

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
July 12, 2018
7:00 P.M.**

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Brown ____ Conus ____ Lewis
2. **Welcome**
3. **Pledge of Allegiance**

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

4. Approve Updated Minutes for March 22, 2018 Regular City Council Meeting
5. Approve Minutes for June 28, 2018 Regular City Council Meeting

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. ElevateEdgerton! 2019 Budget Presentation by James Oltman

Business Requiring Action

9. **CONSIDER A FIRST AMENDMENT TO CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER DESIGN-BUILD AGREEMENT BETWEEN CITY OF EDGERTON AND MILES EXCAVATING, INC. FOR HOMESTEAD LANE/207TH STREET PROJECT**

Motion: _____ Second: _____ Vote: _____

11. **Report by the City Administrator**

- Presentation of Recommended 2019 Other Fund Budgets

12. **Report by the Mayor**

13. Future Meeting/Event Reminders:

- July 13th: Noon – 6:00 PM – Blood Drive
- July 14th: Dusk – Summer Movie Night featuring Disney's Coco
- July 18th: Noon – Senior Lunch
- July 26th: 7:00 PM – City Council Meeting

14. Adjourn Motion: _____ Second: _____ Vote: _____

**City of Edgerton, Kansas
Minutes of City Council Regular Session
March 22, 2018**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on March 22, 2018. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

Ron Conus	present
Clay Longanecker	present
Josh Lewis	present
Jody Brown	present
Darius Crist	absent

With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Assistant City Administrator Scott Peterson
	City Attorney Lee Hendricks
	Public Works Superintendent Trey Whitaker
	Parks Bob McVey
	Development Services Director Katy Crow

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

4. Agenda Approval was considered.
5. Approve Resolution No. 03-22-18A Appointing Scott Peterson as Interim City Clerk for the City of Edgerton was considered.
6. Approve Resolution No. 03-22-18B Appointing David Hamby as Floodplain Administrator for the City of Edgerton was considered.

Motion by Brown, Second by Longanecker, to approve the consent agenda.

Motion was approved, 4-0

8. PUBLIC COMMENTS

Don Cooper, 772 S Poplar St., Gardner, KS, spoke on behalf of the Board of Directors of the HOA of the houses in Gardner along Poplar Street that abut the future site of Inland Port X. Mr. Cooper requested that the City be more proactive in maintaining the landscape in between Inland Port X

and the homes on Poplar Street, stating that large amounts of trash and debris had been accumulating, and grass and weeds had not been mowed in some time.

Rebecca Shalkoski, 680 S. Poplar St., Gardner, KS, also spoke about the property maintenance issues along the future site of Inland Port X. She mentioned that she was having issues with snakes and rodents due to the overgrown brush. Mayor Roberts responded that the property belongs to NorthPoint, not the City of Edgerton, but that staff would make sure that NorthPoint was more diligent about property maintenance in the area.

Pat Peer, 32695 W. 215th St., Spring Hill, addressed the special City Council meeting that was held Thursday, March 15 to readdress annexation of land into Edgerton south of Interstate 35. Ms. Peer stated her belief that the project, and development in Edgerton in general, was moving too quickly, and this special meeting was a result of that hastiness. Ms. Peer also inquired into the number of trucks and trains that pass through Edgerton each day, and how much that would increase with the development to the South. Mayor Roberts answered that he did not know the number of trucks and trains that move through Edgerton every day, but offered to meet with Ms. Peer at any time to discuss it and any other concerns she may have regarding the annexation and development.

9. DECLARATION

None

10. MEMBERSHIP WITH NATIONAL JOINT POWERS ALLIANCE (NJPA) FOR COOPERATIVE CONTRACT PURCHASING SOLUTIONS WAS CONSIDERED.

Trey Whitaker, Public Works Superintendent, presented information regarding the National Joint Powers Alliance (NJPA), a cooperative purchasing group that allows City Staff to streamline the purchasing process of vehicles and equipment. Membership has no annual cost, no obligation or liability to the City. The group allows members to access contracts agreed to by other member jurisdictions.

Motion by Longanecker, Second by Lewis, to approve membership with National Joint Powers Alliance (NJPA) for Cooperative Contract Purchasing Solutions.

Motion was approved, 4-0.

11. ORDINANCE 1078 ANNEXING CERTAIN LAND INTO THE CITY OF EDGERTON WAS CONSIDERED.

Katy Crow, Development Services Director, presented a request for annexation from NorthPoint Development, LLC, on behalf of Edgerton Land Holding Company, LLC. The property for proposed annexation is a small parcel that was previously owned by Water District 7 and used as a pump station. Edgerton Land Holding Company, LLC acquired the property, and is requesting that it be annexed into Edgerton. The property would be contiguous with other recently annexed properties in Edgerton.

Motion by Longanecker, Second by Brown, to approve Ordinance 1078 Annexing Certain Land into the City of Edgerton.

Motion was approved, 4-0.

12. AUTHORIZATION OF HOMESTEAD LANE/207TH STREET ROAD IMPROVEMENT PROJECT WAS CONSIDERED.

Beth Linn, City Administrator, presented a request by City Staff for Council to authorize the 207th Street and Homestead Lane Road Improvement Project. There are currently no plans to be considered, approval of the project simply starts the process of the project, which will be a design-build construction.

Funding for this project is provided by KDOT, with no City Fund dollars going towards the construction; furthermore, the City will not be required to make any repayment to KDOT for the road construction.

Mayor Roberts had a discussion with Ms. Peer, and other members of the audience, including a resident of Miami County who did not provide her name, regarding the project and its impact on truck traffic, noise, and road size in the area.

Motion by Lewis, Second by Longanecker to Approve Authorization of Homestead Lane/207th Street Road Improvement Project.

Motion was approved, 4-0.

13. REPORT BY THE CITY ADMINISTRATOR/DESIGNATION OF KRWA VOTING DELEGATE

Ms. Linn asked the Council to designate a KRWA voting delegate for the 2018 year. Ms. Linn recommended Mike Mabrey, Utilities Superintendent, to be the voting delegate, with Trey Whitaker, Public Works Superintendent, to serve as his alternate.

Motion by Longanecker, Second by Brown, to designate Mike Mabrey as the City's KRWA Voting Delegate, with Trey Whitaker to serve as his alternate.

Motion was approved, 4-0.

Ms. Linn thanked Janeice Rawles, City Clerk, for her 26 years of service, as this is her final City Council meeting. Ms. Rawles is retiring after many years of service and dedication to the City of Edgerton. Ms. Rawles has promised to remain an active member of the community.

Ms. Linn mentioned the pot hole at 8th Street and Highway 56. While the pot hole is in the KDOT right-of-way, Edgerton's Public Works department went ahead and repaired the pot hole. Ms. Linn mentioned that you can report a pot hole on the City's website, or by calling City Hall.

14. REPORT BY THE MAYOR

Mayor Roberts mentioned that Dollar General will have a soft opening on March 26, at 8 am. This will be a few weeks prior to the grand opening/ribbon cutting, but the store will remain functionally open.

15. FUTURE MEETING/EVENT REMINDERS:

- March 24th 9:00 AM – 1:00 PM – Low Cost Vaccine Clinic in Downton Greenspace
- March 24th 10:00 AM – Noon – Edgerton Easter Egg Hunt in Martin Creek Park
- April 10th 7:00 PM – Planning Commission Meeting
- April 12th 7:00 PM – City Council Meeting
- April 18th Noon – Senior Lunch
- April 26th 7:00 PM – City Council Meeting

16. EXECUTIVE SESSION

Motion by Longanecker, Second by Brown, to recess into an executive session pursuant to K.S.A. 75-4319 (b)(2) for attorney/client privilege for contract negotiations to include City Attorney and City Administrator for fifteen (15) minutes was considered.

Motion was approved, 4-0.

Meeting recessed at 8:25 pm. Council took a short break prior to the Executive Session.

Executive Session began at 8:37 pm

Motion by Brown, Second by Longanecker, to reconvene.

Motion was approved, 5-0.

Meeting reconvened at 8:52 pm, no action taken.

17. ADJOURN

Motion by Brown, Second by Lewis, to adjourn.

Motion was approved, 4-0

Meeting adjourned at 8:55 pm, no action taken.

Scott Peterson

Assistant City Administrator/Interim City Clerk

City of Edgerton, Kansas
Minutes of City Council Regular Session
June 28, 2018

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on June 28, 2018. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

Ron Conus	present
Clay Longanecker	present
Josh Lewis	present
Jody Brown	present

With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Assistant City Administrator Scott Peterson
	City Clerk Rachel James
	City Attorney Lee Hendricks
	Development Services Director Katy Crow
	Parks Maintenance Bob McVey
	Finance Director Karen Kindle
	Public Works Superintendent Trey Whitaker

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

- 4.** Approve Minutes for May 24, 2018 Regular City Council Meeting
- 5.** Approve Minutes for June 14, 2018 Regular City Council Meeting

Motion by Lewis, Second by Longanecker, to approve the consent agenda.

Motion was approved, 4-0.

REGULAR AGENDA

- 6. Public Comments.** None.

- 7. Declaration.** None.

BUSINESS REQUIRING ACTION

- 8. CONSIDER APPOINTMENT OF TIM BERGER TO THE EDGERTON PLANNING COMMISSION TO FILL A VACANCY WHICH EXPIRES IN SEPTEMBER 2019**

Mayor Roberts discussed Mr. Berger's background as a US Army Veteran, Catfish Tournament Director, as well as currently working in Information Technology at CenturyLink.

Councilmember Brown also spoke on Mr. Berger's behalf stating that he is neighbors with Mr. Berger and he is kind, smart, and hardworking and would be a great addition to the Planning Commission.

Motion by Longanecker, Second by Lewis to approve the appointment of Tim Berger to the Planning Commission.

Motion passed 4-0.

9. CONSIDER AN AGREEMENT WITH THE SECRETARY OF THE KANSAS DEPARTMENT OF TRANSPORTATION FOR THE HOMESTEAD LANE/207TH STREET PROJECT

Beth Linn, City Administrator presented on the proposed Agreement with Kansas Department of Transportation. Ms. Linn stated that for past roadway projects, the City has partnered with KDOT for improvements. Partnering with KDOT is a critical piece in the continued interest and partnership with LPKC. Ms. Linn recapped the agreement highlights including bridge specifications, sidewalk aesthetics, and project details. KDOT has agreed to covering 80% of preliminary costs not to exceed \$9.5 million. The project has a tight timeline and is to be completed by the first quarter of 2019.

Councilmember Lewis asked if the City was controlling the speed of the project.

Ms. Linn responded that the design/build team had set the schedule and clearly communicated the desired timeline for the project.

Motion by Longanecker, Second Brown to approve agreement with the Secretary of the Department of Transportation for the Homestead Lane/207th Street Project.

Motion passed 4-0.

10. CONSIDER SELECTION OF MILES EXCAVATING INC./AFFINIS CORP AS THE DESIGN-BUILD TEAM FOR HOMESTEAD LANE AND 207TH STREET PROJECT

Beth Linn, City Administrator, presented the selection process for Design-Build team for the Homestead Lane/ 207th Street Project. Three build teams with previous experience working with the City of Edgerton bid for the project and staff is recommending Miles Excavating Inc./ Affinis Corp for selection. Miles Excavating has been recommended by City staff due to the extremely aggressive schedule and their demonstrated excellence in past projects. In these past projects, Miles Excavating and Affinis Corp. have exceeded expectations with innovative solutions to construction, projects completed under budget, as well as their experience working adjacent to utilities and residential areas.

Councilmember Conus asked about the other two companies that submitted bids as well as the bidding process. Ms. Linn gave an overview of the process and discussed inviting the three companies to bid in contrast to the typical design-bid-build process, which is characteristically a much longer process. Councilmember Conus asked about timeframe for project. Mayor Roberts responded with the expected timeline and that staff expects the road and bridge to be open of first quarter of 2019 to meet the needs of the Kubota facility.

Motion by Longanecker, Second by Conus to approve selection of Miles Excavating Inc/Affinis Corp as the Design-Build Team for Homestead Lane and 207th Street Project.

Motion passed 4-0.

11. CONSIDER AGREEMENT WITH BG CONSULTANTS FOR CONSTRUCTION ADMINISTRATION AND OBSERVATION SERVICES FOR HOMESTEAD LANE AND 207TH STREET PROJECT

Beth Linn, City Administrator, gave an overview of the agreement with BG Consultants which reserve funds for inspections, daily reports, pay estimates, hourly rate schedules, etc. at a cost of \$500,000. BG Consultants would bill for actual house

12. Report by the City Administrator

- Report on Public Comments Received for 207th Street Grade Separation
 - Scott Peterson, Assistant City Administrator, briefed Council on resident's feedback on 207th Street Grade Separation.
 - Council reached consensus on the off-alignment option and the on-alignment option "B".

13. Report by the Mayor

14. Future Meeting/Event Reminders:

- July 3rd: 6:00 PM – Community Picnic and Firework Show
- July 12th: 7:00 PM – City Council Meeting
- July 13th: Noon – 6:00 PM – Blood Drive
- July 14th: Dusk – Summer Movie Night featuring Disney's Coco
- July 26th: 7:00 PM – City Council Meeting

15. 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 RECONVENE INTO OPEN SESSION

Motion by Brown, Second by Lewis to adjourn into Executive Session for 15 minutes.

Motion passed 4-0. Adjourn at 7:38pm

Motion by Longanecker, Second by Lewis to reconvene into Open Session.

Motion passed 4-0. Reconvene at 7:58pm.

15. Adjourn

Motion by Brown, Second by Lewis to adjourn.

Motion passed 4-0.



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City Council Action Item

Council Meeting Date: July 12, 2018

Agenda Item #:

Department: Utilities

Agenda Item: Consider First Amendment To Contract For Services For Construction Of Wastewater Improvements And Transportation And Treatment Of Wastewater In An Area Between The City Of Edgerton, Kansas And Gardner, Kansas

Background/Description of Item:

In May 2012, the City of Edgerton entered into an Agreement with the City of Gardner the construction of the Big Bull Creek Wastewater Facility and transportation and treatment of wastewater. A copy of that agreement is enclosed.

That Agreement contains multiple provisions which provide that Edgerton must measure effluent through a meter at the Homestead Lane Lift Station. In 2018, the City of Edgerton as part of the Logistics Park Kansas City Sanitary Sewer Master Plan constructed the new Widmer Lift Station near 191st Street and Essex Street and decommissioned the Homestead Lane Lift Station.

The City of Edgerton proposed a First Amendment to the Agreement to amend portions of the Agreement related to the Homestead Lane lift station to reflect this change. Enclosed is draft Amendment prepared by Edgerton City Attorney. Gardner City Attorney has reviewed it and suggested a few minor revisions. Edgerton City Attorney has reviewed those changes and is updating the draft agreement. City Attorney will provide a copy of the updated amendment and will review the changes with City Council on July 12.

The remainder of the contract remains unchanged.

Related Ordinance(s) or Statue(s):

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approve First Amendment To Contract For Services For Construction Of Wastewater Improvements And Transportation And Treatment Of Wastewater In An Area Between The City Of Edgerton, Kansas And Gardner, Kansas

Enclosed: Draft First Amendment
Agreement with Gardner

Prepared by: Beth Linn, City Administrator

**FIRST AMENDMENT TO CONTRACT FOR SERVICES FOR CONSTRUCTION
OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND
TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF
EDGERTON, KANSAS AND GARDNER, KANSAS**

THIS FIRST AMENDMENT TO THE CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS (hereinafter "First Amendment"), is made and entered into by and between the **City of Edgerton, Kansas** (hereinafter "Edgerton"), and the **City of Gardner, Kansas** (hereinafter "Gardner").

WITNESSETH:

WHEREAS, Edgerton and Gardner entered into an agreement dated May 10th, 2012 entitled CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS, (hereinafter "Contract"); and

WHEREAS, the Contract contains multiple provisions which provide that Edgerton must measure effluent through a meter located at Homestead Lift Station; and

WHEREAS, through discussions between the parties it has been determined that the correct location for that meter is at Edgerton's Widmer Lift Station, not Homestead Lift Station; and

WHEREAS, Edgerton and Gardner wish to amend portions of the Contract, namely multiple sections of Article II and one section of Article XII, to reflect this change; and

WHEREAS, Article XVIII of the Contract states that the Contract can only be modified in writing by mutual agreement of the parties.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Edgerton and Gardner, they do hereby agree as follows:

1. **Amendment to Article II "DEFINITIONS" to include the definition of "Widmer Lift Station".** Article II of the Contract shall be amended to include the following definition:

Widmer Lift Station. Means the sewage lift station owned by Edgerton located at the _____ corner of _____.

2. **Amendment to Article II “DEFINITIONS” to correctly reflect the Widmer Lift Station as the location for measurement in the definition of “Capacity Reduction Amount”.** Paragraph two of Article II of the Contract titled “Capacity Reduction Amount” shall be amended to read as follows:

Capacity Reduction Amount. The amount of flow as measured at the Widmer Lift Station in MGD that Edgerton projects it will need during the subsequent rolling quarter to serve its customers, which amount will initially be 0.05MGD.

3. **Amendment to Article II “DEFINITIONS” to correctly reflect the Widmer Lift Station as the location for measurement in the definition of “Key Development Point”.** Paragraph twenty-seven of Article II of the Contract titled “Key Development Point” shall be amended to read as follows:

Key Development Point. The 90th day following any measurement date at which Edgerton’s average daily flows for the 90-day period next preceding such measurement, as measured at the Widmer Lift Station, exceed 0.20 MGD.

4. **Amendment to Article XII to correctly reflect the Widmer Lift Station.** Paragraph two, sentence one of Article XII of the Contract is hereby amended to read as follows:

Either party may sample and analyze flows at its own expense at, if for Edgerton, the Widmer Lift Station, and, if for Gardner, the Waverly Lift Station.

5. **Remainder of Contract Unchanged.** All other provisions of the Contract shall remain unchanged.

6. **Modification.** No provision of this Contract may be modified, altered or amended by the individual action of either party. All such modifications, alterations or amendments must be agreed to in writing by both parties.

7. **Governing Law and Regulations.** This Amendment will be governed by and construed in accordance with the laws and regulations of the State of Kansas.

8. **Entire Agreement.** This First Amendment constitutes the entire agreement between the parties regarding the subject matter contained herein and no representations or understandings not contained herein will be binding upon the parties.

IN WITNESS THEREOF, the parties hereto have set their hands and seals effective the date first set forth above.

CITY OF EDGERTON, KANSAS

Date:_____

By:_____
Donald R. Roberts, Mayor

ATTEST:

Rachel James, City Clerk

[SEAL]

CITY OF GARDNER, KANSAS

Date:_____

By:_____
Steve Shute, Mayor

ATTEST:

City Clerk

[SEAL]

**CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER
IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF
WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON,
KANSAS, AND GARDNER, KANSAS**

This Agreement, made and entered into this 10th day of May, 2012, by and between the City of Edgerton, Kansas, hereinafter referred to as "Edgerton", and the City of Gardner, Kansas, hereinafter referred to as "Gardner" (collectively referred to as "the Parties"), each Party having been organized and now existing under the laws of the State of Kansas.

WITNESSETH:

WHEREAS, under the provisions of Title 13 of the Gardner Municipal Code and Chapter XV of the Edgerton Municipal Code, Gardner and Edgerton are empowered to construct, maintain, govern, administer, and provide sewage treatment services for properties located within each city to secure proper sanitary conditions for the preservation of public health and the protection of the environment; and

WHEREAS, pursuant to the provisions of K.S.A. 12-2908, the Parties hereto may enter into cooperative agreements to promote the planning, development, construction, acquisition, and operation of public improvements or sewage facilities in a mutually advantageous manner; and

WHEREAS, Edgerton and Gardner desire to enter into this cooperative agreement to provide for the transportation and treatment of wastewater in a manner that will preserve public health, meet regulations of local, state, and federal authorities, provide for the orderly growth and development of wastewater facilities and promote efficiency and coordination in the administration of sanitary sewer systems;

WHEREAS, Edgerton desires to construct lift stations, force main, gravity sewer mains, sewage treatment facilities, and related sanitary sewer improvements as more fully shown on **Exhibit A** (the "Cooperative Facilities"); and

WHEREAS, Gardner desires to construct a force main, gravity sewer mains and sewer force mains as more fully shown on **Exhibit B** (the "Gardner Facilities"), which will enable Gardner to send sewage to the Cooperative Facilities; and

WHEREAS, the Parties agree, pursuant to K.S.A. 12-2908, that Edgerton will design and construct the Cooperative Facilities and the Gardner Facilities; and

WHEREAS, Edgerton seeks reimbursement for a portion of the costs of the Cooperative Facilities and all of the costs of the Gardner Facilities through payments from Gardner pursuant to this Agreement; and

WHEREAS, Edgerton and Gardner desire to enter into this contract for services whereby Gardner, as the Cooperative Facilities and Gardner Facilities are constructed in various phases, will pay for its portion of the costs of the Cooperative Facilities (its "Development Share" as further defined herein), and the Full Development cost of the Gardner Facilities plus a 2% administrative fee;

WHEREAS, the estimated cost of each phase of the Cooperative Facilities and Gardner Facilities, and the Development Share as shown on **Exhibit C**.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, it is agreed by and between Edgerton and Gardner as follows:

ARTICLE I GENERAL INTENT AND TERMS OF AGREEMENT

The intent of this agreement is to permit the more economical construction, operation and maintenance of Edgerton's Big Bull Creek Wastewater Treatment Plant through intergovernmental cooperation. This Agreement will enable Gardner to transport a projected flow of wastewater from Gardner (via the Waverly Lift Station) to the Edgerton sewer system for transportation and treatment purposes, and to establish mutually acceptable standards, cost arrangements, and billing procedures related thereto.

Cooperation of the Parties will create significant current and future economic savings for each community. Edgerton will benefit from the development of a more efficient Wastewater Treatment Plant with shared capital investment and a reliable source of existing flow, improving the operation of the plant. Gardner will be able to defer significant sewer infrastructure capital investment in the southwest area of the community, as well as preserve treatment capacity at its Kill Creek Wastewater Treatment Plant.

The presence of Gardner and its commitment to provide immediate minimum wastewater flows will permit the development of a more efficient 0.5MGD plant initially, as well as at the point capacity needs to be expanded to 1.0MGD, which is estimated to be about five years under current projections.

The effective date of this Agreement (the "Effective Date") shall be the first date written above, and expiration of the Agreement shall be the later of the 35th anniversary of the Agreement, or on the third anniversary of the date on which all debt (which may include

bonds, loans, notes or other instruments) issued by Edgerton to finance, enhance or maintain the Cooperative Facilities is paid at maturity or no longer outstanding under the provisions of the terms of such debt, which may include retirement of the debt through redemption or legal defeasance.

ARTICLE II DEFINITIONS

Base Cost. The Full Development Cost, as certified by the Initial Design-Builders, of any Cooperative Facility to be constructed under a Standalone Scenario.

Capacity Reduction Amount. The amount of flow as measured at the Homestead Lane Lift Station in MGD that Edgerton projects it will need during the subsequent rolling quarter to serve its customers, which amount will initially be 0.05MGD.

Capacity Reduction Notification Date. The earlier of the Key Development Point or the final day of the first full calendar quarter following Edgerton's written notice to Gardner that it has modified the Capacity Reduction Amount.

Cooperative Facility. Any individual component of the Cooperative Facilities.

Cooperative Facilities. The WWTP, Interceptor, Force Main Trench and real estate held in fee simple title, and temporary and permanent easements related thereto, for any of the WWTP, Interceptor, or Force Main Trench.

Default Flow Rate. Prior to the Key Development Point, monthly average daily flows equal to 0.09MGD. From and after the Key Development Point until Gardner's approval of the Phase II WWTP Improvements, none. Following Gardner's approval of Phase II WWTP Improvements, monthly average daily flows equal to 0.20MGD.

Development Share. Each Party's total of its share of the Full Development Cost for the Cooperative Facilities.

Disbursement Agent. A bank trust department or comparable entity responsible for making payments to the Initial Design-Builders and others related to the development of the Cooperative Facilities and Gardner Facilities. Initially, UMB Bank, Kansas City, Missouri.

Edgerton Municipal Code. The compiled ordinances of the City of Edgerton, Kansas, as shall be maintained and updated by the Edgerton City Clerk from time to time.

Emergency Repairs. Repairs to Cooperative Facilities requiring immediate action to avoid a threat to the health, safety and welfare of the public or to prevent imminent damage to the Cooperative Facilities.

Force Main Trench. A shared trench, sufficient in size to accommodate the Individual Force Mains, commencing from a point west of the intersection of 191st and Waverly Road in Edgerton and terminating at the upstream end of the Interceptor. See Exhibit A.

Full Development Cost. The total cost of acquiring land and easements, siting, permitting, designing, constructing, testing and bringing to Full Initial Operation any Cooperative Facility and Gardner Facility.

Full Initial Operation. The date, certified by the Initial Design-Builders, upon which any Cooperative Facility is legally and technically ready to accept sewage from retail customers.

Gardner Facility or Gardner Facilities. Gardner's Individual Force Main to be set in the Force Main Trench, the Waverly Lift Station, force main and trenching necessary to span the Waverly Lift Station and the Force Main Trench, and roughly one-half mile of gravity sewer and/or force main constructed between the South Lift Station and the Waverly Lift Station. See Exhibit B.

Gardner Facility Completion Date. The date by which the Gardner Facilities must be operational to permit Full Initial Operation, which date is currently June 1, 2013.

Homestead Lane Lift Station. Means the sewage lift station owned by Edgerton located at the Southeast corner of 191st Street and Homestead Lane.

Incremental Development Cost. The excess of the Full Development Costs for the Joint Scenario over the Standalone Scenario to bring any Cooperative Facility to Full Initial Operation, all as certified by the Initial Design-Builders.

Independent Rate Consultant. An engineering firm, accounting firm or municipal advisor with expertise in the establishment of rates for municipal wastewater facilities as appointed by Edgerton from time to time and approved by Gardner, such approval shall not be unreasonably withheld.

Individual Force Mains. The force mains, each owned and operated individually by each Party, located in the Force Main Trench.

Initial Design-Builders. The design-build team of Burns & McDonnell and CAS Construction, or their successors, and the firm of BG Consultants, Inc., hereby approved by the Parties.

Initial Development Plan. The written plan of the Initial Design-Builders to develop the Cooperative Facilities as described in **Exhibit D**.

Initial Flow Rate. 0.15MGD of monthly average daily flow as measured at the Waverly Lift Station.

Initial Independent Rate Consultant. Springsted, Inc.

Initial Wholesale O&M Charge. The Wholesale Operating and Maintenance Charge established by the Initial Independent Rate Consultant and approved by the Edgerton City Council, and the Gardner City Council, which shall be applicable to this Agreement as of the effective date. Such approvals shall not be unreasonably withheld.

Interceptor. The 30- and 36-inch (preliminary size) gravity sewer interceptor running from a point adjacent to Homestead Lane in unincorporated Johnson County, Kansas, roughly equidistant from West 199th Street and the intersection of Interstate 35 and Homestead Lane, including a 36" pipeline under Interstate 35.

Joint Scenario. Edgerton's plans, as recommended by the Initial Design-Builders, to construct the WWTP, the Interceptor and the Force Main Trench with the participation and cooperation of Gardner as contemplated by this Agreement.

Key Development Point. The 90th day following any measurement date at which Edgerton's average daily flows for the 90-day period next preceding such measurement, as measured at the Homestead Lane Lift Station, exceed 0.20 MGD.

Low Flow Surcharge. From and after Full Initial Operation and through the Key Development Date it shall be 110%. After the Key Development Point and until Gardner's approval of the Phase II Improvements there shall be no Low Flow Surcharge. From and after Gardner's approval of the Phase II Improvements it shall be 110%.

Major Maintenance. Maintenance activities related to the Cooperative Facilities that are not usual or customary, as determined by the System Engineer in its reasonable discretion, and exceed \$50,000 per instance.

MGD. Millions of gallons per day of Normal Strength Sewage.

Normal Strength Sewage. As defined by the Ordinance.

Ordinance. The City of Edgerton Wastewater Pretreatment Ordinance or its successors, as may be amended from time to time and codified in the Edgerton Municipal Code.

Phase I WWTP Improvements. The capital improvements necessary, as certified by the Initial Design-Builders, to produce the WWTP on or about September 1, 2013 that has a design average day capacity of 0.50 MGD.

Phase II WWTP Improvements. The capital improvements necessary, as certified by the System Engineer, to increase design average day capacity of the WWTP to at least 1.00 MGD.

South Lift Station. Gardner's existing lift station located roughly at the intersection of 191st and Center Street.

Standalone Scenario. Edgerton's plans, as recommended by the Initial Design-Builders, to construct any Cooperative Facility without the participation of Gardner.

System Engineer. One or more consulting engineers or firms of consulting engineers, appointed by Edgerton, with significant experience in the design and operation of sewage handling and treatment systems responsible for advising Edgerton on the timing and scope of major maintenance and capital investment related to the Cooperative Facilities, which Engineer shall initially be Burns & McDonnell.

Waverly Lift Station. The lift station constructed and owned by Gardner located in the general vicinity of 191st and Waverly Road in currently unincorporated Johnson County, Kansas.

Wholesale O&M Charge. The fees per thousand gallons of Normal Strength Sewage delivered by Gardner from the Waverly Lift Station, as determined by the Independent Rate Consultant. Such charges shall include the normal operations and regular maintenance charges billed to any Edgerton sewer customer, as identified in the Edgerton Municipal Code, plus a component for Major Maintenance, but shall not include charges related to the initial capital investment in the Cooperative Facilities.

WWTP. The Big Bull Creek Wastewater Treatment Plant and all improvements and appurtenances thereto.

ARTICLE III DEVELOPMENT, CONSTRUCTION AND FINANCING

Edgerton shall be responsible for developing the Cooperative Facilities and the Gardner Facilities and shall be responsible for managing all contracts executed therefor. Gardner hereby affirms its approval of the Initial Design-Builders, the Initial Independent Rate Consultant, and the System Engineer. Gardner hereby ratifies its acceptance of the Initial Development Plan.

Because the design/build process will not produce full plans until the Cooperative Facilities are under construction, Gardner acknowledges that it will have limited opportunities to review the design of such facilities. Recognizing the importance of its partnership with Gardner, Edgerton will make the Initial Design-Builders available to Gardner representatives on a regular basis, but not less than monthly, from the effective date of this Agreement through substantial completion of the Cooperative Facilities or the Gardner Facilities, whichever is later, for review and consultation regarding the Initial

Development Plan. Gardner will have the opportunity to identify design elements or oversights that might adversely impact the conveyance or treatment of sewage flows.

The parties shall share equally in the Full Development Costs for the WWTP. Gardner shall pay the Incremental Development Cost for the Interceptor. Gardner shall pay the Incremental Development Cost for the Force Main Trench. Edgerton shall be responsible for the Base Cost of the Interceptor and the Force Main Trench. Gardner shall pay the Full Development Costs for the Gardner Facilities, plus a two (2) percent administrative fee calculated on the Full Development Costs of the Gardner Facilities.

Each party shall be responsible for financing its Development Share.

Each party shall make funds available for its Full Development Share not later than September 1, 2012. "Available" means cash-on-hand or an agreement with a bank or other lender to provide draws against a firm credit commitment in an amount equal to or exceeding its Development Share. Gardner acknowledges that Edgerton intends to use State Revolving Fund loan(s) to finance the costs of constructing the Cooperative Facilities, and Gardner agrees it will not take any action to jeopardize said loans or otherwise impair Edgerton's eligibility to obtain the loans.

Gardner hereby agrees to contract with Edgerton for the delivery of the Gardner Facilities by the Gardner Facility Completion Date. Gardner will be responsible for 102% of the costs associated with the Gardner Facilities as certified by the Initial Design-Builders and agrees to make payments to the Disbursement Agent within 15 days of presentation of invoices for all expenditures attributable to the Full Development Costs, plus 2%, for the Gardner Facilities. Edgerton agrees to use the Initial Design-Builders to complete the Gardner Facilities and to extend the per unit costs for labor and materials as provided in its agreement with the Initial Design-Builders, plus a two (2) percent administration fee to be retained by Edgerton.

At its sole discretion, Edgerton may, at any time, advance funds for Gardner's Development Share, to be reimbursed by Gardner within 15 days of demand following September 1, 2012. The Parties expect that this provision will be used to cover design costs, engineering, easement acquisition and land acquisition, permitting development of the Cooperative Facilities between the time of execution of this Agreement and the availability of financing. Gardner's responsibility for reimbursing Edgerton shall be absolute.

Edgerton will engage a bank corporate trust department or similar entity to serve as Disbursement Agent for payments for work completed on the Cooperative Facilities and the Gardner Facilities. Upon demand for partial payment, Gardner shall wire funds to the Disbursement Agent which, along with funds paid to it by Edgerton, will disburse funds in satisfaction of invoices against the Full Development Cost. The fees and expenses of the Disbursement Agent shall be considered part of the Full Development Cost. Within 30 days of execution of this Agreement, Gardner shall deposit the sum of \$60,000 with the

Disbursement Agent. Edgerton shall be entitled to present invoices to the Disbursement Agent for Gardner's Development share to be paid by the \$60,000 deposit.

Gardner agrees to pay its share of progress payments against its Development Share. Gardner agrees to make funds available to the Disbursement Agent within 15 days of demand by Edgerton in order to permit progress payments within the time constraints specified in K.S.A. 16-1903. Each party will be responsible for the interest and other late payment costs charged on the full amount of the progress payment if it causes a late payment. Edgerton shall not demand payment from Gardner for its share of contract retainage until substantial completion for the applicable Cooperative Facility or Gardner Facility is certified by the Initial Design-Builders and the completion punch list is developed and costed.

ARTICLE IV INSPECTION OF FACILITIES

Edgerton and Gardner will jointly retain a qualified inspector, and/or inspection company ("Inspector"), to inspect all aspects of the construction of the Cooperative Facilities and the Gardner Facilities. The Inspector will serve Edgerton and Gardner in the capacity of an independent contractor. The costs for the Inspector shall be included in the Full Development Cost. The Parties hereby agree to appoint the Inspector jointly through a competitive process administered by Edgerton and including Gardner staff on the selection team.

ARTICLE V OWNERSHIP AND OPERATION

Edgerton and Gardner shall continue to control, own, operate, and maintain their respective sewerage systems, now existing or constructed in the future. No provision of this Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or create any property or other rights or liabilities except as may be otherwise expressly set forth herein.

Edgerton shall maintain fee simple title to the Cooperative Facilities, and shall be solely responsible for their regular operation and maintenance. Gardner shall compensate Edgerton for such activities through the payment of the Wholesale O&M Charge.

Gardner shall maintain fee simple title to the Gardner Facilities.

Edgerton agrees to provide unlimited access easements to Gardner related to the Force Main Trench. Edgerton agrees to make the Cooperative Facilities available to Gardner for inspection upon reasonable notice. Gardner agrees to make the Waverly Lift Station accessible to authorized Edgerton staff members and consultants with reasonable same-day

notice on any day for auditing of flow, sampling of wastewater strength and verification of access of flow measurement devices.

The Gardner Facilities shall include flow monitoring devices at the Waverly Lift Station sufficient, in the reasonable opinion of the Initial Design-Builders, to accurately measure the amount of sewage flow transmitted to the Cooperative Facilities. Ownership, maintenance, and replacement, as may be necessary, of both the vaults and measurement devices shall remain with Gardner. Gardner shall perform a calibration of the measurement devices not less than semi-annually and provide Edgerton the calibration results within five (5) business days of such testing. Edgerton retains the right to periodically verify the accuracy of the flow measurement devices. Gardner shall collect and record the continuous flow data obtained at the Waverly Lift Station. All of the collected flow data shall be reported by Gardner to Edgerton on a monthly basis for the purpose of verifying compliance with the quality and quantity provisions of this Agreement and for the preparation of the monthly billing information.

ARTICLE VI CONTINUED COOPERATION AND DIALOGUE

Each party agrees to appoint knowledgeable staff members to meet periodically, but not less than quarterly, during the life of the Agreement to discuss and resolve operational issues and to provide updates on the pace of wastewater flow growth from each community. Additionally, each party agrees to appoint two (2) governing body members to serve on a Big Bull WWTP task force to meet at least one (1) time each calendar year for the life of the Agreement to discuss concerns related to growth management and the shared financing of future cooperative facilities and to make recommendations for action on such topics, as needed, to the governing bodies of each community.

The Parties agree to pass such ordinances, resolutions, or other legislation and execute such instruments from time to time as may be necessary to effectuate the terms and conditions of this Agreement.

ARTICLE VII RIGHT TO USE IMPROVEMENTS

Upon notification in writing from Edgerton that the Cooperative Facilities have been substantially completed and are ready to accept flows, and as long as Gardner is in good standing under this Agreement, Gardner shall have the right to connect to and discharge untreated sanitary sewage and wastes to the Cooperative Facilities, subject to the quantity and quality limitations set forth herein and subject to the right of Edgerton to be compensated for its costs and expenses pursuant to the terms of this Agreement. Except to the extent provided by this Agreement, Edgerton shall not impair Gardner's rights to send such flows to the Cooperative Facility.

ARTICLE VIII FLOW RATES

Recognizing that the WWTP design contemplated by this Agreement requires sufficient minimum average flows, Gardner agrees, from and after Full Initial Operation of the WWTP and until the Key Development Point, to deliver sewage flows of not less than 0.15 MGD from the Waverly Lift Station. The parties agree that, from and after Full Initial Operation of the WWTP and until the Key Development Point, they shall work cooperatively to ensure total average day flows at the WWTP headworks do not exceed 80% of design capacity.

From and after Full Initial Operation of the WWTP and until the Key Development point, and subject to the minimum flow requirements provided herein, Gardner may send maximum average day flows from the Waverly Lift Station not to exceed the amount produced by the formula below:

(Design Capacity * 80%) - Capacity Reduction Amount (which Capacity Reduction Amount shall not exceed 0.2MGD)

On and after the Key Development Point, each Party shall be limited to maximum average day flows as produced by the formula below:

(Design Capacity * 80%) * 50%

On any date after the Key Development Point until such time as it approves the development of the Phase II WWTP Improvements, Gardner may, upon written notice to Edgerton, propose to permanently terminate sending flow to the WWTP (the "Termination Notice"). Upon the certification by the System Engineer (and such certification shall not be unreasonably withheld) that Gardner has met all financial obligations under this Agreement and that such diversion would not have a materially adverse impact on the ability of Edgerton to operate the plant within usual and customary operating parameters for similar facilities and in full compliance with its regulatory requirements (the "Certification Date"), Gardner shall, at its sole expense, cause its Individual Force Main connection at the Waverly Lift Station to be capped within 60 days following the second anniversary of such certification by the System Engineer (the "Termination Date"). From the Certification Date and until the Termination Date, Edgerton may, but is not required to, accept Gardner's rescission of such Termination Notice. In the event of a rescission, the parties will continue to be governed by this Agreement. After paying all outstanding charges not yet billed and/or collected by the Termination Date, Gardner's obligation to make Wholesale O&M Charge payments shall end on the Termination Date.

ARTICLE IX BILLING

Edgerton shall bill Gardner monthly for its sewer flow for the prior month as measured at the Waverly Lift Station. Gardner agrees to provide, and Edgerton agrees to bill Gardner for, Normal Strength Sewage. Such billings for Normal Strength Sewage shall be at the Wholesale O&M Charge.

Gardner agrees to make payment to Edgerton within 15 days of delivery of such monthly bill.

If Gardner has not approved construction of the Phase II WWTP Improvements, for any month after Full Initial Operation and until the first month following the Key Development Point for which Gardner's average daily flows do not equal or exceed the Initial Flow Rate, Edgerton shall calculate Gardner's bill for that month using the larger of:

$$\begin{array}{c} \text{Wholesale O\&M Rate} * \text{Low Flow Surcharge} * \text{Actual Usage} \\ \text{or} \\ \text{Wholesale O\&M Rate} * \text{Low Flow Surcharge} * \text{Default Flow Rate} \end{array}$$

If Gardner has approved construction of the Phase II WWTP Improvements, for any month following the first month after the placed-in-service date of the Phase II WWTP Improvements, as certified by the System Engineer, for which Gardner's average daily flows do not equal or exceed the Default Flow Rate then in effect, Edgerton shall calculate Gardner's bill for that month by applying the formula below:

$$\text{Wholesale O\&M Rate} * \text{Low Flow Surcharge} * \text{Default Flow Rate}$$

Gardner's failure to provide flows exceeding the Default Flow Rate for two consecutive months or for more than six months in any rolling 12-month period shall constitute an event of default under this Agreement. The parties acknowledge that the unique nature of the Cooperative Facilities may require unique remedies, such as a court of competent jurisdiction directing Gardner to provide flow sufficient to maintain minimal plant operations or compensating Edgerton for documented, increased operations and maintenance costs stemming from insufficient sewer flows.

In the event a malfunctioning flow meter causes a short term loss of data, Gardner shall take appropriate action to repair the malfunctioning flow meter and the flow values for billing purposes during the period when actual data are not available shall be estimated by Edgerton in its reasonable discretion based on flow values or the sum of individual customer water use readings derived from the same period during the prior year or other flow projection agreed upon by both parties.

ARTICLE X MAJOR MAINTENANCE

The Parties agree, within 60 days of the date the Initial Design-Builders declare the Cooperative Facilities to be substantially complete, that each shall deposit the sum of \$50,000 (the "Initial Deposit") into the Big Bull Major Maintenance Repair Fund (the "Repair Fund"), held in the Edgerton treasury. The Repair Fund shall be a separate fund on Edgerton's books and records.

Until such time as the Initial Deposit is depleted, the Parties will share equally in the costs, as certified by the System Engineer, of Major Maintenance on the Cooperative Facilities. Major Maintenance includes repairs and improvements recommended by the System Engineer exceeding \$50,000 that are necessary to protect the health, safety and welfare of the public and/or to ensure continued regulatory compliance.

From and after Full Initial Operation, the Rate Consultant shall include in the Wholesale O&M Charge such amount as shall be necessary, in the opinion of the System Engineer, to cover Major Maintenance costs over the subsequent five (5) year period, based upon projected total flow to the WWTP during such five (5) year period. Edgerton hereby agrees to deposit the moneys derived each fiscal year from the Major Maintenance portion of Wholesale O&M Charge receipts into the Repair Fund. Within 30 days of the end of each calendar quarter, Edgerton shall deposit into the Repair Fund an amount equal to the Major Maintenance component of the Wholesale O&M Charge multiplied by the aggregate flow for the calendar quarter measured at its Homestead Lane Lift Station; provided that Edgerton shall be credited for any amounts it paid for a Major Maintenance item during the quarter to the extent any portion of the cost of such Major Maintenance item was not paid by the Repair Fund. If the amount of such credit exceeds the amount Edgerton would be required to pay into the Repair Fund for the quarter, the excess balance shall be carried forward to subsequent quarters.

From and after the time at which the Initial Deposit is depleted, Edgerton will finance Major Maintenance repairs from the Repair Fund. The Rate Consultant shall be responsible for adjusting the Major Maintenance component of the Wholesale O&M Charge to produce sufficient funds to meet future demands on the Repair Fund as described above.

Until the Initial Deposit is depleted, except for Emergency Repairs constituting Major Maintenance, Edgerton agrees to provide Gardner with 60 days' notice prior to commencing Major Maintenance.

Upon termination of this Agreement, the balance of the Repair Fund, if any, will be distributed equally to the parties.

Edgerton agrees to provide to Gardner upon demand, but not more frequently than monthly, a report detailing the balance held in the Repair Fund plus a detailed list of

revenues and expenditures in such fund. Edgerton's reporting requirement under this Article shall expire on the Termination Date.

ARTICLE XI PHASE II IMPROVEMENTS

On any date following the Key Development Point, either party may propose, with written notice to the other, the commencement of development of Phase II WWTP Improvements. The party proposing such development shall cause, at its cost (or with the consent of the other party, at the shared cost of the parties), (a) the System Engineer to evaluate the improvements required and to estimate the total development cost of such improvements and (b) the Independent Rate Consultant to estimate the impact of such improvements, if built, on retail rates and the Wholesale O&M Charge, presuming the cost of such improvements were split equally by the parties.

Within 90 days of initial written notice, the System Engineer and the Independent Rate Consultant will provide their written reports simultaneously to each party.

Within 45 days of the date of delivery of the latest of the two reports of the System Engineer and the Independent Rate Consultant, the governing body of each party shall take formal action to accept or reject the proposal of the proposing party to develop the Phase II WWTP Improvements. The governing body may provide its acceptance contingent upon it being able to secure financing for such improvements at then-market rates for communities in Kansas with similar credit quality and with similar bond/note/loanholder security.

If both Parties' governing bodies approve the proposal to construct Phase II WWTP Improvements, Edgerton agrees that within 30 days of the final approval to commence procurement of the professionals necessary to design, permit and construct such Phase II WWTP Improvements. All costs of such Phase II WWTP Improvements will be shared by the Parties equally in the manner prescribed for the WWTP Improvements herein.

If Gardner proposes construction of Phase II WWTP Improvements, it will agree to provide not less than 0.2MGD average daily flow during the life of the Agreement, from and after the date full operation of the Phase II WWTP Improvements, such date shall be determined by the System Engineer in its reasonable discretion.

If Gardner's governing body fails to approve Edgerton's proposal to construct Phase II WWTP Improvements, Edgerton may choose to construct Phase II WWTP Improvements at Edgerton's cost. Edgerton shall have full access to the incremental new plant capacity until the Gardner Buy-In (described below), at which time incremental new plant capacity shall be shared equally.

At any point subsequent to its initial failure to approve construction of Phase II WWTP Improvements, Gardner may, in addition to providing a commitment to provide not

less than 0.3MGD monthly average flow during the life of the Agreement, from and after the date full operation of the Phase II WWTP Improvements (such date shall be determined by the System Engineer in its reasonable discretion) purchase a 50% share of the Phase II capacity using the formula below (the "Gardner Buy-In"):

$$(50\% * (\text{Full Development Cost of Phase II WWTP Improvements} * 105\%)) \\ - ((\text{Number of Years Elapsed from Notice to Proceed on Phase II WWTP} \\ \text{Improvements to Today} / 40) * 50\% \text{ of Full Development Cost of Phase II WWTP} \\ \text{Improvements}))$$

plus

$$(50\% * \text{Cumulative Major Maintenance Costs Incurred related to Phase II WWTP} \\ \text{Improvements}) - ((\text{Number of Years Elapsed from Notice to Proceed on Phase II} \\ \text{WWTP Improvements to Today} / 40) * 50\% \text{ of Cumulative Major Maintenance Costs} \\ \text{Incurred on Phase II WWTP Improvements}))$$

plus

50% * Cumulative Interest Costs to the later of the Buy-In Date or the Next Available Call Date on debt incurred by Edgerton for Phase II WWTP Improvements

where

Cumulative Interest Costs do not include interest paid by bond proceeds (e.g., capitalized interest) and are offset by actual or expected interest earnings on bond funds (e.g., construction fund earnings)

If Edgerton's governing body fails to approve Gardner's proposal to construct Phase II WWTP Improvements, Gardner may choose to require Edgerton to construct Phase II WWTP Improvements at Gardner's cost plus a 2% administrative fee on the total development costs actually incurred, which fee shall be retained by Edgerton. Gardner shall have full access to the incremental new plant capacity until the Edgerton Buy-In (described below), at which time incremental new plant capacity shall be shared equally.

At any point subsequent to its initial failure to approve construction of Phase II WWTP Improvements, Edgerton may purchase a 50% share of the Phase II capacity using the formula below (the "Edgerton Buy-In"):

$$(50\% * (\text{Full Development Cost of Phase II WWTP Improvements} * 105\%)) \\ - ((\text{Number of Years Elapsed from Notice to Proceed on Phase II WWTP} \\ \text{Improvements to Today} / 40) * 50\% \text{ of Full Development Cost of Phase II WWTP} \\ \text{Improvements}))$$

plus

$$(50\% * \text{Cumulative Major Maintenance Costs Incurred related to Phase II WWTP} \\ \text{Improvements}) - ((\text{Number of Years Elapsed from Notice to Proceed on Phase II} \\ \text{WWTP Improvements to Today} / 40) * 50\% \text{ of Cumulative Major Maintenance Costs} \\ \text{Incurred on Phase II WWTP Improvements}))$$

plus

50% * Cumulative Interest Costs to the later of the Buy-In Date or the Next Available Call Date on Gardner Phase II WWTP Improvements Debt

where

Cumulative Interest Costs do not include interest paid by bond proceeds (e.g., capitalized interest) and are offset by actual or expected interest earnings on bond funds (e.g., construction fund earnings)

The parties agree to continuous dialogue about the development of shared facilities for plant capacities in excess of 1.0MGD at such time as it becomes apparent that plant expansion beyond the Phase II Improvements shall be necessary.

ARTICLE XII SAMPLING, TESTING, AND VIOLATIONS

Nothing herein shall be construed as changing any wastewater standards or reporting requirements that EPA and KDHE impose on the Parties. Gardner agrees to make reasonable efforts to prevent infiltration and inflow to the Cooperative Facilities.

Either party may sample and analyze flows at its own expense at, if for Edgerton, the Homestead Lane Lift Station, and, if for Gardner, the Waverly Lift Station. Gardner shall sample and analyze flows at its sole expense at the Waverly Lift Station at a frequency based upon the schedule indicated on **Exhibit E**. Additional samples may be collected from the Waverly Lift Station by Edgerton at Edgerton's sole discretion and expense (except that staff time for Gardner employees and contractors to provide access to the Waverly Lift Station shall not be charged) for the purpose of verifying the accuracy of the information reported by Gardner. Any and all results and analysis from samples collected pursuant to this Article, by either party, shall be shared with the other party within five (5) business days of testing.

All samples, unless otherwise mutually agreed upon, shall be obtained using methods as found in the most current edition of "Standard Methods for the Examination of Water and Wastewater". Analysis shall be conducted by standard methodology as found in the most current edition of "Standard Methods for the Examination of Water and Wastewater". Laboratories performing analysis must hold certification from state or other certification agencies. Samples collected for Biochemical Oxygen Demand ("BOD5") or the Total Suspended Solids ("TSS") analysis shall be twenty-four (24) hour flow composite. Samples collected for Fats, Oil and Grease ("FOG") or pH analysis shall be a grab sample. Time composite samples may be used in lieu of flow composite samples in the event of maintenance, operational, or laboratory difficulties. Grab samples may be used in lieu of time composites for similar cause. All samples and analysis obtained at the connection point by either party shall be reported to the other party. Either party shall have the opportunity to split samples collected by the other party.

Samples found to be not representative of the flow by mutual agreement shall not be used in calculations of charges. Split samples varying by more than 20% for BOD5 or TSS will not be used in the calculations for determining loadings or charges. Should any sample

results be discarded for any reason, additional samples will be collected as necessary to provide the minimum number of sample results required by **Exhibit E** of this Agreement.

Subject to the requirements of the EPA, if any, the quality (excluding the 5-Day BOD5 and the TSS) of the wastewater received by Edgerton under this Agreement shall be within the parameters set forth in the Ordinance. Gardner shall be subject to remedial actions as provided in the Ordinance if it fails to comply with this provision.

With the exception of discharges from the Waverly Lift Station that result in a major disruption of the Edgerton collection system or treatment system as described herein below, any costs or actual damages incurred by Edgerton as the result of the discharge of wastes from the Waverly Lift Station to Edgerton's sewer system, which discharge is prohibited under the Ordinance, including but not limited to fines assessed by KDHE or other regulatory agencies, shall be paid by Gardner within thirty (30) days from the date written notice of such costs or damages is delivered by Edgerton to Gardner. Either Party shall have the right to appeal or contest any fines assessed by KDHE or other regulatory agency.

In the event violations of wastewater quantity or quality limitations occur from flow from the Waverly Lift Station that are in sufficient magnitude to cause a major disruption to the Edgerton collection and/or treatment system such that health, safety or water quality are seriously threatened or impaired, Gardner shall take corrective action to eliminate the violations immediately upon receipt of written notice from Edgerton. Should Edgerton determine in its sole discretion that Gardner is not acting in a manner to correct the violation(s) in a time frame that is appropriate for the urgency of the situation, Edgerton may take whatever action it deems necessary to restore proper transport and/or treatment at its facilities and Gardner agrees to permit unrestricted access to its sewer related facilities to employees and /or the third party agents of Edgerton in order to accomplish such action. Should Edgerton's intervention be required, Gardner shall pay to Edgerton an amount equal to 125% of Edgerton's actual costs, including any fines or damages resulting from the major disruption. In the event of persistent violations, Edgerton may refuse to accept further wastewater flows from Gardner.

ARTICLE XIII DISPUTES

The Parties recognize that protection of the health of citizens and quality of the waters are paramount to monetary or proprietary issues, and agree that any disputes arising between the Parties subsequent to the Effective Date of this Agreement concerning monetary or proprietary issues shall not constitute grounds for its immediate termination.

The intent of this Agreement is to facilitate the resolution of disputes at the staff level in a cooperative manner. This procedure, however, shall not limit either party from seeking other remedies consistent with other provisions of this Agreement, or when the issue in dispute requires immediate involvement by the District Court of Johnson County, Kansas.

Nothing in this Agreement section shall prevent either Party from seeking immediate legal recourse in the District Court of Johnson County, Kansas to recover costs due under this Agreement or to obtain specific performance or to enjoin noncompliance with the terms of this Agreement where such relief is necessary to protect the health, safety, and welfare of the residents of either Edgerton or Gardner, in each Party's reasonable judgment, or to prevent damage to either the Cooperative Facilities or the Gardner Facilities, in each Party's reasonable judgment.

ARTICLE XIV FORCE MAJEURE

Edgerton reserves the right, without relieving Gardner of its obligations hereunder, to stop providing sewage treatment services when necessary by reason of force majeure. "Force Majeure" as used herein shall mean without limitation: acts of nature, strikes, lockouts or industrial disturbances; acts of public enemies, riots, domestic terrorism, fires, storms, floods, or explosions; mandate or order of the EPA, KDHE, or other governmental authority; or other causes beyond the control of Edgerton. Gardner agrees to hold Edgerton harmless for any damage or loss resulting from such interruption or suspension of service. If a force majeure condition occurs, Edgerton shall provide notice to Gardner as soon as reasonably possible under the circumstances, stating the nature of the condition and the action being taken to avoid or minimize its effect.

ARTICLE XV INDEMNIFICATION AND HOLD HARMLESS

Gardner agrees to indemnify, defend, and hold Edgerton harmless from any and all suits, liabilities, claims, losses, costs, and expenses, including reasonable attorneys fees, which Edgerton might otherwise incur as a result of any acts or omissions (including but not limited to acts or omissions constituting negligence or misrepresentation) committed by Gardner, its employees, agents, or contractors, in connection with transactions or activities related to the performance of or failure to comply with any of the provisions of this Agreement. Edgerton agrees to indemnify, defend, and hold Gardner harmless from any and all suits, liabilities, claims, losses, costs, and expenses including reasonable attorneys fees which Gardner might otherwise incur as a result of any acts or omissions (including but not limited to acts or omissions constituting negligence or misrepresentation) committed by Edgerton, its employees, agents, or contractors, in connection with transactions or activities related to the performance of or failure to comply with any of the provisions of this Agreement.

ARTICLE XVI NOTICES AND ADMINISTRATION

The Edgerton City Administrator, or designee, shall be the administrative officer for Edgerton respecting this Agreement, and any approvals or other decisions necessary under this Agreement will be made by the City Administrator, or designee. The Gardner City Administrator, or designee, shall be the administrative officer for Gardner respecting this Agreement, and any approvals or other decisions necessary under this Agreement will be made by the City Administrator, or designee. Any notice required by this Agreement shall be deemed to be well given when delivered to such officers respectively.

Any notices, demands or request required by this Agreement, other than routine correspondence and billings, shall be made in writing and shall be sent by certified U.S. Mail postage prepaid, to the following addresses:

City of Gardner:

City Administrator
City of Gardner
120 E. Main Street
Gardner, Kansas 66030

City of Edgerton:

City Administrator
City of Edgerton
PO Box 255
404 E. Nelson Street
Edgerton, Kansas

Either Party may change the address to which notices, demands, or request required under this Agreement shall be sent by providing five (5) days written notice to the other party of the new address.

ARTICLE XVII

AGREEMENT NOT ASSIGNABLE

Gardner shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or any of its rights and obligations hereunder by legal process or otherwise without the prior written consent of Edgerton and in no event shall such consent relieve Gardner from its obligations accrued under the terms of this Agreement. Violation of this provision shall result in the immediate termination of this Agreement. In the event of such termination, Gardner shall remain liable to Edgerton for any obligations incurred for services provided prior to the termination of the Agreement.

ARTICLE XVIII
AGREEMENT COMPLETE BUT SEVERABLE

This written Agreement constitutes the complete understanding of the parties and except as otherwise indicated, can only be modified or terminated in writing by mutual agreement of the parties. However, should any provision of the Agreement for any reason be deemed or ruled illegal, invalid or unconstitutional by any court of competent jurisdiction, no other provision of this Agreement shall be affected, and this Agreement shall then be construed and enforced as if such illegal or invalid or unconstitutional provision had not been contained herein.

ARTICLE XIX
APPLICABLE LAW

Except as otherwise specifically indicated herein, Edgerton and Gardner hereby expressly agree that this Agreement shall be governed by and interpreted according to the laws of the State of Kansas.

IN WITNESS THEREOF, the Parties hereto, acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in the date and year first above written.

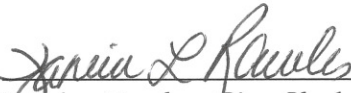
CITY OF EDGERTON, KANSAS


Donald R. Roberts, Mayor

CITY OF GARDNER, KANSAS


David C. Drovetta, Mayor

ATTEST:


Janice Rawles, City Clerk


ATTEST:


Doreen Pesek, City Clerk

[SEAL]



APPROVED AS TO FORM:


Patrick G. Reavey, City Attorney

[SEAL]



APPROVED AS TO FORM:

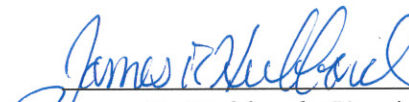

James R. Hubbard, City Attorney

EXHIBIT LIST

EXHIBIT A	Cooperative Facilities
EXHIBIT B	Gardner Facilities
EXHIBIT C	Cost estimates for each Phase of Cooperative Facilities, Gardner Facilities, and the respective Development Shares
EXHIBIT D	Initial Development Plan
EXHIBIT E	Sampling Schedule

EXHIBIT A

COOPERATIVE FACILITIES

The Cooperative Facilities shall include those items listed below, located as reflected on the map made part of this Exhibit A.

1. *Wastewater Treatment Plant*—The WWTP, its physical site and all improvements and appurtenances thereto.
 - a. Phase One—Plant with 0.50 MGD average day treatment capacity as provided in the Initial Development Plan
 - b. Phase Two—Upgrade to Phase One plant to provide a total 1.0 MGD average day treatment capacity as provided in the Initial Development Plan
2. *Force Main Trench*—A shared trench, sufficient in size to accommodate the Individual Force Mains, commencing from a point west of the intersection of 191st and Waverly Road in Edgerton and terminating at the upstream end of the Interceptor.
3. *Interceptor*—The 30- and 36-inch (preliminary size) gravity sewer interceptor running from a point adjacent to Homestead Lane in unincorporated Johnson County, Kansas, roughly equidistant from West 199th Street and the intersection of Interstate 35 and Homestead Lane, including a 36" pipeline under Interstate 35.
4. *Land and Easements*—Real estate held in fee simple title, temporary and permanent easements and related for any of the WWTP, Interceptor, or Force Main Trench.

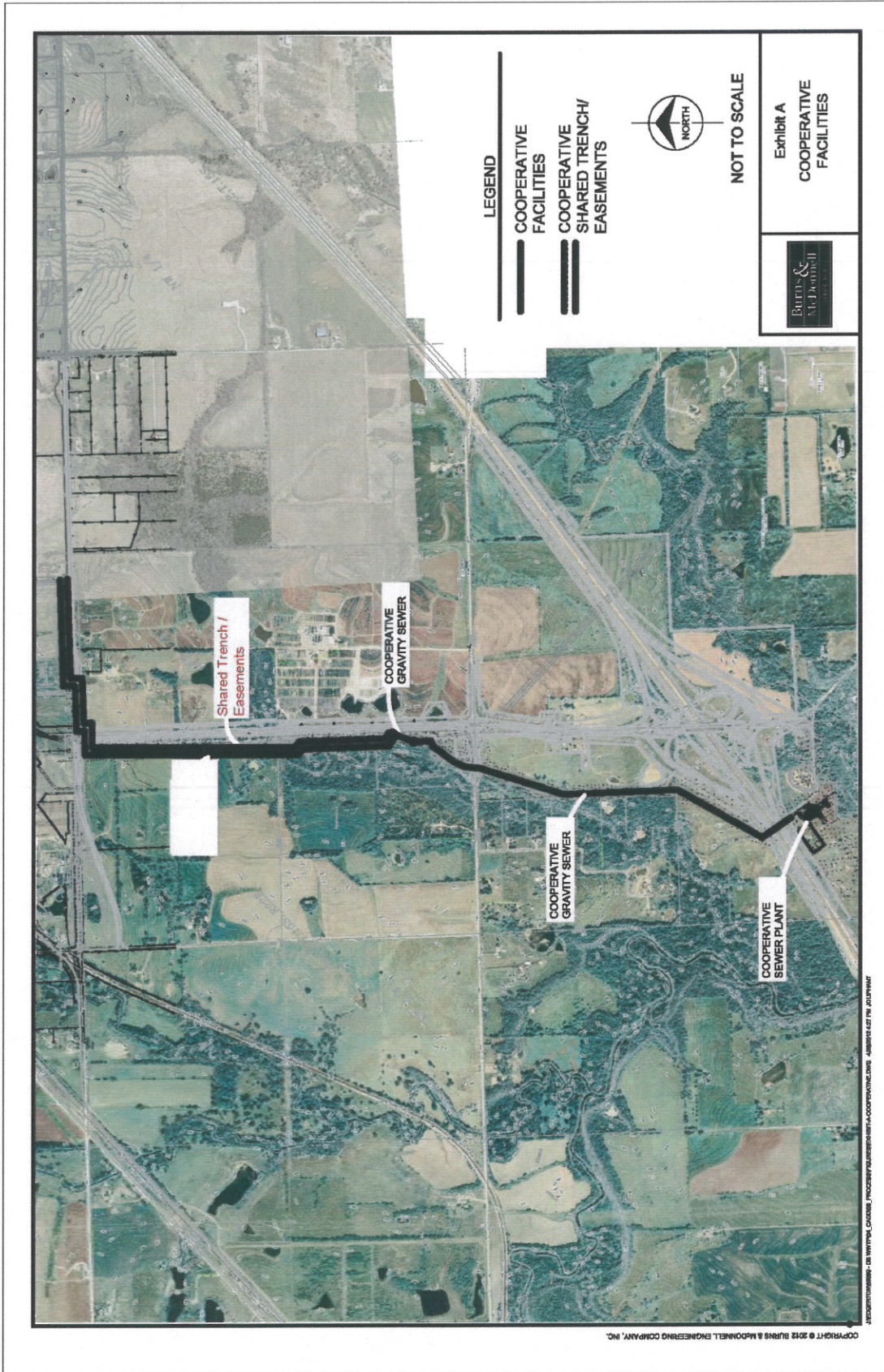


EXHIBIT B

GARDNER FACILITIES

The Cooperative Facilities shall include those items listed below, located as reflected on the map made part of this Exhibit B.

1. *Waverly Road Lift Station* – The lift station will, its physical site, and all appurtenances thereto. Flow metering at the Lift Station will be used for billing purposes and to assure flow from Gardner facilities do not exceed the available capacity of the Big Bull Creek WWTP.
 - a. Phase 1 – lift station with a firm capacity of 500,000 gallons per day
 - b. Phase 2 – Upgrade lift station as needed, capacity anticipated to be no larger than 1.5 million gallons per day firm capacity
2. *Gardner Interceptor* – A dedicated interceptor, tentatively sized as 15-inches in diameter and sufficient to convey up to 1.5 million gallons per day, from the South Gardner Force Main to the Waverly Road Lift Station. The interceptor facility includes manholes tentatively spaced at 400 feet apart, a motor-actuated valve designed to allow flow from the existing South Gardner Force Main to be diverted into the Interceptor, and a metering flume used in the control of the motor-actuated diversion valve.
3. *Gardner Force Main* – A dedicated force main, tentatively sized as 8-inches and sized to convey flows up to 1.5 million gallons per day, from the Waverly Road Lift Station to the upper manhole of the Cooperative Facilities' Interceptor. The Force Main will be buried in its own trench from the Lift Station to a point along 191st Street and midway between Waverly Road and Homestead Lane, where it will be installed in the shared Force Main Trench described in the Cooperative Facilities.

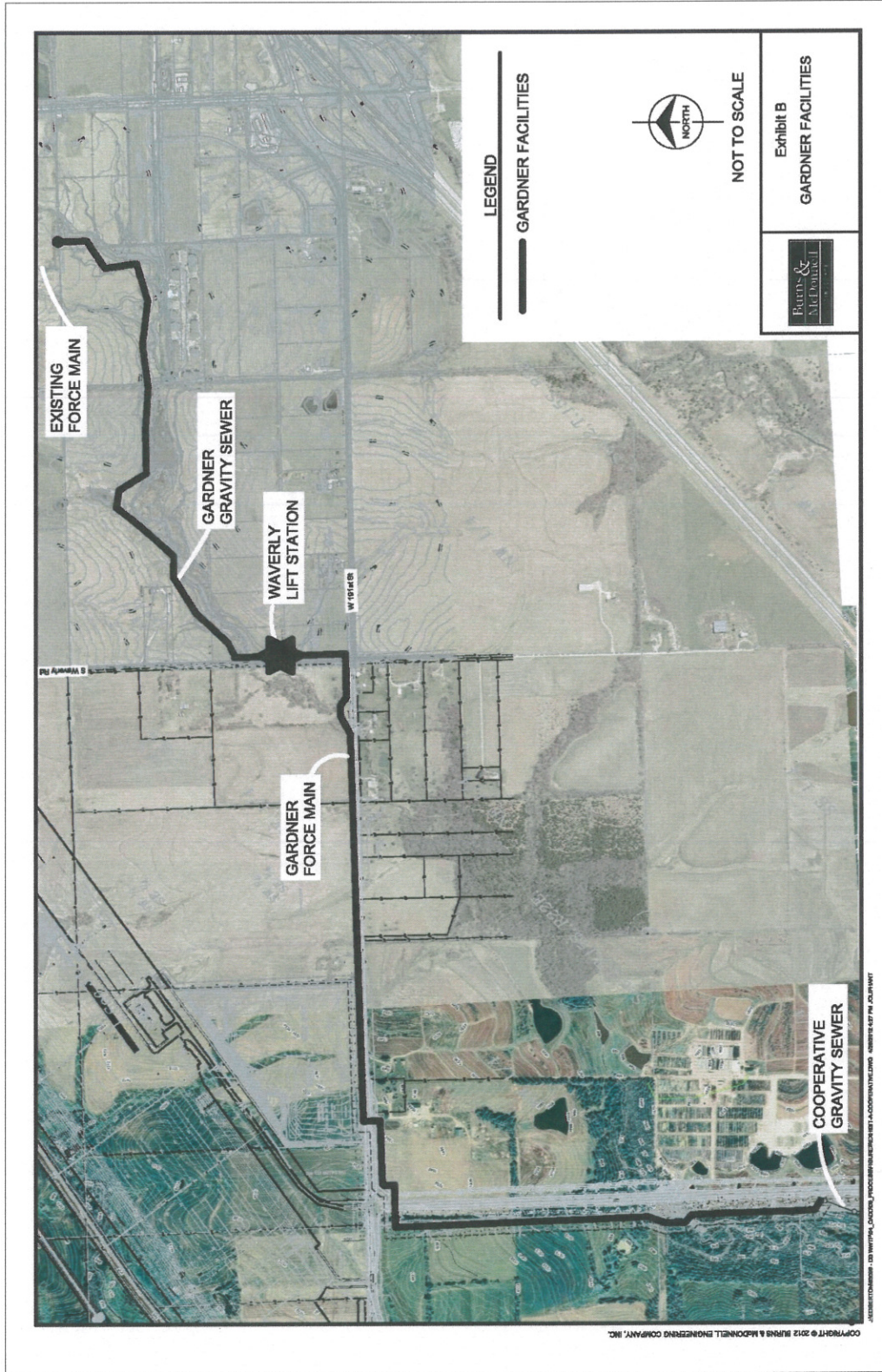


EXHIBIT C COST ESTIMATES

Exhibit C - Opinion of Probable Costs for Facilities

	Phasing		
	Phase I	Phase 2	Phase 3
Capacity (avg/peak)	0.5/1.5	1/3	3/9
Development Share - Edgerton	\$9.50	\$3.50	\$11.30
Development Share - Gardner	\$6.50	\$3.50	\$11.30
Total Cooperative Facilities	\$16.00	\$7.00	\$22.60
Total Gardner Facilities	\$2.5-\$3.5	\$0.1-\$0.3	NA

Notes:

1. Price range on Gardner Infrastructure is due to uncertainties in subsurface conditions and depth of sewer construction.
2. Please note that these costs are projections and do not include any property acquisition, utility extension, or mitigation costs
3. Phase III costs are a function of technology costs at the time and water quality requirements at the time of construction. These projections are highly variable.

EXHIBIT D INITIAL DEVELOPMENT PLAN

WWTP.

Phase I: 0.50 MGD Average Day Treatment Capacity.

This facility will have an average day treatment capacity of 0.5 million gallons per day plus a peak flow headworks treatment capacity of 1.5 MGD and secondary and tertiary treatment peak flow capacity of 1.0 MGD. A minimum equalization/wet weather storage capacity of 0.5 million gallons will be provided. Specific facilities include:

1. 30-inch diameter gravity interceptor sized to convey flow from force mains provided by Gardner and Edgerton.
2. 36-inch diameter crossing of I-35.
3. Influent pump station including electrical controls to convey flow to headworks treatment
4. Headworks facility including screening and grit removal.
5. Biological treatment system including tank, aeration equipment, and electrical controls.
6. Effluent building including polishing filters, ultraviolet disinfection equipment, equipment piping and valves, parshall flume for measuring effluent flowrate, HVAC and electrical controls.
7. Chemical feed storage pumping facilities for alum and carbon supply.
8. Backup generator and diesel tank.
9. Primary 3-phase site power to be provided by KCPL.
10. 0.5 million gallons of equalization storage of screened and degritted wastewater.
11. Splitter boxes, roads, fencing, etc.
12. All other required ancillary facilities and utilities.

Phase II: Expansion from 0.5 to 1.0 MGD Average Day Treatment Capacity

This expansion would effectively double the capacity of the plant while continuing to use the existing treatment technology. Peak treatment capacity would be 3.0 MGD for the headworks and 2.0 MGD for secondary and tertiary treatment. Equalization/wet weather storage capacity would be 1.0 million gallons. This information is contingent on information provided by the Kansas Department of Health and Environment regarding effluent water quality needs. Upgrades include:

1. Doubling the pumping capacity of the influent pump station, with additional electrical upgrades and piping improvements as needed.
2. Doubling the capacity of the headworks facility with additional electrical and HVAC upgrades and piping improvement as needed.
3. Construction of a fermentation/anaerobic basin with mixing as needed plus electrical controls.
4. Construction of an identical 0.5 MGD biological treatment system aeration basin with aeration equipment, piping, and electrical controls as needed.

5. Installation of additional filters, disinfection equipment, system piping and valves, and electrical controls and HVAC as needed at the Effluent building.
6. Construction of additional chemical storage and feed facilities.
7. Construction of a second aerobic digester tank, with blowers, diffusers, piping, valves and electrical controls as needed.
8. Construction of additional solids dewatering equipment, process piping and valves, and electrical and HVAC improvements as needed.
9. Upgrades to the non-potable and potable water systems to support the facility as needed.
10. Doubling the onsite backup power capacity
11. Construction of an additional 0.5 million gallons of equalization storage.
12. All other required upgrades to ancillary facilities and utilities.

Interceptor.

A combined 30- and 36-inch PVC pipeline running from a point adjacent to Homestead Lane in unincorporated Johnson County, Kansas, roughly equidistant from West 199th Street and the intersection of Interstate 35 and Homestead Lane and terminating at the headworks of the WWTP, including securing of easements and/or land in fee simple, trenching, backfilling and restoration, and boring a 36" conduit per KDOT requirements under Interstate 35.

Force Main Trench.

The acquisition of construction easements and a 15' permanent easement and the construction of a trench of sufficient size to accommodate the Individual Force Mains of each party, commencing from a point west of the intersection of 191st and Waverly Road in Edgerton and terminating at the upstream terminus of the Interceptor, plus backfilling and restoration.

EXHIBIT E **SAMPLING SCHEDULE**

Sampling Frequency Date	Analysis Parameters	Reporting Sample
Semi-annually During 1st Quarter Using: 1 Composite 2 Grab	BOD, TSS O & G and pH	15th of April
Semi-annually During 3rd Quarter Using: 1 Composite 2 Grab	BOD, TSS O & G and pH	15th of October

City Council Action Item

Council Meeting Date: July 12, 2018

Agenda Item #:

Department: Public Works

Agenda Item: Consider Design-Build Agreement Between City Of Edgerton And Miles Excavating, Inc. For Homestead Lane/207th Street Project

Background/Description of Item:

On June 28, 2018, Edgerton City Council approved the selection of Miles Excavating, Inc. (Miles) as the design-build team for the Homestead Lane/207th Street Project.

The Project includes the design and construction of Homestead Lane (Interstate 35 to 207th Street) and 207th Street (Homestead Lane to Waverly Road). Homestead Lane includes a new four-lane bridge over Tributary D of Big Bull Creek, including 10-foot protected sidewalk on one side. The bridge will include similar aesthetic treatment as Waverly Road bridge such as wall treatments, lighting etc. The road improvements for both Homestead Lane and 207th Street will include four lanes (two in each direction) with a 14-foot wide median that changes to turn lanes where appropriate. A 10-foot wide concrete sidewalk will be provided on the north side.

Enclosed is the draft Agreement Between the City of Edgerton and Miles for that project. A summary of the important points in the agreement are below.

- **Lump-Sum Contract:** The Agreement is a lump-sum contract that Miles provides the project as described above plus the additional items listed in their proposal for \$11,375,000. This amount also includes \$300,000 for an Allowance Item that is an Owner-Controlled Contingency. This amount reserves \$500,000 for construction administration and inspection that the City has contract with BG Consultants to provide.
- **Contract Time:** The Draft Agreement outlines the following deadlines for completion of the project.
 - Scheduled Interim Milestone Date: February 1 to provide two lanes of roadway open to traffic
 - Scheduled Substantial Completion Date: May 1, 2019 for entire Work to be substantially complete
 - Final Completion: July 1, 2019 for entire Work to be complete
- **Liquated Damages:** Agreement sets liquated damages at \$1000 per day for Design-Builder not meeting Scheduled Substantial Completion of Scheduled Interim Milestone


Dates. It does allow a three-day grace period between deadline and commencement of liquated damages.

City Attorney and the Design-Builder are still reviewing/finalizing the Agreement. Any suggested revisions will be reviewed with the City Council at the July 12, 2018 meeting.

Related Ordinance(s) or Statute(s):

Funding Source: Kansas Department of Transportation/Public Infrastructure Fund Phase II

Budget Allocated: Approximately \$11.875 MM

Finance Director Approval: **X** 
Karen Kindle, Finance Director

Recommendation: Authorize the Mayor to Execute the Design-Build Agreement Between City Of Edgerton And Miles Excavating, Inc. For Homestead Lane/207th Street Project once approved by City Attorney

Enclosed: Draft Design-Build Agreement with Miles Excavating, Inc.

Prepared by: Beth Linn, City Administrator



STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM

Document No. 525

Second Edition, 2010

© Design-Build Institute of America

Washington, DC

Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

TABLE OF CONTENTS

Article	Name	Page
Article 1	Scope of Work	3
Article 2	Contract Documents	3
Article 3	Interpretation and Intent	3
Article 4	Ownership of Work Product	4
Article 5	Contract Time.....	5
Article 6	Contract Price	6
Article 7	Procedure for Payment	7
Article 8	Termination for Convenience	8
Article 9	Representative of the Parties	9
Article 10	Bonds and Insurance	10
Article 11	Other Provisions.....	10



Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

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

This **AGREEMENT** is made as of the 12th day of July in the year of 2018, by and between the following parties, for services in connection with the Project identified below.

OWNER:

(Name and address)

City of Edgerton, a Kansas municipality
PO Box 255
404 East Nelson Street
Edgerton, KS 66021

DESIGN-BUILDER:

(Name and address)

Miles Excavating, Inc.
PO Box 458
15063 State Avenue
Basehor, KS 66007

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Homestead Lane/207th Street Project

Located at Homestead Lane (Interstate 35 to 207th Street) and 207th Street (Homestead Lane to Waverly Road)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above.

Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than May 1, 2019 ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

Substantial completion of two lanes of roadway open to traffic by February 1, 2019

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved by July 1, 2019. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date and/or "Scheduled Interim Milestone Dates", Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by three (3) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner One-Thousand Dollars (\$1000.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Eleven Million Three Hundred Seventy Five Thousand Dollars (\$ 11,375,000.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are

not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the fifteenth (15th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain ten percent (10%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%) per month until paid.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final

Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 *(Choose one of the following:)*

☐ The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

☐ Overhead and profit in the amount of _____ percent (_____%) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Donald Roberts
Mayor
City of Edgerton
PO Box 255
404 E Nelson
Edgerton, KS 66021
913.893.6231

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Beth Linn
City Administrator
City of Edgerton
PO Box 255
404 E Nelson
Edgerton, KS 66021
913.893.6231

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

Other Performance Security.

☐ Required ☒ Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]

☐ Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the parties may want to delete such sections and include the following alternative dispute resolution clause.]

☐ Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.



STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

TABLE OF CONTENTS

Article	Name	Page
Article 1	General.....	1
Article 2	Design-Builder's Services and Responsibilities.....	2
Article 3	Owner's Services and Responsibilities.....	6
Article 4	Hazardous Conditions and Differing Site Conditions.....	8
Article 5	Insurance and Bonds	9
Article 6	Payment	11
Article 7	Indemnification	13
Article 8	Time	15
Article 9	Changes to the Contract Price and Time	15
Article 10	Contract Adjustments and Disputes	17
Article 11	Stop Work and Termination for Cause	19
Article 12	Electronic Data	21
Article 13	Miscellaneous.....	22

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

1.2.12 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.13 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.14 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.15 *Site* is the land or premises on which the Project is located.

1.2.16 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.17 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.18 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.19 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from

their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for

whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process

or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for

whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice

Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration

Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request

of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

PERFORMANCE BOND

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

WHEREAS, said Contractor has entered into a written Contract with the City dated _____, 20__, (the "Contract") for furnishing in a good, substantial and workmanlike manner all labor, materials, tools, equipment, appliances, transportation, superintendence and other facilities and accessories for the construction of certain improvements as designated, defined and described in the Contract and the award of Contract relating to the 191ST STREET AND WAVERLY ROAD TRAFFIC SIGNAL in the City of Edgerton, Kansas, all in accordance with the Project Manual, including the detailed Plans incorporated therein, on file in the office of the City Engineer for the City of Edgerton, Kansas; a copy of said Contract is or may be attached hereto and is incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of its terms and conditions, both express and implied.

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

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

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

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

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

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

IN TESTIMONY WHEREOF, said Contractor has hereunto set his hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be

hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at
_____ on this, the _____ day of
_____, 20__.

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

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

STATUTORY BOND

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

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has entered into a written Contract with the City of Edgerton, Kansas on the _____, (the "Contract") for furnishing in a good, substantial and workmanlike manner all labor, materials, tools, equipment, appliances, transportation, superintendence and other facilities and accessories for the construction of certain improvements as designated, defined and described in the Contract relating to the 191ST STREET AND WAVERLY ROAD TRAFFIC SIGNAL in the City of Edgerton, Kansas, all in accordance with the Project Manual and the detailed Plans incorporated therein, on file in the office of the City Engineer for the City of Edgerton, Kansas and incorporated herein by reference.

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

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

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

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

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

EXHIBIT C: INSURANCE REQUIREMENTS – CITY OF EDGERTON, KS

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

(1) COMMERCIAL GENERAL LIABILITY

\$1,000,000 Per Occurrence

\$2,000,000 Aggregate

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

(2) AUTOMOBILE LIABILITY

\$1,000,000 Per Accident

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

(3) WORKERS COMPENSATION - STATUTORY & EMPLOYERS LIABILITY

\$500,000 Each Accident

\$500,000 Policy Limit - Disease

\$500,000 Each Employee – Disease

Coverage shall apply to all workers and employees related to the work, including sole proprietors, partners, members of an LLC, and officers of a corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage.

EXHIBIT C: INSURANCE REQUIREMENTS – CITY OF EDGERTON, KS, CONT'D

(4) UMBRELLA / EXCESS LIABILITY

\$4,000,000 Per Occurrence

\$4,000,000 Aggregate

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

(5) BUILDERS RISK / INSTALLATION FLOATER

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

(6) WAIVER OF SUBROGATION

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

EXHIBIT C: INSURANCE REQUIREMENTS – CITY OF EDGERTON, KS, CONT'D

(7) CERTIFICATE OF INSURANCE/MISCELLANEOUS PROVISIONS

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