forth on Schedule A to the Lease is correct.

This certificate will not be considered to alter, construe, or amend the terms of the Lease.

\_\_\_\_\_  
LESSEE:

\_\_\_\_\_  
WITNESS:

\_\_\_\_\_  
BY: (AUTHORIZED SIGNATURE)

\_\_\_\_\_  
| (PRINTED NAME & TITLE)

X

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
Federal Tax ID #:

# SCHEDULE C

Lessee:

Lessor:

Lease Number:

Lease Term in Months:

Rental Periods:

First Payment Date:

Capital Cost of  
Equipment:

Rental Payment Date	Payment Amount	Amount Credited to Interest	Amount Credited to Capital Cost	*Outstanding Principal Balance	
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
	\$ -	\$ -	\$ -		\$ -

**\*Modified - Standard Prepayment - In the event Lessee desire to prepay the Lease, they may do so in whole, but not in part at a premium of the then current outstanding principal balance, calculated as follows; 3% in year (1), 2% in year (2), and 1% in each year thereafter until maturity. There is no prepayment penalty if Lessee is using internally generated funds for prepayment.**

**Interest, if any, accruing from the Start Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Lease Purchase Agreement.**

**LESSEE:**

\_\_\_\_\_

**SIGNED BY:**

\_\_\_\_\_

**TITLE:**

\_\_\_\_\_

SCHEDULE D TO  
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT  
Lease No. \_\_\_\_\_

OPINION OF COUNSEL  
(To be on Letterhead of Lessee's Counsel)  
[Date]

Re: State and Municipal Lease/Purchase Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ (the "Lease"),  
between Commerce Bank ("Lessor") and \_\_\_\_\_ ("Lessee")

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined (a) the Lease, which, among other things, provides for the sale to and purchase by the Lessee of the Equipment, (b) an executed counterpart of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Lease and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease.
3. The Lease and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms.
4. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.
5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment.

Furthermore, I confirm that the name of the Lessee as stated in the Lease, as \_\_\_\_\_ is the exact legal name of the Lessee for all purposes contemplated herein.

All capitalized terms herein shall have the same meanings as in the Lease. Lessor, its successors and assigns and any counsel rendering an opinion on the tax-exempt status of the interest components of Rental Payments are entitled to rely on this opinion.

Very truly yours,



SCHEDULE E TO  
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT  
Lease No. \_\_\_\_\_

I, \_\_\_\_\_ (Witness), do hereby certify that I am the duly elected, or appointed and acting Secretary/Clerk of the \_\_\_\_\_ an agency duly organized and existing under the laws of the State of \_\_\_\_\_ (the "Lessee"), and that the following resolutions have been presented to and duly adopted by the \_\_\_\_\_ at a meeting duly and regularly held and convened in accordance with applicable law on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WHEREAS, the Lessee is entering a State and Municipal Lease/Purchase Agreement ("Lease") dated \_\_\_\_\_, with Commerce Bank;

WHEREAS, Lessee has carefully reviewed its financing requirements for the current calendar year and reasonably expects that it will not issue more than ten million dollars (\$10,000,000) of tax-exempt obligations during the calendar year;

NOW, THEREFORE, be it RESOLVED, that the Lessee be, and hereby is, authorized to enter into the Lease with Commerce Bank for a period of \_\_\_\_ months, and be it further

RESOLVED, that the following officials of the Lessee be, and hereby are, authorized, empowered and directed to sign on its behalf the Lease and any addenda, schedules, notes, UCC financing statements or other instruments issued under the provision of the Lease and any other instrument or document which may be necessary or expedient in connection with agreement upon or fulfillment of the provisions of the Lease.

<u>Title</u>	<u>Printed Name</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

RESOLVED, that pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, this Lease be and hereby is designated a "qualified tax-exempt obligation" includable within the ten million dollars (\$10,000,000) of the aggregate issues designated as "qualified tax-exempt obligations" for the calendar year within which this Lease is entered into.

RESOLVED, that Lessee shall not designate more than ten million dollars (\$10,000,000) of tax-exempt obligations during the current calendar year as qualified tax-exempt obligations and Lessee, together with its subordinate entities, does not reasonably expect to issue more than ten million dollars (\$10,000,000) of tax-exempt obligations during the current calendar year.

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal hereto this day \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

---

NAME OF LESSEE:

WITNESSED BY (SECRETARY/CLERK):

X

---

SCHEDULE F  
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT  
Lease No. \_\_\_\_\_

ESSENTIAL USE/SOURCE OF FUNDS LETTER

[Date]

Commerce Bank  
8000 Forsyth Boulevard  
St. Louis, Missouri 63105

Re: State and Municipal Lease/Purchase Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ (the "Lease"), between  
Commerce Bank ("Lessor") and \_\_\_\_\_ ("Lessee")

Ladies and Gentlemen:

This confirms and affirms that the Equipment described in the Lease is essential to the function of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all such Equipment, which need is not temporary or expected to diminish in the foreseeable future. Such Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, such Equipment was selected by us to be used as follows: \_\_\_\_\_

The estimated useful life of such Equipment based upon manufacturer's representations and our projected needs is \_\_\_\_\_ years.

Our source of funds for payments of the Rental Payments due under the Lease for the current fiscal year is \_\_\_\_\_.

We currently expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons:

Very truly yours,

LESSEE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

BY: (AUTHORIZED SIGNATURE)

| (PRINTED NAME & TITLE)

X

DATE: \_\_\_\_\_

SCHEDULE G  
PROOF OF INSURANCE

Insurance Agent Name: \_\_\_\_\_  
Agency Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Ladies and Gentlemen:

Please add Commerce Bank, as both sole loss payee under property insurance covering the equipment listed on attached Schedule A and additional insured under the general liability insurance policy. The minimum liability coverage is \$1,000,000.00. Please mail or fax an insurance certificate to:

Commerce Bank  
P.O. Box 11309  
St. Louis, MO 63105  
**Fax # 314-746-3744**

Please note that the Bank requires 30 day written notice of cancellation of the policy covering leased equipment.

**Lessee:**

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

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

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

SCHEDULE H  
AUTHORIZATION FOR PREAUTHORIZED PAYMENTS

Loan # \_\_\_\_\_

Borrower/Lessee: \_\_\_\_\_

I authorize Commerce Bank to initiate debit entries in the amount shown and from the checking or savings account with the depository named below ("Bank") each month on the payment due date.

\*Bank Name: \_\_\_\_\_

Address: \_\_\_\_\_

ABA #: \_\_\_\_\_

Account #: \_\_\_\_\_ ( ) Checking ( ) Savings

Monthly Debit Amount: \_\_\_\_\_ (Monthly Rental Amount. Total payment may vary due to changes in tax rates) First

Payment Due Date: \_\_\_\_\_ (Begin debiting this date—allow a few days prior to payment)

This authorization is to remain in full effect until Commerce Bank and Bank have received written notification from me of its termination and have a reasonable opportunity to act on this notification. Commerce Bank may terminate this agreement upon 10 days written notice to me.

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**\* NOTE:** Your "Bank" does not need to be Commerce Bank to benefit from this feature. Any bank account can be auto debited.  
**PLEASE attach a voided check and mail along with this signed form to:**

Commerce Bank  
P.O. Box 11309  
Saint Louis, MO 63105

There is NO charge for this service.



SCHEDULE I  
DISBURSEMENT AUTHORIZATION

To: Commerce Bank

RE: Lease Number:

Date:

Gentlemen:

Please disburse the proceeds of the above lease as follows:

**[DISBURSEMENT OF PROCEEDS HERE]**

TOTAL DISBURSURSEMENT:     \$

Sincerely,

**[LESSEE'S NAME HERE]**  
LESSEE

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

SCHEDULE J  
KANSAS ADDENDUM TO STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT

**Master Lease #**

This Addendum to the State & Municipal Lease/Purchase Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease, between **Commerce Bank**, as Lessor, and as Lessee, is hereby Incorporated In and made a part of the Lease.

The capitalized terms used in this Addendum shall have the meanings given to them in the Lease.

Notwithstanding any other provision of the Lease, Lessee shall only be obligated under the Lease to pay Rental Payments and other payments under the Lease from funds budgeted and appropriated for that purpose during Lessee's then current budget year or, where appropriate, Insurance proceeds (including self- insurance reserves if self-insurance is in effect).

The Lessee acknowledges as follows:

(a) The capital cost that would be required to purchase the Equipment if paid for by cash would be \$\_\_\_\_\_

(b) The annual average effective Interest cost of the Lease is \_\_\_\_\_% per annum.

(c) No amount is included in Rental Payments (assuming continuation of the Lease through the maximum term of the Lease) for service, maintenance, insurance and other charges exclusive of capital cost and Interest cost

Dated: \_\_\_\_\_, 20\_\_

Lessor: **Commerce Bank**

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

Printed Name: \_\_\_\_\_

Lessee:

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

Printed Name: \_\_\_\_\_

## ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, and entered into among **COMMERCE BANK**, a Missouri banking corporation (together with its successors and assigns, "Lessor"), \_\_\_\_\_ a municipal corporation and political subdivision existing under the laws of \_\_\_\_\_ ("Lessee"), and **THE COMMERCE TRUST COMPANY**, a Missouri banking corporation, as escrow agent (together with its successors and assigns, the "Escrow Agent").

**Name of Acquisition Fund:** " \_\_\_\_\_ "

**Amount of Deposit into the Acquisition Fund:** \$ \_\_\_\_\_

### TERMS AND CONDITIONS

1. This Escrow Agreement relates to and is hereby made a part of the State and Municipal Lease/Purchase Agreement dated as of \_\_\_\_\_, 20\_\_\_\_, (the "Lease"), between Lessor and Lessee.

2. Except as otherwise defined herein, all terms defined in the Lease shall have the same meaning for the purposes of this Escrow Agreement as in the Lease.

3. Lessor, Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall not be deemed to be a party to the Lease, and this Escrow Agreement shall be deemed to constitute the entire agreement between Lessor and Lessee and the Escrow Agent.

4. There is hereby established in the custody of the Escrow Agent a special trust fund designated as set forth above (the "Acquisition Fund") to be held and administered by the Escrow Agent in trust for the benefit of Lessor and Lessee in accordance with this Escrow Agreement.

5. Lessor shall deposit in the Acquisition Fund the amount specified above. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon written order of an authorized Lessee representative, in accordance with the Arbitrage Instructions attached as **Exhibit A**, in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. If an Authorized Lessee Representative fails to timely direct the investment of any moneys held hereunder, the Escrow Agent shall invest and reinvest such moneys in Qualified Investments described in 6(vi) below. Such investments shall be held by the Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments shall be deposited in the Acquisition Fund, and any losses on such investments shall be charged to the Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment. Qualified Investments described in 6(vi) below will be subject to an annualized sweep fee charged monthly to the earnings on monies invested.

6. "Qualified Investments" means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United



States of America acceptable to Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including the Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including the Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that the Escrow Agent or a third party acting solely as agent for the Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; or (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated "Aaa" by Moody's Investors Service or "AAAm-G" by Standard & Poor's Ratings Services or the comparable rating by Fitch IBCA, Inc.

7. Moneys in the Acquisition Fund shall be used to pay for the cost of acquisition of the Equipment listed in the Lease. Such payment shall be made from the Acquisition Fund upon presentation to the Escrow Agent of one or more properly executed Payment Request and Acceptance Certificates, a form of which is attached as **Exhibit B**, executed by Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of said Equipment and a written approval by Lessor of the Vendor be paid. In making any disbursement pursuant to this **Section 7**, the Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and the Escrow Agent shall not be required to make any inquiry, inspection or investigation in connection therewith. The approval of each Payment Request and Acceptance Certificate by the Lessor shall constitute unto the Escrow Agent an irrevocable determination by the Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed.

8. The Acquisition Fund shall terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit C**, properly executed by Lessee, or (b) the presentation of written notification by the Lessor, or, if the Lessor shall have assigned its interest under the Lease, then the assignees or subassignees of all of Lessor's interest under the Lease or an Agent on their behalf, that the Lease has been terminated pursuant to **Section 8** or **20** of the Lease. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall be used to prepay the principal portion of Rental Payments unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Rental Payment Schedule attached to the Lease shall be revised accordingly as specified by Lessor. Upon termination as described in clause (b) of this paragraph, any amount remaining in the Acquisition Fund shall immediately be paid to Lessor or to any assignees or subassignees of Lessor interest in this Lease.

9. The Escrow Agent may at any time resign by giving at least 30 days written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee



and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent shall cease and terminate. If a successor Escrow Agent has not been so appointed with 90 days of such resignation or removal, the Escrow Agent may petition a court of competent jurisdiction to have a successor Escrow Agent appointed.

10. Any corporation or association into which the Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Escrow Agent hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

11. The Escrow Agent incurs no responsibility to make any disbursements pursuant to the Escrow Agreement except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Equipment listed in the Lease or as to the performance of any obligations of Lessor or Lessee.

12. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

13. Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, Lessee, to the extent permitted by law, and Lessor jointly and severally hereby agree to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

14. The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one time fee in the amount of \$ \_\_\_\_\_ to be paid by Lessee concurrently with the execution and delivery of this Escrow Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from Lessor of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement. Claims for such reimbursement may be made to Lessor and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Escrow Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of

the money or Qualified Investments on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Escrow Agreement or otherwise.

15. If Lessee, Lessor or the Escrow Agent shall be in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by Lessor and Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

16. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action or non-action taken by the Escrow Agent in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

17. This Escrow Agreement shall be governed by and construed in accordance with the laws of the state in which the Escrow Agent is located.

18. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. This Escrow Agreement may not be amended except by a written instrument executed by Lessor, Lessee and the Escrow Agent.

20. This Escrow Agreement may be executed in several counterparts, each of which so executed shall be an original.

21. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**IN WITNESS WHEREOF**, Lessor, Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

**COMMERCE BANK**  
LESSOR

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

\_\_\_\_\_  
LESSEE

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

**THE COMMERCE TRUST COMPANY**  
ESCROW AGENT

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



## EXHIBIT A

### ARBITRAGE INSTRUCTIONS

These Arbitrage Instructions provide procedures for complying with § 148 of the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the exclusion from federal gross income of the interest portions of the Rental Payments under the Lease.

**1. Temporary Period/Yield Restriction.** Except as described in this paragraph, money in the Acquisition Fund must not be invested at a yield greater than the yield on the Lease. Proceeds of the Lease in the Acquisition Fund and investment earnings on such proceeds may be invested without yield restriction for three years after the Start Date of the Lease. If any unspent proceeds remain in the Acquisition Fund after three years, such amounts may continue to be invested without yield restriction so long as Lessee pays to the IRS all yield reduction payments under § 1.148-5(c) of the Treasury Regulations.

**2. Opinion of Bond Counsel.** These Arbitrage Instructions may be modified or amended in whole or in part upon receipt of an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations, satisfactory to Lessor, that such modifications and amendments will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes.

## EXHIBIT B

### FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: THE COMMERCE TRUST COMPANY, as escrow agent and COMMERCE BANK, as Lessor  
8000 Forsyth Blvd.  
St. Louis, Missouri 63105

Re: \_\_\_\_\_ Acquisition Fund established by the Escrow Agreement, dated  
as of \_\_\_\_\_, 20\_\_ (the "Escrow Agreement") among Commerce Bank, as lessor  
("Lessor"), \_\_\_\_\_ ("Lessee") and the Commerce Trust Company, as  
Escrow Agent (the "Escrow Agent")

Ladies and Gentlemen:

The Escrow Agent is hereby requested to pay from the Acquisition Fund to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition of the equipment or the interest portions of Rental Payment(s) described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment or payment of the interest portions of Rental Payment(s) and has not formed the basis of any prior request for payment.

The equipment described below is part or all of the "Equipment" that is listed in State and Municipal Lease/Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Lease") described in the Escrow Agreement.

Equipment:

Payee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amount: \$

Lessee hereby certifies and represents to and agrees with Lessor and the Escrow Agent as follows:

- (1) The Equipment described above (a) has been delivered, installed and accepted on the date hereof, or (b) the amount requested is a down payment currently due on said Equipment.
- (2) If (1)(a) is applicable, Lessee has conducted such inspection and/or testing of said Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts said Equipment for all purposes.
- (3) If (1)(a) is applicable, Lessee is currently maintaining the insurance coverage required by **Section 17** of the Lease.

Lessee hereby certifies and represents to Lessor and the Escrow Agent that no event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Lease) exists at the date hereof.

Dated: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
LESSEE

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

APPROVED:

**COMMERCE BANK**  
LESSOR

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

**EXHIBIT C**

**FINAL ACCEPTANCE CERTIFICATE**

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL EQUIPMENT  
HAS BEEN ACCEPTED]

The undersigned hereby certifies that the equipment described above, together with the equipment described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with the Escrow Agent and Lessor pursuant to the Escrow Agreement, constitutes all of the Equipment subject to the Lease.

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

\_\_\_\_\_  
LESSEE

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



Lease No. \_\_\_\_\_

**8038-G QUESTIONNAIRE**

Name of Lessee: «Lessee Name»  
Address of Lessee: «Lessee Address», «Lessee City», «Lessee State» «Lessee Zip»  
Contact Person: «Lessee Contact»  
Telephone Number: «Lessee Phone»  
Email Address: «Lessee Email»  
Lessee's FEIN: «Tax ID»

**GENERAL**

*In September 2011, the Internal Revenue Service ("IRS") updated Form 8038-G (the form used by Lessees to report the issuance of a tax-exempt obligation). The revised Form 8038-G asks specific questions about written procedures to: (1) monitor private use of assets financed with proceeds of a tax-exempt obligation and, as necessary, to take remedial actions to correct any violations of federal tax restrictions on the use of financed assets; and (2) monitor the yield on the investment of gross proceeds of tax-exempt obligations and, as necessary, make payments of arbitrage rebate earned to the United States. In addition, the revised Form 8038-G asks Lessees to report whether any proceeds will be used to reimburse the Lessee for an expenditure paid prior to issuance. This questionnaire is designed to obtain the information necessary to complete Form 8038-G for the Lease. Lessee will be required to review and approve the information entered prior to signing the 8038-G form.*

*At this time, the consequences of not having adopted written procedures to monitor private use of financed assets and yield on the investment of gross proceeds of tax-exempt obligations are unknown. If you have further questions, please consult your regular bond or legal counsel.*

**Part 1 – Written Tax Compliance Procedures**

**Note:** *If either of these questions is not answered, we will assume the Lessee has not adopted the described procedures.*

1. Has the Lessee established written procedures to monitor compliance with federal tax restrictions for the term of the lease? The written procedures should identify a particular individual within Lessee's organization to monitor compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered. **Yes** \_\_\_\_ **No** \_\_\_\_
2. Has the Lessee established written procedures to monitor the yield on the investment of proceeds of the Lease on deposit in an escrow account or similar fund prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States? **Yes** \_\_\_\_ **No** \_\_\_\_

**Part 2 – Reimbursement of Prior Expenditures**

1. As of the funding date, were any of the proceeds of the Lease used to reimburse Lessee for expenditures paid to acquire the financed assets prior to the funding date of the Lease?  
**Yes** \_\_\_\_ **No** \_\_\_\_

*If yes, please attach a spreadsheet listing the expenditure(s) together with the date paid, vendor paid and purpose of the expenditure or other proof of the expenditure(s) containing this information (i.e. invoices, receipts, cancelled checks).*

**Items 2 and 3 need to be completed ONLY if the answer to item 1 above is YES.**

2. Please attach a copy of Lessee's resolution of intent to finance the financed assets, which includes date of adoption.
3. What is the amount of proceeds of the Lease reimbursed to Lessee? \$ \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ «Signer»

**TITLE:** \_\_\_\_\_ «Signer Title»

**DATE:** \_\_\_\_\_

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)  
► See separate instructions.  
**Caution:** If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		<b>If Amended Return, check here</b> <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

<b>Part II Type of Issue (enter the issue price).</b> See the instructions and attach schedule.			
11	Education . . . . .	11	
12	Health and hospital . . . . .	12	
13	Transportation . . . . .	13	
14	Public safety . . . . .	14	
15	Environment (including sewage bonds) . . . . .	15	
16	Housing . . . . .	16	
17	Utilities . . . . .	17	
18	Other. Describe ►	18	
19	If obligations are TANs or RANs, check only box 19a . . . . .	► <input type="checkbox"/>	
	If obligations are BANs, check only box 19b . . . . .	► <input type="checkbox"/>	
20	If obligations are in the form of a lease or installment sale, check box . . . . .	► <input type="checkbox"/>	

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.				
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity
21		\$	\$	years
				%

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>				
22	Proceeds used for accrued interest . . . . .	22		
23	Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	23		
24	Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24		
25	Proceeds used for credit enhancement . . . . .	25		
26	Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26		
27	Proceeds used to currently refund prior issues . . . . .	27		
28	Proceeds used to advance refund prior issues . . . . .	28		
29	Total (add lines 24 through 28) . . . . .	29		
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30		

<b>Part V Description of Refunded Bonds.</b> Complete this part only for refunding bonds.		
31	Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . .	
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	



**Part VI Miscellaneous**

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . . **35**
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . . **36a**
- b** Enter the final maturity date of the GIC ▶ \_\_\_\_\_
- c** Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . . **37**
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the following information:
- b** Enter the date of the master pool obligation ▶ \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
- d** Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ☐
- 41a** If the issuer has identified a hedge, check here ☐ and enter the following information:
- b** Name of hedge provider ▶ \_\_\_\_\_
- c** Type of hedge ▶ \_\_\_\_\_
- d** Term of hedge ▶ \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ☐ and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
- b** Enter the date the official intent was adopted ▶ \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ Type or print name and title \_\_\_\_\_

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no. _____			

# KANSAS NOTICE OF SECURITY INTEREST

For Original Purchase Lien,  
CANNOT BE USED FOR A SECURED/MORTGAGED VEHICLE LIEN

**THIS FORM MUST BE COMPLETELY AND UNIFORMLY PREPARED** by either typing or printing. See Instruction 3, below. FEE: \$2.50

**NAME OF PURCHASER/BORROWER(S):** (Name(s) as shown on Dr. Lic., state issued ID or FEIN, as well as the number(s) from such identification.)

Dr. Lic / ID / FEIN #: \_\_\_\_\_

Dr. Lic / ID / FEIN #: \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

For trust, use the name as shown on the trust documents, purchaser/borrower is responsible for accuracy.

**VEHICLE INFORMATION:** Please be sure the vehicle information is correct. (If there is any deviation in the information on the NSI and the title application, the security interest is not considered perfected.)

Year \_\_\_\_\_ Make \_\_\_\_\_ Style \_\_\_\_\_ VIN / ID# \_\_\_\_\_

Date of Vehicle Sale \_\_\_\_\_ Date of Vehicle Delivery \_\_\_\_\_

## **THIS VEHICLE IS SUBJECT TO THE FOLLOWING LIEN OR ENCUMBRANCE:**

Secured  
Party \_\_\_\_\_

Institution's

ABA #: \_\_\_\_\_

American Bankers Association No., if known \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

By my signature, I/we, the purchaser(s) of the vehicle listed herein acknowledge that I/we have entered into a security agreement for this vehicle and that the secured party listed above is filing this Notice of Security Interest. I also acknowledge that if for any reason the security interest does not appear on the certificate of title, that this lien or encumbrance is still valid.

Owner(s) Signature(s) \_\_\_\_\_

Owner(s) Hand Printed Name(s) \_\_\_\_\_

Date \_\_\_\_\_

**NSI Filed By:**  
**REQUIRED**

Name of Business, Print Clearly \_\_\_\_\_

Name of Person Completing Form, Print Clearly \_\_\_\_\_

Above Business's: Phone Number \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

ZIP \_\_\_\_\_

- ✓ DO NOT ATTACH TITLE TO THIS FORM. The assigned title is to be submitted to the county treasurer's office when the owner(s) make application for title and registration.
- ✓ A letter will be sent to the lien holder to: 1) Inform the lien holder a Kansas title record has updated and their lien is perfected, or 2) Informing the lien holder it has been 90 days since the date of purchase and the NSI has not match to a title application.

## **NOTICE OF SECURITY INTEREST FILING INSTRUCTIONS**

FOR OFFICE USE ONLY

A Notice of Security Interest serves as notification to the Division of Vehicles that a person/business has applied for a loan on the vehicle described on this form and subsequently that a lien is to be reflected on the vehicle title record.

1. To perfect a security interest in a vehicle, a Notice of Security Interest (NSI) may be filed, by mail or otherwise, with the Division of Vehicles by a vehicle dealer or other secured party (within thirty (30) days of the date of sale and delivery). The NSI application submitted will remain in this office as verification that the title should, indeed, reflect a security interest.
2. If a NSI is filed more than 30 days after the date of sale and delivery, the NSI will be rejected by the division. If there is any deviation in the information on the NSI and the title application, the security interest is not considered perfected until the lien interest of the secured party appears on the vehicle title record. In such an event, it becomes the responsibility of the secured party to ensure that their interest appears on the vehicle title record in order to protect that interest. A security interest may also be perfected by instructing the buyer to indicate the name of the secured party on the title application made at the county treasurer's office.
3. Any alteration or deviation in preparation requires the initialization of all parties. Failure to comply with these requirements voids this form.
4. Should you elect to perfect a lien by use of a Notice of Security Interest document, the form must be accurately completed, fee attached\* and mailed to the: Kansas Department of Revenue, Division of Vehicles, T&R / Processing Team, 915 SW Harrison, Topeka, Kansas 66626-0001

**\* Attach the filing fee of \$2.50. Do not send cash and make checks out to Kansas Department of Revenue.**

Notice of Security Interest can be filed online using KSelien. Please take a tour of our web site and sign up at:  
<http://www.ksrevenue.org/kselien.htm>

**THIS ITEM WAS TABLED FROM JUNE 9<sup>TH</sup> MEETING.  
NEW INFORMATION IS INCLUDED IN RED TEXT.**

**AGENDA ITEM INFORMATION FORM**

**Agenda Item:** Consider an Agreement with Burns & McDonnell/CAS Construction On The Basis Of A Stipulated Price

**Department:** Utilities

**Background/Description of Item:** In June 2014, the City of Edgerton received the Kansas Water Pollution Control Permit for the Edgerton Wastewater Treatment Facility (EWWTF). Section E of this permit (Schedule of Compliance) listed several requirements from the Kansas Department of Health and Environment (KDHE) including significantly more stringent nutrient removal requirements for plant effluent. Edgerton WWTF was constructed in 1981. Significant construction and upgrade would be required at EEWTF to meet the nutrient removal standards required by KDHE.

In January 2015, city staff together with City Engineer presented to City Council an alternate plan to remove the existing EWWTF out of service by June 30, 2019 by installing a pump station and force main to transport the sewage to the Big Bull Creek Wastewater Treatment Facility (BBC WWTF). Edgerton City Council approved Resolution No. 01-22-15A in support of this concept. This alternate approach was approved by Kansas Department of Health and Environment (KDHE).

In November 2015, Edgerton City Council approved a Preliminary Design-Build Agreement with Burns & McDonnell/CAS Construction in the amount of \$200,800. The Preliminary Design-Build Agreement states the Contractor shall design the project to approximately 30% of the Project, which will enable the Contractor to determine a Guaranteed Maximum Price (GMP) for construction of the project.

Please find enclosed the Executive Summary submitted by Burns & McDonnell/CAS Construction for consideration by City Council. The Executive Summary of the Work includes a description of the scope of work included in this agreement. It also includes the Guaranteed Maximum Price (GMP) of \$2,787,950. A detailed item breakdown of this price proposal is included. Four items in the GMP are listed as allowances. These items the City is responsible for actual costs (either higher or lower than amount listed).

This agreement does not include the contract amount for preliminary work (\$200,800) to develop the GMP. Assuming the estimates for the allowance items are correct, total project expenses for design and construction would be \$2,988,750. This amount does not include city engineer expenses or construction inspection costs. Staff would recommend using BG Consultants for inspection and anticipates bringing that contract for services for consideration by City Council at June 9<sup>th</sup> meeting.

In February 2016, City Council approved a Charter Ordinance to exempt the City from state statute provisions regarding the issuance of bonds for the purpose of paying for sanitary sewer improvements. That Ordinance provides the City of Edgerton flexibility to use general obligation bonds for the construction of this project. Additionally, the City Council took the first step in that process by approving a resolution to authorize the offering for sale of general obligation bonds for this project. Following the closing of the 60-day waiting period after publication of the Charter Ordinance, staff anticipates bringing the resolution to authorize the project and bonds to the July 14<sup>th</sup> City Council meeting together with approving the sale of the bonds that same meeting.

**THIS ITEM WAS TABLED FROM JUNE 9<sup>TH</sup> MEETING.  
NEW INFORMATION IS INCLUDED IN RED TEXT.**

City Attorney/City's Insurance Representative have reviewed the design-build agreement and terms and conditions. City Attorney and D/B team are still negotiating final terms and conditions. Previous Agreement is available upon request from the City Clerk as the document over 100 pages. City Attorney will review updates for City Council during May 26, 2016 meeting. Additionally, City Engineer and Design-Build team will be present for questions.

**This item was tabled at the June 9, 2016 City Council meeting. New information was not finalized at time of packet publication. This item will be updated and republished on Tuesday, June 21<sup>st</sup>.**

Enclosures: Executive Summary

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve an Agreement with Burns & McDonnell/CAS Construction On the Basis Of A Stipulated Price with Guaranteed Maximum Price at \$2,787,950.

**Funding Source:** General Obligation Bonds Series 2016

Prepared by: Beth Linn, City Administrator  
Date: May 23, 2016



June 9, 2016

**City of Edgerton, KS Pump Station and Force Main Work-**

**Price - \$2,700,500.00**

**Executive summary of work -**

- 100% Performance and payment bonds
- GL, UL, PL and builders risk insurance included
- Prevailing wages are not required for this contract.
- Sales tax exemption certificate to be provided by City.
- Phase 1 services is a separate agreement will be billed separately and is not included in this price
- Includes all labor, materials, equipment and supervision to complete the scope of the work
- Includes all design and construction administration fees for the work
- Trees along force main route will be cleared prior to June1 as a part of the Phase 1 services agreement
- Relocation of existing salt/sand storage building
- New wetwell and drywell areas to be fenced and secured
- Manholes and piping necessary to direct flow to the new wetwell before the existing plant.
- New wetwell and drywell structures.
- Mechanical basket screen system to remove trash from wetwell prior to pumping
- Wetwell submersible pumps in series with drywell pumps connecting to new force main.
- Both wetwell and drywell will be ready for installation of third set of pumps when need dictates.
- Includes approximately 13,500lf of HDPE force main, directional drilling of the creek crossing, air release valves/vaults, pipeline cleanouts, pressure regulating valve and tie into existing manhole for routing to Big Bull Creek WWTP.
- Site and force main route will be clean, fine graded and seeded upon completion.

**Price Breakdown**

<b><u>Item</u></b>	<b><u>Cost</u></b>
<b><u>General conditions</u></b> including mobilization, onsite supervision, safety, trash removal, haul off, material testing for soil & concrete, cell phone and data, <b><u>Construction equipment</u></b> including all excavators, cranes, wheel loaders, trucks, compactors, fuel and maintenance, tools for the work.	\$253,001.
<b><u>Insurances &amp; Bonds</u></b> including all performance, payment and statutory bonds, general liability, umbrella liability, builders risk	\$67,941.
<b><u>Site</u></b> - excavation for pump stations, manholes and final piping connections Backfill for all excavated areas Yard piping and final tie-ins for the pump stations	\$72,695.
Precast Wetwell – 13' L x 7'W x 17'D Cast in Place Drywell – 20'L x 14'W x 7'D Manhole structures - 3 ea.	\$171,379.
Site fencing and concrete paving for new pump stations	\$58,182.

<b>Hoisting</b> - structural frames and hoists for the exterior of wetwell and drywell; structural rails for each of the pumps inside the drywell for safe access and maintenance of pumps and valves	\$17,736.
<b>Force main</b> – 13,500 lf of 8”HDPE / approx. 30% in rock Air Release valves and vaults – 7 ea Cleanouts for HDD under creek – 2 ea Pressure sustaining valve and vault – 1 ea at final manhole connection	\$795,004.
<b>Screenings</b> – trash basket, guide rails, mechanized hoisting system	\$116,456.
<b>Pumps</b> – 2 submersible, 2 – centrifugal, piping, valves in pump stations	\$192,426.
<b>HVAC</b> for drywell	\$19,294.
<b>Electrical</b> – including a new 150kw emergency generator & ATS All power and control cable All soft starts and panelboards for pumps <b>Instrumentation</b> – Control panels , PLCs, flowmeters, software and SCADA revisions for monitor and control	\$428,611.
Final Design	\$144,000.
Construction Services	\$121,000.
<b>Allowances</b> ▪ Linework – stump removal \$10,000. ▪ Sand / Salt Storage building \$22,000 ▪ Existing Plant Decommissioning \$74,000. ▪ HDD Bull Creek & Quarry Drive \$136,775.	\$242,775.
<b>Total Contract Value</b>	<b>\$2,700,500.</b>

Allowances are items that are covered in the lump sum total contract value for the specific budget of the item detailed. Costs for these items (labor, material, equipment and subcontractors) will be tracked at cost with no markup for overhead and profit. In the event that the costs are in excess of the amounts listed, the Owner shall pay such additional cost. In the event that the costs are less than the amounts listed, the Owner shall be entitled to the amounts remaining. Allowances included in the lump sum price above -

- Linework – stump removal \$10,000.
- Sand / Salt Storage building – all labor, material and equipment to remove and reinstall existing building including new concrete slab and concrete blocks \$22,000.
- Existing Plant Decommissioning \$74,000.
- HDD Bull Creek & Quarry Drive \$136,775.

Items that have changed since last meeting – price reduced by \$87,000

- Moved the storage building to an allowance item
- Changed the HVAC requirements in the drywell vault
- Deleted one manhole and small amount of pipe for future tie in
- Deleted the VFD’s and moved to soft starts for the pumps
- Deleted one ARV and associated vault

May 23, 2016

**City of Edgerton, KS Pump Station and Force Main Work-**

**Price - \$2,787,950.00**

**Executive summary of work -**

- 100% Performance and payment bonds
- GL, UL, PL and builders risk insurance included
- Prevailing wages are not required for this contract.
- Sales tax exemption certificate to be provided by City.
- Phase 1 services is a separate agreement will be billed separately and is not included in this price
- Includes all labor, materials, equipment and supervision to complete the scope of the work
- Includes all design and construction administration fees for the work
- Trees along force main route will be cleared prior to June1 as a part of the Phase 1 services agreement
- Relocation of existing salt/sand storage building
- New wetwell and drywell areas to be fenced and secured
- Manholes and piping necessary to direct flow to the new wetwell before the existing plant.
- New wetwell and drywell structures.
- Mechanical basket screen system to remove trash from wetwell prior to pumping
- Wetwell submersible pumps in series with drywell pumps connecting to new force main.
- Both wetwell and drywell will be ready for installation of third set of pumps when need dictates.
- Includes approximately 13,200lf of HDPE force main, directional drilling of the creek crossing, air release valves/vaults, pipeline cleanouts, pressure regulating valve and tie into existing manhole for routing to Big Bull Creek WWTP.
- Site and force main route will be clean, fine graded and seeded upon completion.

**Price Breakdown**

<b><u>Item</u></b>	<b><u>Cost</u></b>
General conditions/ construction equipment/Insurances & Bonds	\$317,942.
Site excavation/backfill/yard piping	\$81,767.
Wetwell / Drywell / manhole structures	\$131,578.
Site fencing / paving / relocate ex. storage building	\$138,364.
Hoisting	\$20,410.
Force main & appurtenances	\$803,576
Allowances (detailed below)	\$222,775.
Screenings	\$120,855.
Pumps / pipe / valves	\$199,375.
HVAC	\$25,672.
Electrical/instrumentation/controls	\$460,636.
Design and Construction Administration	\$265,000.
<b>Total Contract Value</b>	<b>\$2,787,950.</b>

- Allowances are items that are covered in the lump sum total contract value for the specific budget of the item detailed. Costs for these items (labor, material, equipment and subcontractors) will be tracked at cost with no markup for overhead and profit. In the event that the costs are in excess of the amounts listed, the Owner shall pay such additional cost. In the event that the costs are less than the amounts listed, the Owner shall be entitled to the amounts remaining. Allowances included in the lump sum price above -
  - Linework – stump removal \$10,000.
  - Concrete blocks at salt/sand storage \$2,000.
  - Existing Plant Decommissioning \$74,000.
  - HDD Bull Creek & Quarry Drive \$136,775.



## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider an Agreement with BG Consultants for Construction Administration and Observation Services for the Edgerton Wastewater Treatment Plant Pump Station and Force Main

**Department:** Utilities

**Background/Description of Item:** In November 2015, Edgerton City Council approved a Preliminary Design-Build Agreement with Burns & McDonnell/CAS Construction in the amount of \$200,800. The City Council will consider the Design-Build Agreement at the meeting on June 23, 2016.

Kansas Department of Health and Environment (KDHE) requires full-time inspection for construction of any sanitary sewer main and pump station. Therefore, this project will require full-time inspection. Staff is recommends using BG Consultants for the inspection of this project since the BG inspection team is familiar with the Edgerton infrastructure and the Design-Build team. Additionally, BG inspection team is already in Edgerton performing inspection on many other projects. This proximity allows for economies of scale in price. The agreement will bill based on actual hours of inspection performed. City Engineer estimates a range in price of \$100,000 - \$120,000 based on construction timeframe of six (6) months.

The Agreement has not yet been reviewed by City Attorney. Staff recommends approval of the agreement and execution of the contract by Mayor upon approval by City Attorney.

Enclosure: Draft Agreement for Construction Observation Services

**Related Ordinance(s) or Statute(s):**

**Recommendation:** Approve an Agreement with BG Consultants for Construction Administration and Observation Services for the Edgerton Wastewater Treatment Plant Pump Station and Force Main pending approval from City Attorney

**Funding Source:** Reimbursement from Edgerton Land Holding Company

Prepared by: Beth Linn, City Administrator  
Date: June 20, 2016



## AGREEMENT CONSULTANT-CLIENT

**THIS AGREEMENT** made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Edgerton, Kansas, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

Construction Administration and Observation Services for
Edgerton Wastewater Treatment Plant Pump Station and Force Main
Edgerton, Kansas

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

### SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

### 2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	David Hamby
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-749-4474

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance for bodily injury and property damage and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties, the CONSULTANT shall in no way be liable to either the CLIENT or such third parties in any manner whatsoever for such Services or for payment thereof.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Professional Responsibility:** The CONSULTANT will exercise reasonable skill, care and diligence in the performance of its Services as is ordinarily possessed and exercised by a licensed professional performing the same Services under similar circumstances.
- 2.2.11. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

### **SECTION 3 – CLIENT RESPONSIBILITIES**

#### **3.1 GENERAL DUTIES AND RESPONSIBILITIES**

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.



- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Beth Linn  
Address: PO Box 255, 404 E. Nelson St.  
Edgerton, KS 66021  
Phone: 913-893-6231

## SECTION 4 – PAYMENT

### 4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement and shall be completed on or before March 1, 2017 (dependent upon Contractor's schedule). Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 2, and reimbursable expenses not contemplated in this Agreement will be charged at actual cost ~~plus ten (10) percent~~. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** Reimbursable expenses ~~plus ten (10) percent~~ shall be charged. Reimbursable expenses include, but are not limited to, ~~expenses of transportation in connection with the Project; expenses in connection with authorized out of town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT~~ and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.

- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay the CONSULTANT within ten (10) days of approval by the governing body.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services in a timely manner according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays.
- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 2. CONSULTANT shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit 2. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost ~~plus ten (10) percent~~. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## **SECTION 5 – MUTUAL PROVISIONS**

### **5.1 TERMINATION**

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The CLIENT also retains all its rights and remedies against the CONSULTANT, including, but not limited to, its rights to sue for damages, interest and attorney fees.

5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

## 5.2 DISPUTE RESOLUTION

5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

## 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT's right of use of instruments of service, if any, is limited to that use on the Project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

#### 5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and save CONSULTANT, its offices and employees harmless from and against any liability, claim, judgment, demand or cause of action arising out of or relating to: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless CONSULTANT from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work.
- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred as a result of the negligence, errors or omissions of the CONSULTANT, its offices or employees in performance of Services pursuant to this Agreement.

#### 5.5 ENTIRE AGREEMENT

- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

#### 5.6 APPLICABLE LAW

- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

#### 5.7 ASSIGNMENT OF AGREEMENT

- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

#### 5.8 NO THIRD PARTY BENEFICIARIES

- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

#### 5.9 LIMITATION OF LIABILITY

- 5.9.1. For any alleged breach of CLIENT's standard of care hereunder, CLIENT'S remedy shall, if practical, be to require CONSULTANT to re-perform any defective Services. If re-performing the defective services is not practical (for example, the item to be inspected has already been enclosed in concrete or the construction work is already complete at the time the defect is discovered), then the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation



actually paid to CONSULTANT for the Services or \$200,000, whichever is greater. All claims by CLIENT shall be deemed relinquished unless filed within the applicable statute of limitations for the claim asserted.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

#### 5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are complete. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

#### 5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

#### 5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

#### 5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

#### 5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

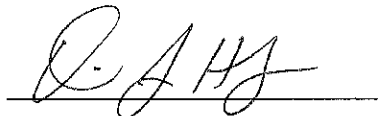
**CONSULTANT:**

**CLIENT:**

**BG Consultants, Inc.**

**City of Edgerton, Kansas**

By:



By:

\_\_\_\_\_

Printed Name:

David J. Hamby

Printed Name:

Donald Roberts

Title:

Vice President

Title:

Mayor

END OF CONSULTANT-CLIENT AGREEMENT

**EXHIBIT 1**  
**SCOPE OF SERVICES**

**Edgerton Wastewater Treatment Plant Pump Station and Force Main Project**  
**Edgerton, Kansas**

**I. PROJECT LOCATION AND DESCRIPTION**

- a. Provide professional services described as follows: Provide construction administration and observation services for the construction of the Edgerton Wastewater Treatment Plant Pump Station and Force Main project in Edgerton, Kansas.

**II. INFORMATION GATHERING**

- a. Meet with Edgerton staff to determine specific project needs and general project desires of the CLIENT. Receive and review available information, reports and plans.

**III. CONSTRUCTION OBSERVATION**

- a. Perform construction observation of the Project as required.
- b. Keep CLIENT informed of any significant issues, problems, or changes to the plans during construction.
- c. Provide detailed daily reports of construction activity, review testing reports, calculate quantities and review pay requests, provide technical support in the field to City Staff, serve as the conduit for communication between the Contractor and the CLIENT, make recommendation on disposition of questionable product and attend progress meetings with the project team.
- d. Complete and submit paperwork and documentation required during the project and final paperwork and documentation to complete the project.
- e. At completion of project, assist the Design Engineer in providing as-built drawings to CLIENT for their permanent records.

**IV. SCHEDULE**

- a. Provide construction observation services on days and times as required to observe and document work being performed by the contractor.

**EXHIBIT 2**  
**COST AND SCHEDULE**

**2016 BG CONSULTANTS STANDARD HOURLY RATES**

<u>POSITION</u>	<u>PER HOUR 2016</u>
PRINCIPAL	\$194.00
PROJECT ENGINEER IV	\$171.00
PROJECT ENGINEER III	\$155.00
PROJECT ENGINEER II	\$144.00
PROJECT ENGINEER I	\$121.50
SENIOR DESIGN ENGINEER	\$144.00
DESIGN ENGINEER	\$110.00
ASSISTANT DESIGN ENGINEER	\$88.50
TECHNICIAN II	\$94.00
TECHNICIAN I	\$86.50
SENIOR CONSTRUCTION OBSERVER	\$105.00
CERTIFIED CONSTRUCTION OBSERVER	\$83.50
CONSTRUCTION OBSERVER	\$76.00
SENIOR PROJECT SURVEYOR	\$176.50
PROJECT SURVEYOR	\$129.50
FIELD SUPERVISOR	\$102.00
SURVEYOR	\$74.00
GPS SURVEYOR	\$108.00
CAD SYSTEM AND OPERATOR	\$107.00
CLERICAL	\$55.50

Note:

1. The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
2. For any Federal Wage and Hour Law non-exempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.



**EXHIBIT 3**  
**SPECIAL PROVISIONS**

None.