

OSAWATOMIE CITY COUNCIL
AGENDA

March 10, 2022

6:30 p.m. | Memorial Hall | 411 11th Street

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Invocation
5. 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.

 - A. March 10 City Council Agenda
 - B. Meeting Minutes
 - February 23, 2022 – KOMA Training Work Session
 - February 24, 2022
 - C. Pay Application(s)
 - BG Consultants – WWTP and Street Repair - \$16,889.25
 - Western Consultants – WWTP and Rehab - \$12,087.50
 - D. Special Event Permit(s)
 - Soap Box Derby
6. Comments from the Public

Citizen participation will be limited to 5 minutes. Stand & be recognized by the Mayor.
7. Public Hearing
8. Presentations, Proclamations, and Appointments
 - A. Appointments to the Osawatome Trail Commission (Scanlon and LaDuex)
9. Unfinished Business
10. New Business
 - A. Resolution 977 – Approve Governmental Assistance Services (GAS) for Application Assistance for USDA Grant/Loan Combination for Water Plant and Distribution Design and Construction (Glendening)
 - B. Resolution 978 – Approve Agreement with BG Consultants for Water Plant (Glendening)
 - C. Resolution 979 – Approve Power Purchase Agreement with Evergy (Glendening)
 - D. Resolution 982 – Approve Bid for Fifty (50) Yamaha Golf Carts (Scanlon)
 - E. Resolution 983 – Application of \$125,000 of the 2022 ARPA Grant to development of Phase I of Camp MoPac (Scanlon)
11. Council Report
12. Mayor's Report
13. City Manager & Staff Report
14. Adjourn

NEXT REGULAR MEETING – MARCH 24, 2022

Osawatomie, Kansas. **February 23, 2022.** A work session was held at City Hall located at 439 Main Street at 2:00 p.m. Council members present were Wright, Bratton, LaDuex, Diehm, Filipin and Caldwell. Mayor Hampson was absent. Council members Macek and Dickinson were absent. City Staff present at the meeting were: Deputy City Manager Bret Glendening and City Clerk Tammy Seamands.

WORKSHOP. League of Kansas Municipalities presented KOMA for Elected Officials via a Zoom training session.

OTHER DISCUSSION/MOTIONS.

Motion made by Bratton, seconded by Diehm to adjourn. Yeas: All. The meeting adjourned at 4:00 p.m.

/s/ Tammy Seamands
Tammy Seamands, City Clerk

Osawatomie, Kansas. **February 24, 2022.** The Council Meeting was held at Memorial Hall located at 411 11th Street. Mayor Nick Hampson called the meeting to order at 6:30 p.m. Council members present were Wright, Macek, Bratton, LaDuex, Dickinson, Diehm, Filipin and Caldwell. City Staff present at the meeting were City Manager Mike Scanlon, Deputy City Manager Bret Glendening, City Clerk Tammy Seamands, Assistant to the City Manager Samantha Moon and Business Liaison Kari Bradley. Members of the public were: Derek Henness, Paul Owings, Hyun Ju Gil and Betty McCale

INVOCATION. – Hyun Ju Gil – First United Methodist Church

CONSENT AGENDA. Approval of February 24th Agenda, February 10th Council Minutes, February 18th Council Minutes, and 01-22 Register Report. **Motion** made by LaDuex, seconded by Filipin to approve the consent agenda as presented. Yeas: All.

COMMENTS FROM THE PUBLIC. – Betty McCale – Secretary of First United Methodist Church – Some of the things that the church has done this last year that involved the community was a Halloween Program – it was curtailed with covid so they just had the trunk-or-treat, a Christmas concert with the Band of Oz, they worked with the Ministerial Alliance on utility assistance, the Thanksgiving dinner and other projects. Quite a few members are involved with the food bank. The church has food drives. Some members are also involved with the school and they support several scholarships. They have a 10:30 a.m. service on Sundays.

PUBLIC HEARINGS. – None

PRESENTATIONS, PROCLAMATIONS AND APPOINTMENTS.

BG CONSULTANTS – PRESENTATION OF BIDS AND RECOMMENDATION OF CONTRACTOR FOR WASTEWATER TREATMENT PLANT UPGRADES – Paul Owings presented the bid letting that was received on February 21, 2022 for the 2022 Wastewater Treatment Plant Improvements. BG Consultants, Inc. recommends awarding the construction contract to Crossland Heavy Contractors Construction in the amount of \$2,538,564.

UNFINISHED BUSINESS.

RESOLUTION 980 —ACCEPTING THE RECOMMENDATION OF BG CONSULTANTS ON WWTP CONTRACTOR - **Motion** made by Caldwell, seconded by Dickinson to approve Resolution 980 – Accepting the recommendation of BG Consultants for the award of the contract associated with the CDBG grant to make certain modifications to the wastewater treatment facility to Crossland Heavy Contractors Construction in the amount of \$2,538,564 as presented. Yeas: All.

NEW BUSINESS.

PRESENTATION OF THE S&P GLOBAL RATING ON GENERAL OBLIGATION BOND (GOB) ISSUE 2022A – Glendening reviewed the S&P Global Ratings. Osawatomie received a rating of A+/Stable.

PRESENTATION OF THE BIDS AND ACCEPTANCE OF THE WINNING BID ON GOB ISSUE 2022A – Country Club Bank was the low bidder with a net interest rate of 1.8122%. **Motion** made by LaDuex, seconded by Wright to accept the bid from Country Club Bank at the net interest rate of 1.8122% in regards to the general obligation bond series 2022A in the amount of \$6,175,000. Yeas: All.

ORDINANCE 3808 –AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2022A, OF THE CITY OF OSAWATOMIE, KANSAS–**Motion** made by LaDuex, seconded by Dickinson to approve Ordinance 3808 – An ordinance authorizing and providing for the issuance of general obligation bonds, series 2022A, of the City of Osawatomie, Kansas; providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on said bonds as they become due; authorizing certain other documents and actions in connection therewith; and making certain covenants with respect thereto. as presented. Yeas: All.

RESOLUTION 981 – A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES 2022A, OF THE CITY OF OSAWATOMIE KANSAS – **Motion** made by LaDuex, seconded by Dickinson to approve Resolution 981 – A resolution prescribing the form and details of and authorizing and directing the sale and delivery of general obligation bonds, series 2022A, of the City of Osawatomie, Kansas, previously authorized by Ordinance No. 3808 of the issuer; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith as presented. Yeas: All.

COUNCIL REPORTS

Cathy Caldwell ~ Last night the tourism committee met and elected Jeff Dorsett as Chairman and Melissa Maimer as Vice Chairman. There was quite a spirited conversation last night as they went through their procedures. The question was asked what is your goal that you would like to see on this committee.

Tammy Filipin ~ One of their managers came into the office last week that is from Lawrence and he said that he heard that there is a lot of chatter about what is going on in Osawatomie. He knows that we have a lot of housing going up.

Karen LaDuex ~ They had a library board meeting and there was a lot of discussion regarding the purchase of the building at 500 Main. A few of us met and did a Kansas Open Meetings Act training yesterday. It was a really good refresher and she would highly recommend it if you have not taken it.

Dan Macek ~ His number two constitute would like to know where we are at on the solar array.

MAYOR'S REPORT – Thank you to Tammy, Bret and Mike for getting this bond issue to the end and subbing tonight for our Bond Counsel and Financial Advisor – the savings they brought us and the great rate is something that will allow us to do more. I want to thank the public works department for getting a whole lot of snow pushed and moved last Thursday – Bill Roseberry and his crew did great. In talking with Mike there looks like there's some possible boundary changes and annexation in our future. We'll probably have a work session in April once we get an idea as to what parcels and pieces we will be working with. Mike will also be setting up city council updates where staff can give updates to a couple of councilmembers at a time and tour project and facilities. I think staff is working on a financial dashboard that will provide us current information on projects, debt and cash balances., We have two more meetings the next two Thursdays – which will get us through this grant and bond issuance period.

CITY MANAGER & STAFF REPORTS. – When you put a bond issue like this together it really falls on two or three staff members. Bret and Tammy carried a lot of work that went into that POS. Bret was like a seasoned manager on the call. Bret did a wonderful job on the call.

EXECUTIVE SESSION. - None

OTHER DISCUSSION/MOTIONS.

Motion made by Dickinson, seconded by LaDuex to adjourn. Yeas: All. The mayor declared the meeting adjourned at 7:15 p.m.

/s/ Tammy Seamands
Tammy Seamands, City Clerk

March 3, 2022

Bret Glendening, Deputy City Manager
 City of Osawatomie, Kansas
 439 Main Street
 Osawatomie, KS 66064

Re: 20-1414L - Osawatomie WWTP Improvements

-----Invoice for Consulting Services-----

This invoice is for services which were performed during the month of **February** as follows:

Engineering Services:

<u>Task</u>	<u>Lump Sum Amount</u>	<u>Completion Progress</u>	<u>Total</u>
1. Preliminary Design Phase	\$117,000.00	100.0%	\$117,000.00
2. Final Design Phase*	\$92,000.00	100.0%	\$92,000.00
3. Bidding and Negotiating Phase	\$20,000.00	100.0%	\$20,000.00
4. Approvals and Permitting	\$15,000.00	100.0%	\$15,000.00
5. Construction Substantial Completion	\$5,000.00	0.0%	\$0.00

*Updated, refer to Contract Amendment 01

Subtotal Amount Due: \$2,700.00
 Total Completed to date: \$244,000.00
 Prior Billings to Date: \$241,300.00

Resident Project Observation

Contract Amount	\$ 234,000.00	
Work Completed to Date	\$ -	0%
Work Previously Billed	\$ -	
Subtotal	\$0.00	

Additional Services

Contract Amount	\$ 5,000.00	
Work Completed to Date	\$ 5,000.00	100%
Work Previously Billed	\$ 5,000.00	
Subtotal	\$0.00	

Total Amount Due: \$2,700.00

Sincerely,

BG CONSULTANTS, INC.



Paul Owings, P.E.
 Project Engineer

INVOICE NO. 1

Bret Glendening
Deputy City Manager
439 Main Street
Osawatomie, Kansas 66064

2022.03.04

RE: Water Treatment Plant Waste Stream Summary
22-1138L

Design Lump Sum Contract	\$	8,000.00	
Work Completed to Date	\$	558.00	7%
Work Previously Billed	\$	-	
Subtotal	\$	558.00	
Total Amount Due	\$	558.00	

If you have any questions regarding this statement please contact me at (785) 727-1694 or my personal cell phone (785) 737-7121

Sincerely,



Paul Owings, PE
Project Manager

* **by email only** *

City of Osawatomie
 Attn: Bret Glendening, Deputy City Manager
 439 Main Street
 Osawatomie, KS 66064

February 6, 2022

INVOICE #1

Re: Brown Street Improvements (16th to 18th Street)
 Main Street Terrace (18th Street to 16th Street)
 Walnut Avenue (6th Street to 4th Street)
 18th Street (Main Street to Brown Avenue)
 Brown Avenue (12th Street to 7th Street)
 6th Street (Lincoln Avenue to Kelly Avenue)
 Osawatomie, Kansas

BG Project No. 22-1139L

-----**Invoice for Consulting Services**-----

This Invoice is for services performed during the month of January 2022 as follows:

	Lump Sum	% Complete	
	Amount	Progress	Subtotal
Design Phase Services			
Design, Bid, and Const. Eng. Services (Lump Sum Fee).....	\$ 760,500.00	1.25%	\$ 9,506.25
		Subtotal #1 =	\$ 9,506.25

Construction Observation

Observation Services (Not to Exceed).....	\$ 120,000.00		
Engineer IV.....	0.0 hrs @	\$ 144.00 /hr	\$ -
Engineer II.....	0.0 hrs @	\$ 130.00 /hr	\$ -
Senior Construction Observer.....	0.0 hrs @	\$ 120.00 /hr	\$ -
Certified Construction Observer.....	0.0 hrs @	\$ 103.00 /hr	\$ -
		Subtotal #2 =	\$ -
Total Construction Observation Services Billed Thru this Invoice.....		\$	-
Contract Value of Construction Observation Services Remaining.....		\$	120,000.00

Reimbursable Expenses

None this month.....	\$	-
	Subtotal #3 =	\$ -

Total Amount of Services Complete (Subtotals #1 + #2 + #3).....	\$	9,506.25
Less Previous Amount Billed (Thru Invoices: #0).....	\$	-
Total Amount Owed this Invoice.....	\$	9,506.25
Plus Previous Invoices Unpaid (<i>none</i>).....	\$	-
Total Amount Owed to Date.....	\$	9,506.25

TOTAL AMOUNT DUE THIS INVOICE	\$ 9,506.25
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For questions, please contact me at 785-749-4474 or diane.rosebaugh@bgcons.com.

Sincerely,

Diane Rosebaugh

Diane Rosebaugh, P.E.
 Project Manager | Associate Principal

* **by email only** *

City of Osawatimie
 Attn: Bret Glendening, Deputy City Manager
 439 Main Street
 Osawatimie, KS 66064

March 6, 2022

INVOICE #2

Re: Brown Street Improvements (16th to 18th Street)
 Osawatimie, Kansas

BG Project No. 22-1115L

-----**Invoice for Consulting Services**-----

This Invoice is for services performed during the month of February 2022 as follows:

	Lump Sum	% Complete	
	Amount	Progress	Subtotal
<u>Design Phase Services</u>			
Design, Bid, and Const. Eng. Services (Lump Sum Fee).	\$ 15,000.00	60.00%	\$ 9,000.00
		Subtotal #1 =	\$ 9,000.00

Construction Observation

Observation Services (Not to Exceed).....	\$ 34,200.00		
Engineer IV.....	0.0 hrs @ \$ 144.00 /hr	\$	-
Engineer II.....	0.0 hrs @ \$ 130.00 /hr	\$	-
Senior Construction Observer.....	0.0 hrs @ \$ 120.00 /hr	\$	-
Certified Construction Observer.....	0.0 hrs @ \$ 103.00 /hr	\$	-
	Subtotal #2 =	\$	-
Total Construction Observation Services Billed Thru this Invoice	\$		-
Contract Value of Construction Observation Services Remaining	\$		34,200.00

Reimbursable Expenses

None this month.....	\$	-
	Subtotal #3 =	\$ -

Total Amount of Services Complete (Subtotals #1 + #2 + #3).....	\$ 9,000.00
Less Previous Amount Billed (Thru Invoices: #1).....	\$ 4,875.00
Total Amount Owed this Invoice.....	\$ 4,125.00
Plus Previous Invoices Unpaid (<i>none</i>).....	\$ -
Total Amount Owed to Date.....	\$ 4,125.00

TOTAL AMOUNT DUE THIS INVOICE	\$ 4,125.00
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For questions, please contact me at 785-749-4474 or diane.rosebaugh@bgcons.com.

Sincerely,



Diane Rosebaugh, P.E.
 Project Manager | Associate Principal

Western Consultants

PO Box 187
Lawrence, KS 66044
816.805.9183

Date: 3/4/22

Bill To: City of Osawatomie
439 Main St
Osawatomie, KS 66064

For: CDBG Commercial Rehab Application

DESCRIPTION	AMOUNT
Prepare and submit CDBG Commercial Rehab Application (payable upon contract execution)	\$8,950.00
TOTAL	\$8.950.00

****Please make check payable to Western Consultants***

Western Consultants

PO Box 187
Lawrence, KS 66044
816.805.9183

Date: 2/1/22 – 2/28/22

Bill To: City of Osawatomie
439 Main St
Osawatomie, KS 66064

**For: Wastewater Treatment Plant Improvements
CDBG 21-PF-027**

DESCRIPTION	AMOUNT
<p>Sent 10 day wage update – emailed project engineer new wages</p> <p>Attended bid letting</p> <p>Bid file updates</p> <p>Contractor eligibility</p> <p>Correspondence regarding new section 3 guidance from HUD</p> <p>Bookkeeping updates</p> <p>Misc. tasks</p>	
25 hrs @ \$125.50 per hour	\$3,137.50
TOTAL	\$3,137.50

***Please make check payable to Western Consultants**



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	10.A.
	Date:	02/17/2022
Deputy City Manager	From:	Bret Glendening

RE: Resolution 977 – Resolution directing city staff to finalize the contract with Governmental Assistance Services (GAS) for application assistance for the USDA Rural Development Loan/Grant Program and complete the necessary environmental review for the project.

RECOMMENDATION: Review Governmental Assistance Services grant application contract (consideration for approval on 3/24/2022).

DETAILS: We have used GAS to support us in several grant application and grant administration projects over the last 15 or so years. We use them because of the complexity and grant administration requirements that constantly change. These services can be reimbursed out of the grant proceeds if we are successful in receiving the loan/grant. In the last five grant applications/administrations submitted the City has received the funds requested.

Related Statute / City Ordinances	Resolution 941, 972
Line-Item Code/Description	N/A
Available Budget:	N/A

CONTRACT FOR COMPLETION OF
USDA ENVIRONMENTAL REVIEW
FOR THE CITY OF OSAWATOMIE, KANSAS
WATER SYSTEM IMPROVEMENTS PROJECT

THIS CONTRACT made this 24TH day of FEBRUARY 2022 between WESTERN CONSULTANTS DBA GOVERNMENTAL ASSISTANCE SERVICES (THE CONSULTANT), PO BOX 187, Lawrence, Kansas 66044, and the CITY OF OSAWATOMIE, KANSAS (THE CITY).

WHEREAS, THE CITY, is engaged in a Community Improvement project, and,

WHEREAS this project requires the completion of an Environmental Review under the National Environmental Policy Act (NEPA) of 1969.

NOW, THEREFORE, THE CITY engages the services of THE CONSULTANT upon the following terms and conditions:

1. TERMINATION OF CONTRACT

A. FOR CAUSE

If, through any cause, either party shall fail to fulfill, in a timely and proper manner, their obligations under this Contract, or if either party shall violate any of the covenants, agreements, or stipulations of this Contract, the other party shall thereupon have the right to terminate this Contract by giving written notice to the breaching party of such termination and specifying the effective date thereof. This notice shall not be less than fifteen (15) days prior to the effective date.

B. FOR CONVENIENCE

The CITY may terminate this Contract, in whole or in part, at any time by written notice to THE CONSULTANT.

In event of termination, all finished or unfinished documents, studies and reports prepared by THE CONSULTANT, under this Contract, shall remain the property of THE CONSULTANT until THE CONSULTANT receives just and equitable compensation for any work satisfactorily completed hereunder, in accordance with this Contract, whereupon said documents, studies and reports shall become the property of THE CITY.

2. CHANGES

THE CITY may from time to time, request changes in the scope of services of THE CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of THE CONSULTANT'S compensation, which are mutually agreed upon by both parties shall be incorporated in written amendments to this Contract.

3. PERSONNEL

- A. THE CONSULTANT represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be the employees of or have any contractual relationship with THE CITY.
- B. All of the services required hereunder will be performed by THE CONSULTANT or under its supervision and all personnel shall be fully qualified to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior approval of THE CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

4. SERVICES OF THE CONSULTANT

Services outlined in this Contract are those necessary to effectively complete the environmental assessment. The following summary of services is not intended to limit the scope of services but is intended to illustrate the work and services to be provided by THE CONSULTANT.

These services will include, but are not limited to the following:

- Preparation of reports and paperwork to be submitted to State and Federal departments involved in the project.
- Prepare and submit Environmental Review Report.
- Prepare and submit USDA Funding Application in the RD Apply System.
- Assist CITY with documentation relating to Release of Funds.
- Prepare "No Significant Impact" certificate.
- Work closely with City Staff throughout entire project.

- Attend Meetings that are project related.
- Report schedule changes to Governing Body.
- Work closely with all Regulatory departments and furnish additional information they may request.
- Operate within Federal and State guidelines, specifically:
 1. Title VI Civil Rights Act of 1964
 2. Section 109 Certifications
 3. Section 504 Certifications
 4. Age Discrimination Act of 1975
 5. Fair Housing Amendments Act of 1988
 6. Executive Order 11063 Certifications
 7. Kansas Act Against Discrimination
 8. Executive Order 11246 Certifications
 9. Section 3 Certifications
 10. Title VIII of the Civil Rights Act of 1968 as amended by the Housing Act of 1974
 11. Section 503 of the Rehabilitation Act of 1973 as amended
 12. 24 CFR 85 as modified by CFR 570 Subpart J
 13. Title 1 of the Housing & Community Development Act of 1974 as amended
 14. Section 519 Public Law 101-144 (The 1990 HUD Appropriation Act)
 15. Cranston-Gonzales National Affordable Housing Act (Section 906 & 912)
- Comply with all applicable laws, ordinances and codes for the State and Local governments.
- Will not discriminate against any employee or applicant for employment because of race, sex, creed, color or national origin. THE CONSULTANT will take Affirmative Action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5. INTEREST OF THE CONSULTANT AND EMPLOYEES

THE CONSULTANT covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest of its service hereunder. THE CONSULTANT further covenants that in the performance of this Contract no person having any such interest shall be employed.

6. THE CITY will be responsible for all additional studies and surveys that may be directed by State or Federal agencies required to obtain a release of funds.

7. FEES

THE CITY agrees to pay THE CONSULTANT a fee for the services outlined.

The fee, for these services, will be as follows (check applicable boxes):

- ☐ Payment of \$5,250.00 upon the signing of this contract for the preparation of the environmental review.
- ☐ Payment of \$2,750.00 upon the signing of this contract for the preparation of the application using the USDA RD Apply system.

In no way can the contract be changed without a written amendment approved by the CITY.

IN WITNESS WHEREOF, the parties have signed this Contract the day and year first mentioned above.

ATTEST: _____
City Clerk

Nick Hampson
Mayor
City of OSAWATOMIE, KS

(SEAL)

D. Garrett Nordstrom
Western Consultants dba
Governmental Assistance Services

RESOLUTION NO. 977

A RESOLUTION DIRECTING CITY STAFF TO SIGN AN AGREEMENT WITH GOVERNMENTAL ASSISTANCE SERVICES FOR A USDA LOAN & GRANT APPLICATION AND COMPLETION OF THE ENVIRONMENTAL REVIEW FOR THE WATER TREATMENT PLANT.

WHEREAS, the City of Osawatomie provides clean, potable drinking water to the citizens of Osawatomie, employees and patients of the Osawatomie State Hospital, as well as Rural Water Districts 1 and 3; and

WHEREAS, the city council accepted the recommendation of the water study committee at its January 13, 2022 council meeting; and

WHEREAS, the city council recognizes the importance of applying for, and obtaining grants such as this to help minimize the financial impact to the water utility's end consumer; and

WHEREAS, the City of Osawatomie, Kansas is a legal governmental entity as provided by the laws of the State of Kansas; and

WHEREAS, the city intends to submit an application for assistance in the design and construction of the new water treatment plant from the United States Department of Agriculture – Rural Development (USDA-RD);

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION ONE: The Governing Body of Osawatomie, Kansas hereby directs city staff to enter into an Agreement with Governmental Assistance Services (GAS) for the preparation of a 2022 USDA Rural Development loan and grant application as well as perform the required environmental review for the project in an amount not to exceed \$8,000 payable from Water Fund resources.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 24th day of March, 2022, a majority voting in favor of.

APPROVED and signed by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	10.B.
	Date:	02/17/2022
Deputy City Manager	From:	Bret Glendening

RE: Resolution 978 – Resolution authorizing the Mayor to enter into a contract with BG Consultants for the design and construction engineering services for the new water treatment plant.

RECOMMENDATION: Review BG Consultants Water Plant Design Contract (consideration for approval on 3/24/2022).

DETAILS: We have used BG Consultants as our city engineer for 20 years or more to support us in several water, sewer, storm sewer and street projects over the years. We use them because of their expertise in all types of public works, as well as their familiarity with state regulations, grant administration requirements, and they are recognized as one of the top municipal engineering firms in the state. These services can be reimbursed out of the loan/grant proceeds if we are successful.

Related Statute / City Ordinances	Resolution 941, 972, 977
Line-Item Code/Description	N/A
Available Budget:	N/A

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



Note: This document has been modified by BG Consultants, Inc. for the express purpose of complying with USDA Rural Development requirements. Additions to the text by USDA Bulletin 1780-35 (02/18/18) and 1780-26 (06/16/20) are denoted by bold text and additions to the text by BG Consultants are denoted by underlined text. Deletions are denoted by strikethroughs. Modifications required by Engineer or other Agency is located in Exhibit J, Special Provisions.

This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [February 8, 2022] (“Effective Date”) between
[Osawatomie, Kansas] (“Owner”) and
[BG Consultants, Inc.] (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
[Water Treatment and Distribution Improvements] (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: Water treatment and distribution system improvements. Water treatment plant improvements include four low service pumps, two presedimentation basins, two solids contact clarifiers, six gravity filters and a filtration building, a dual compartment wet well, one high service and backwash pump house, four high service pumps, two backwash pumps, a chemical feed building with chemical feed systems, and an administration building. Water treatment and distribution improvements are shown on the enclosed figure.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.
1. Execution of the Contract (Preliminary Design Phase, Final Design Phase, Bidding, or Negotiating Phase, Construction Phase, and Post-Construction Phase) shall be contingent upon the confirmation of project funding. However, the Owner may execute the design phases prior to funding award with written authorization to the Engineer. The Owner reserves the right to retain BG Consultants, Inc. for any and all engineering services related to this project.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required ~~in~~ within this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, through due process as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ 60 days of receipt. **Invoices must include a breakdown of services provided.**

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within ~~30~~ 60 days after receipt of Engineer's invoice, then:
1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - ~~2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.~~
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost

estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

5.02 — *Designing to Construction Cost Limit*

- A. ~~If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with all applicable Laws and Regulations compliant with and limited to the professional standard of care.
 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of

the Construction Contract Documents, other than those made by Engineer or its Consultants.

- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall ~~may~~ deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a

limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall be~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable ~~general liability~~ insurance policy policies carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other

insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Owner, Engineer and its their Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.

- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Owner, Engineer or its their Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project ~~for up to 90 days~~ upon seven days written notice to Engineer. If the project is suspended for convenience by the Owner for more than 30 days and is then resumed, the Engineer's compensation may be equitably adjusted, as mutually agreed, using Exhibit K, Amendment to Owner Engineer Agreement, to provide for expenses incurred in the interruption and resumption of Engineer's services.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services

and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited

right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.

- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself),

including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. ~~*Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.~~
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five (5) years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered

or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances

for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. ***Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.***
39. *Environmental Report* – The initial environmental report typically prepared and provide to the Agency at the same time as the preliminary engineering report (PER). The significance of impacts identified will determine whether the impacts can be mitigated or whether a higher level of environmental review is necessary.
40. *Environmental Assessment* – Higher level of environmental review used to determine whether an Environmental Impact Statement (EIS) is required or if a Finding of No Significant Impact (FONSI) can be issued.
41. *Environmental Impact Statement* – The highest level of environmental review providing a more detailed assessment of the environmental impacts that includes public, outside party and other federal agency input.

B. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. ~~Exhibit F, Construction Cost Limit.~~ (Optional – Not Included)
- G. Exhibit G, Insurance.
- H. ~~Exhibit H, Dispute Resolution.~~ (Optional – Not Included)
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the following exhibits ~~included above~~) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in Corrupt, Fraudulent, or Coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "Corrupt Practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "Fraudulent Practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "Coercive Practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 **Federal Requirements**

- A. **Agency Concurrence.** Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for ~~three~~ five (5) years after final payment is made and all other pending matters are closed.
- C. **Restriction on Lobbying.** Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer and/or consultant/consultants must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from ~~in~~ this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Osawatomie, Kansas

Engineer: BG Consultants, Inc.

By: _____

By: _____

Print name: Nick Hampson

Print name: Paul Owings, P.E.

Title: Mayor

Title: Project Manager

Date Signed: _____

Date Signed: 3-8-2022

Engineer License or Firm's Certificate No. (if required):

24159

State of: Kansas

Address for Owner's receipt of notices:

Osawatomie City Offices

439 Main Street; PO Box 37

Osawatomie, Kansas 66064

Address for Engineer's receipt of notices:

1405 Wakarusa Dr.

Lawrence, KS 66049

Designated Representative (Paragraph 8.03.A):

Bret Glendening

Title: Deputy City Manager

Phone 913.755.2146 Ext. 101

Number: _____

E-Mail bglendening@osawatomieks.org

Address: _____

Designated Representative (Paragraph 8.03.A):

Paul Owings, P.E.

Title: Project Manager

Phone Number: 785.727.1694

E-Mail Address: paul.owings@bgcons.com

RUS CERTIFICATION PAGE

PROJECT NAME: Osawatomie Water Distribution and Treatment Improvements

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500. In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer “must plainly show all changes to the Standard EJCDC Text, using ‘Track Changes’ (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.” Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ <u>3,816,000.00</u>
Resident Project Observation	\$ <u>1,954,000.00</u>
Additional Services	\$ <u>N/A</u>
TOTAL:	\$ <u>5,770,000.00</u>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

<u>Paul C Owings</u>	3-8-2022
Engineer	Date

Paul Owings, Project Manager

Name and Title

Owner	Date
-------	------

Nick Hampson, Mayor

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative	Date
-----------------------	------

Name and Title

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase – Not Applicable

A. Engineer shall:

1. ~~Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~

- a. ~~If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: [] **[List the specific potential solutions here.]**~~

- b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~

~~**In addition, Engineer must identify, study and evaluate multiple alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.**~~

- c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] **[insert specific number]** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~

2. ~~Identify potential solution(s) to meet Owner's Project requirements, as needed.~~

3. ~~Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~

4. ~~Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~

- ~~5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~
- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.**~~
- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
10. When mutually agreed, **and approved by the Agency** assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~

~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:~~

~~a. **Provide an Environmental Report as defined in 7 CFR 1970. The Environmental Report must be concurred in by the Agency.**~~

~~15. Furnish [] review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~

~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.~~

~~**Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's and Agency's comments.**~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

A1.02 Preliminary Design Phase

A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings on 22" x 36" sheets, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification

and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
9. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the Environmental Report or Assessment.
10. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
 - a. Prepare a conceptual design which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide an opinion of probable Construction Cost.

- b. Provide to Owner three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.
 - c. Submittal of preliminary design to the Kansas Department of Health and Environment (KDHE) for review, if required by KDHE.
- 11. Furnish 2 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 6 months of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
- 12. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 1 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 60 days after receipt of Owner's comments.
- 13. Furnish 1 review copy of the Preliminary Design Phase Plans and any other deliverables to each public and private utility owner having facilities located within the project area. Assist the City with compiling a list of known private and public utilities including a summary of utility adjustment coordination for City records.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
 - 1. Prepare final Drawings on 22" x 36" sheets and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 - 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 - 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate. Known permits include:
 - a. **Kanas Water Pollution Control Permit**
 - b. **Kansas Water Treatment and Distribution Permit**

c. Kansas Department of Transportation Permit

d. Railroad Permit

4. Advise Owner of any known recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables:
 - a. **The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards**
 - b. Submit final Drawings and Specifications to KDHE for Review
10. Furnish for review by Owner, its legal counsel, **and Agency** and other advisors, 2 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 10 months of authorization to proceed with the Final Design Phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 2 final copies of such documents to Owner within 30 days after receipt of Owner's comments and instructions.

12. Provide the Owner and Agency with a written certification that based on information known and to the best of Engineer's knowledge and belief the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Attachment J of the RUS Bulletin 1780-26) for this purpose.
13. Services required to determine and certify that based upon information known and that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.
14. The following services are not provided. If a future need arises, services by the Engineer may be provided through addendum to this Agreement.
 - a. Providing services for assisting the Owner in obtaining a Section 404 Permit from the U.S. Army Corps of Engineers. The need for said permit is not anticipated for this project.
 - b. Providing an Environmental Assessment or an Environmental Impact Statement concerning the National Environmental Policy Act. Owner has contracted with others for the performance of this work.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - ~~6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~
 - a. The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02A.2 of this Exhibit A.
 - b. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.**

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
 - a. **Upon Award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.**
 10. **Provide copies of Manufacturers' Certification letters to the Bidders on any brand name iron and steel products along with the Plans, Specifications and Bidding Documents. Manufacturers' Certification Letters are to be included in the Bidding Documents and must be kept in the engineer's project file and on site during construction.**
 11. **Provide copies of Manufacturers' Certification letters to the Contractor on any brand name iron and steel products along with the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certification Letters must be kept in the engineer's project file and on site during construction.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so,~~ Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. **The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
- 10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
 - 11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 - 12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals to determine compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certification letters must be kept in the engineer's project file and on site during construction.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.**
19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
 - d. **Receive and review all Manufacturers' Certification Letters for materials required to comply with AIS. Manufacturer's Certifications must be kept in the Engineer's project file and on-site during construction.**
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **(c) Review Change Proposals to determine compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to

such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.**
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

- a. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**
 - b. The visits described in Article A1.05.A.9.a shall be at least monthly.
 - c. The Engineer shall document visit to the project site in writing on standard inspection report forms approved by the Agency with copies furnished to the Owner, Agency, and Contractor.
 - d. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
 - e. The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing 2 copies of such Record Drawings to Owner.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. **Obtain the Contractors' Certification letter and copies of Manufacturers' Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Engineer's, Contractors', and Manufacturers' Certification letters to the Owner and a copy of Contractor's Certification letter to the Agency.**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Notify applicable regulatory agencies of the completion of the project
 - b. Two (2) sets of As-Built Drawings
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously

accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, **but only if the Owner's request is made after completion of the Study and Report Phase.**
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).

Exhibit A – Engineer's Services

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12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- ~~14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.~~
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.

Exhibit A – Engineer's Services

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26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
 - a. Provide legal descriptions for permanent and temporary easements for the Owner to acquire for construction purposes.
 - b. Administrative services resulting from the Owner's request to assist in acquiring geotechnical services as required for design purposes.
 - c. Services in obtaining a Division of Water Resources (DWR) Permit from the Kansas Department of Agriculture or a Section 404 Permit from the US Army Corps of Engineers.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~ **Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.**
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 02/08/2022.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following:

Exhibit B – Owner's Responsibilities

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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1. The Owner shall pay the Contractor any amounts due under the Construction Contract, but must obtain Agency concurrence prior to issuing such payment.

B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. *Signing* loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. *Signing* change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby *acknowledging* responsibility for compliance with American Iron and Steel requirements.
- C. *Obtaining* the certification letters from the consulting engineer upon substantial completion of the project and *maintaining* this documentation for the life of the loan.
- D. Where the owner provides their own engineering and/or construction services, *providing* copies of the engineers' opinion letters and, contractors', and manufacturers' certification letters (as applicable) to the Agency. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.
- E. Where the owner directly procures American Iron and Steel products, *including* American Iron and Steel clauses in the procurement contracts and *obtaining* manufacturers' certification letters and *providing* copies to consulting engineers and contractors.

This is **EXHIBIT C**, consisting of 6 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 02/08/2022.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$3,816,000.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	\$[]
b. Preliminary Design Phase	\$1,645,600.00
c. Final Design Phase	\$1,346,400.00
d. Bidding and Negotiating Phase	\$40,000.00
e. Construction Phase	\$769,000.00
f. Post-Construction Phase	\$15,000.00
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner **and Agency**.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): None.
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 30 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with the concurrence of the Owner and Agency.**

COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 *Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment*

A. *Owner shall pay Engineer for Resident Project Representative Basic Services as follows:*

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **\$1,954,000.00** based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a **2,035 day** construction schedule.
2. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$120.00 per hour.**

B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.0.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.

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1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.
5. Period of Service: The compensation for Resident Project Representative identified in C2.04.A.1 is based on the construction working day duration identified in C2.04.A.1. Should the period of service be extended, the compensation for the Resident Project Representative Services shall be appropriately adjusted.

COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of ~~10%~~1.10.
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no** cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 02/08/2022

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

FAX	\$	0.50	/page
8½"x11" Copies/Impression	\$	0.35	/page
Blue Print Copies	\$	2.00	/sq. ft.
Reproducible Copies (Mylar)	\$	12.00	/sq. ft.
Reproducible Copies (Paper)	\$	6.00	/sq. ft.
Mileage (auto)	\$	0.565	/mile
Field Truck Daily Charge	\$	25.00	/day
Mileage (Field Truck)	\$	0.65	/mile
Field Survey Equipment	\$	500.00	/day
Confined Space Equipment	\$	500.00	/day plus expenses
Resident Project Representative Equipment	\$	600.00	/month
Computer CPU Charge	\$	15.00	/hour
Specialized Software	\$	75.00	/hour
Personal Computer Charge	\$	25.00	/hour
CAD Charge	\$	75.00	/hour
CAE Terminal Charge	\$	85.00	/hour

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

<u>POSITION</u>	<u>DISCOUNTED PER HOUR 2022</u>
PRINCIPAL III	\$264.00
PRINCIPAL II	\$226.00
PRINCIPAL I	\$167.00
ENGINEER/ARCHITECT V	\$160.00
ENGINEER/ARCHITECT IV	\$144.00
ENGINEER/ARCHITECT III	\$135.00
ENGINEER/ARCHITECT II	\$130.00
ENGINEER/ARCHITECT I	\$111.00
INTERN ENGINEER/GRADUATE ARCHITECT IV	\$129.00
INTERN ENGINEER/GRADUATE ARCHITECT III	\$128.00
INTERN ENGINEER/GRADUATE ARCHITECT II	\$116.00
INTERN ENGINEER/GRADUATE ARCHITECT I	\$105.00
TECHNICIAN IV	\$126.00
TECHNICIAN III	\$115.00
TECHNICIAN II	\$99.00
TECHNICIAN I	\$89.50
TECHNICIAN	\$65.00
SENIOR CONSTRUCTION OBSERVER	\$120.00
CERTIFIED CONSTRUCTION OBSERVER	\$103.00
CONSTRUCTION OBSERVER	\$90.50
SENIOR PROJECT SURVEYOR	\$155.00
PROJECT SURVEYOR	\$125.00

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

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ASSISTANT PROJECT SURVEYOR	\$112.00
FIELD SUPERVISOR	\$101.00
FIELD SURVEYOR II	\$85.00
FIELD SURVEYOR I	\$67.50
CLERICAL II	\$71.50
CLERICAL I	\$56.00

Note: 1) The hourly rates shown above are effective for services through December 31st of the contract year

and are subject to revision annually.

2) For any Federal Wage and Hour Law non exempt personnel, overtime will be billed at 1.5 times the hourly

labor billing rates shown.

3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2.]

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and Waived in writing by the Agency.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. **Maintain all Manufacturers' Certification letters in the project file and on site during construction to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. Deleted.~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 02/08/2022



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$1,000,000.00
 - 2) Bodily injury by disease, each employee: \$1,000,000.00
 - 3) Bodily injury/disease, aggregate: \$1,000,000.00
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000.00
 - 2) General Aggregate: \$2,000,000.00
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: N/A
 - 2) General Aggregate: N/A
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000.00
- f. Professional Liability --
 - 1) Each Claim Made \$2,000,000.00
 - 2) Annual Aggregate \$2,000,000.00
- g. Other (specify): N/A

2. By Owner:

- a. Workers' Compensation: Statutory

b. Employer's Liability --

- | | |
|--|-------|
| 1) Bodily injury, Each Accident | \$[] |
| 2) Bodily injury by Disease, Each Employee | \$[] |
| 3) Bodily injury/Disease, Aggregate | \$[] |

c. General Liability --

- | | |
|---|-------|
| 1) General Aggregate: | \$[] |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$[] |

d. Excess Umbrella Liability

- | | |
|-----------------------|-------|
| 1) Per Occurrence: | \$[] |
| 2) General Aggregate: | \$[] |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$[]

f. Other (specify):

\$[]

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. BG Consultants, Inc.
Engineer

b. N/A
Engineer's Consultant

N/A

c. _____
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the \$1,000,000.00. Higher limits are available for an additional fee.
 2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:
-

This is **EXHIBIT J**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 02/08/2022

Special Provisions

Paragraph(s) [Noted Below] of the Agreement is/are amended to include the following agreement(s) of the parties:

The original EJCDC Agreement has been modified in accordance with the following RUS Bulletins

1780-26 dated April 19, 2017

1780-26 dated September 7, 2017

1780-26 dated June 16, 2020

1780-35 dated August 30, 2017

1780-35 dated June 16, 2020

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

6.11 B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, and Engineer's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or Consultants.

8.06 *CDBG Guidelines. The Engineer shall operate within all known CDBG guidelines, specifically:*

- A. Title VI Civil Rights Act of 1964
- B. Section 109 Certifications
- C. Section 504 Certifications
- D. Age Discrimination Act of 1975
- E. Fair Housing Amendments Act of 1988
- F. Executive Order 11063 Certifications
- G. Kansas Act Against Discrimination
- H. Executive Order 11246 Certifications
- I. Section 3 Certifications
- J. Title VIII of the Civil Rights Act of 1968 as amended by the Housing Act of 1974
- K. Section 503 of the Rehabilitation Act of 1973 as amended
- L. 24 CFR 85 as modified by CFR 570 Subpart J
- M. Title I of the Housing & Community Development Act of 1974 as amended
- N. Section 519 Public Law 101-44 (The 1990 HUD Appropriation Act)
- O. Cranston-Gonzales National Affordable Housing Act (Section 906 & 912)

8.07 KDHE SRF Guidelines The Engineer shall operate within all known KDHE guidelines, specifically:

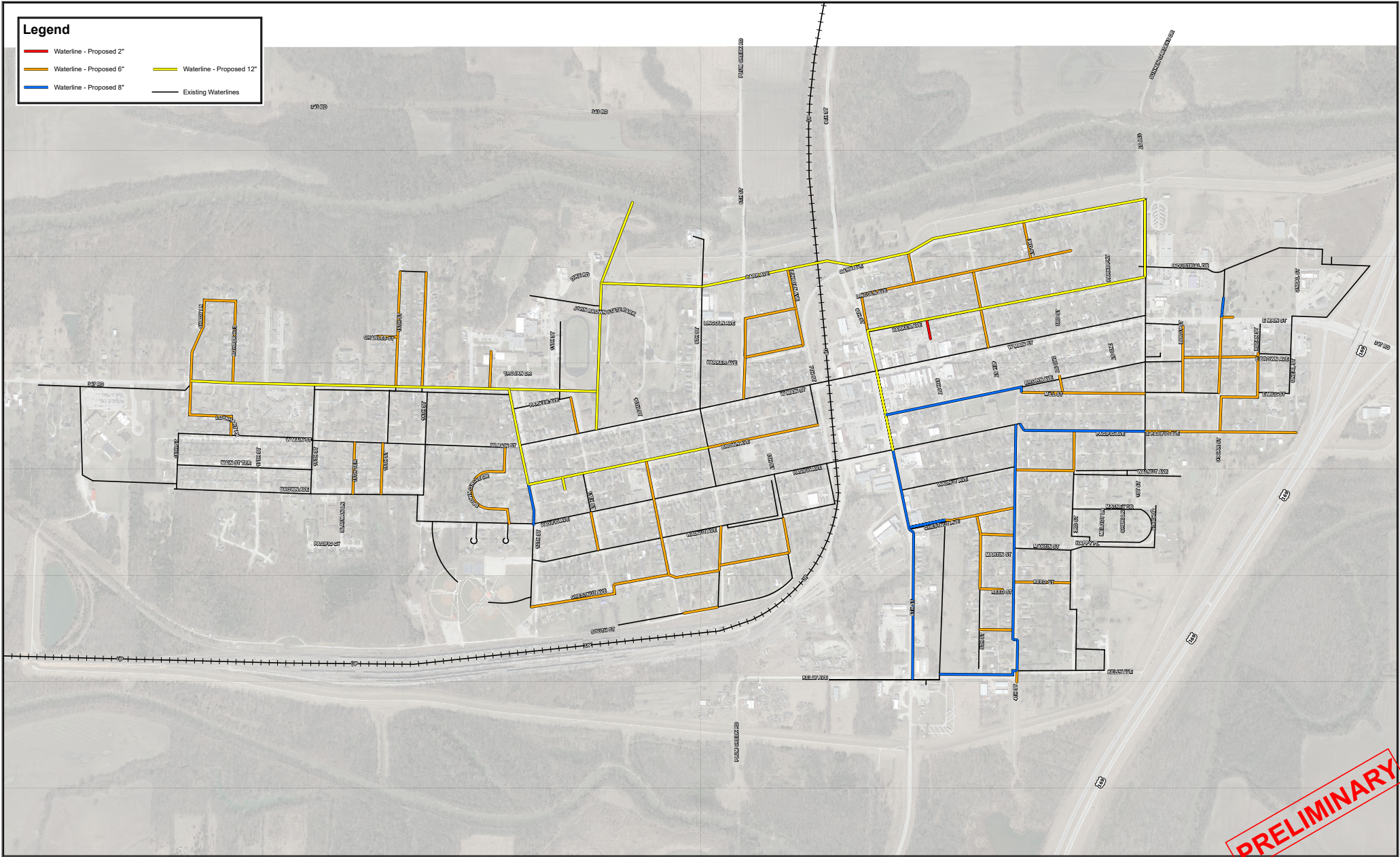
- A. State of Kansas Act Against Discrimination Contract Provision Certification Form
- B. Certification Regarding Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements
- C. Contract Provisions for Equal Opportunity
- D. Contract Provisions for the Kansas Act Against Discrimination
- E. Contract Provisions for Restriction on Lobbying
- F. Contract Provisions for the Trafficking Victims Protection Act of 2000
- G. Contract Provisions for Suspension and Debarment
- H. Contract Provisions for Non Discrimination
- I. Contract Provisions for Non Segregated Facilities

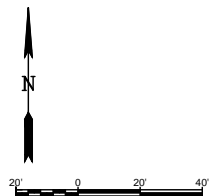
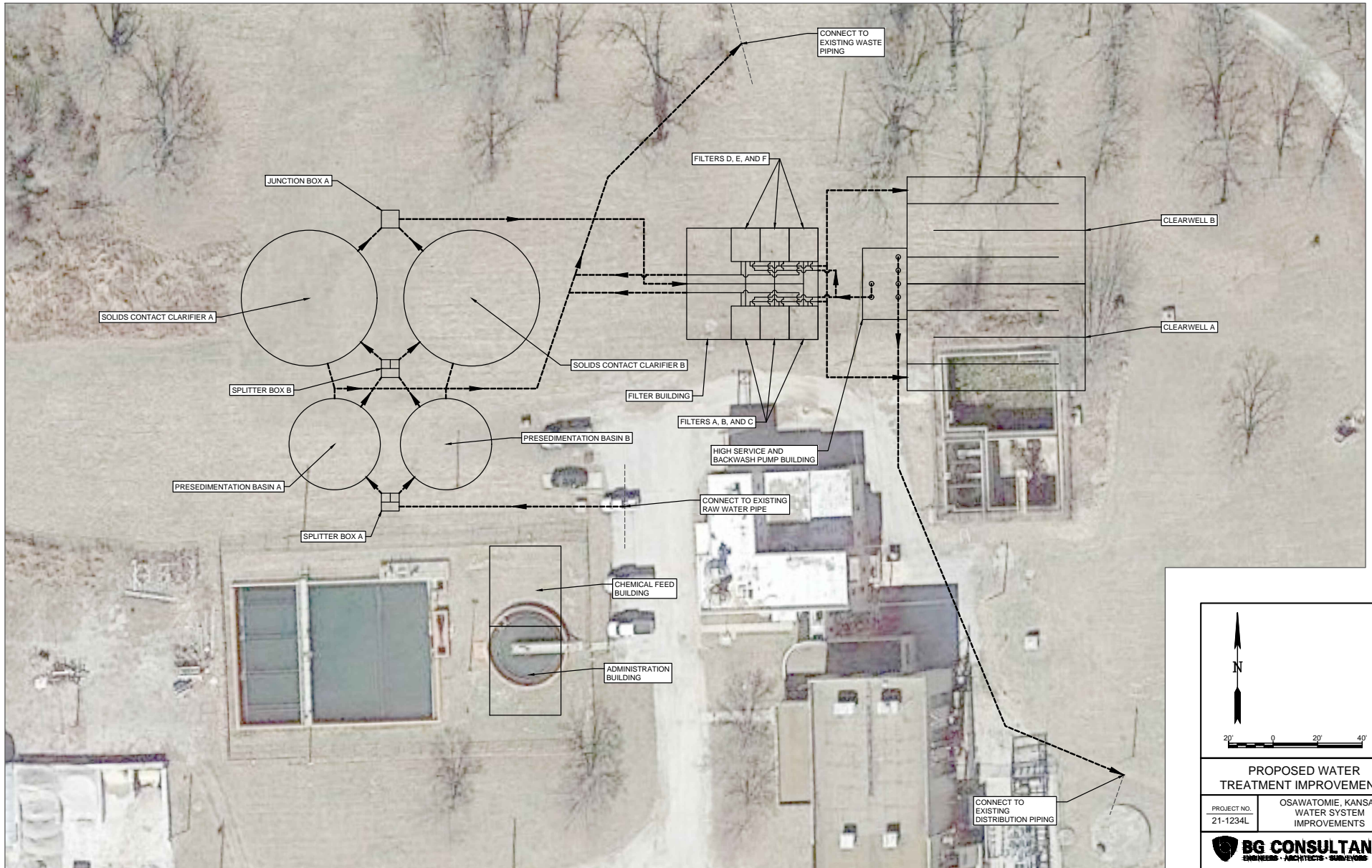
Osawatomie, Kansas
Drinking Water Improvements
Engineer's Opinion of Probable Cost
21-1234L
20-Jan-22
Water Distribution Improvements

<u>No</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Total Price</u>
1	Mobilization & Incidentals	1	LS	\$ 830,000	\$ 830,000
2	12" Waterline (In Place)	18,360	Lin Ft	\$ 100	\$ 1,836,000
3	12" Waterline (Directional Bore)	2,040	Lin Ft	\$ 150	\$ 306,000
4	8" Waterline (In Place)	14,220	Lin Ft	\$ 80	\$ 1,137,600
5	8" Waterline (Directional Bore)	1,580	Lin Ft	\$ 120	\$ 189,600
6	6" Waterline (In Place)	25,290	Lin Ft	\$ 80	\$ 2,023,200
7	6" Waterline (Directional Bore)	2,810	Lin Ft	\$ 120	\$ 337,200
8	2" Waterline (In Place)	190	Lin Ft	\$ 100	\$ 19,000
9	24" Steel Casing (Bore & Jack)	600	Lin Ft	\$ 350	\$ 210,000
10	Service Line (In Place)	900	Each	\$ 1,000	\$ 900,000
11	Water Meter Assembly w/ Meter	900	Each	\$ 1,000	\$ 900,000
12	AMR Meter Reading System	1	L.S.	\$ 80,000	\$ 80,000
13	Gate Valve w/Box	162	Each	\$ 1,500	\$ 243,000
14	Fire Hydrant Setting	162	Each	\$ 5,000	\$ 810,000
15	Connect to Existing Waterline	164	Each	\$ 2,000	\$ 328,000
16	Remove & Replace Surfacing	1	L.S.	\$ 910,000	\$ 910,000
Subtotal Construction Cost					\$ 11,059,600.00
Contingency (10%)					\$ 1,105,960.00
Total Construction Cost					\$ 12,165,560.00
Engineering Design					\$ 1,156,000.00
Construction Observation					\$ 974,000.00
Construction Engineering					\$ 244,000.00
Grant Administration					\$ 40,000.00
Legal					\$ 20,000.00
Temp Financing & Bond Council					\$ 604,000.00
TOTAL PROJECT COST					\$ 15,203,560.00

City of Osawatomie, Kansas
Water Treatment Plant Improvements
 Engineer's Opinion of Probable Cost
21-1234L
 20-Jan-22
Treatment Improvements

No	Description	Quantity	Units	Unit Price	Total Price
1	Mobilization and Incidentals		Lump Sum	\$ 700,000	\$ 700,000
2	Site Piping		Lump Sum	\$ 500,000	\$ 500,000
3	Process Piping		Lump Sum	\$ 800,000	\$ 800,000
4	Site Work		Lump Sum	\$ 550,000	\$ 550,000
5	Demolition		Lump Sum	\$ 350,000	\$ 350,000
6	Splitter Structures/Junction Boxes	3	Each	\$ 50,000	\$ 150,000
7	Low Service Pumps	4	Each	\$ 80,000	\$ 320,000
8	Presedimentation Basin Concrete (Vert.)	160	Cu Yds	\$ 950	\$ 152,000
9	Presedimentation Basin Concrete (Flat)	150	Cu Yds	\$ 700	\$ 105,000
10	Presedimentation Basin Equipment	2	Each	\$ 650,000	\$ 1,300,000
11	Solids Contact Clarifier Concrete (Vert.)	230	Cu Yds	\$ 950	\$ 218,500
12	Solids Contact Clarifier Concrete (Flat)	310	Cu Yds	\$ 700	\$ 217,000
13	Solids Contact Clarifier Equipment	2	Each	\$ 900,000	\$ 1,800,000
14	Gravity Filter Building	2,950	Sq Ft	\$ 450	\$ 1,327,500
15	Gravity Filter Concrete (Vert.)	310	Cu Yds	\$ 1,050	\$ 325,500
16	Gravity Filter Concrete (Flat)	80	Cu Yds	\$ 700	\$ 56,000
17	Pneumatic Air System		Lump Sum	\$ 60,000	\$ 60,000
18	Clearwell Concrete (Vert.)	1,440	Cu Yds	\$ 950	\$ 1,368,000
19	Clearwell Concrete (Flat)	780	Cu Yds	\$ 700	\$ 546,000
20	Pump Building	640	Sq Ft	\$ 450	\$ 288,000
21	Pump Well Concrete (Vert.)	170	Cu Yds	\$ 950	\$ 161,500
22	Pump Well Concrete (Flat)	160	Cu Yds	\$ 700	\$ 112,000
23	Backwash Pumps	2	Each	\$ 95,000	\$ 190,000
24	High Service Pumps	4	Each	\$ 140,000	\$ 560,000
25	Mechanical, Electrical, Plumbing		Lump Sum	\$ 1,700,000	\$ 1,700,000
26	SCADA and Controls		Lump Sum	\$ 1,100,000	\$ 1,100,000
27	Chemical Feed Building	1,152	Sq Ft	\$ 450	\$ 518,400
28	Chemical Feed Systems	4	Each	\$ 250,000	\$ 1,000,000
29	Administration Building	1,280	Sq Ft	\$ 450	\$ 576,000
Subtotal Construction Cost					\$ 17,051,400
Construction Contingency					\$ 1,705,100
Total Construction Cost					\$ 18,756,500.00
Engineering Design					\$ 1,876,000.00
Construction Observation					\$ 980,000.00
Construction Engineering					\$ 540,000.00
Grant Administration					\$ 40,000.00
Legal					\$ 20,000.00
Temp Financing					\$ 908,500.00
Total Opinion of Cost					\$ 23,121,000.00





PROPOSED WATER TREATMENT IMPROVEMENTS

PROJECT NO.
21-1234L

OSAWATOMIE, KANSAS
WATER SYSTEM
IMPROVEMENTS



1405 Wakarusa Drive, Lawrence, Kansas 66049
T: 1.785.749.4474 Web: www.bgcons.com
Manhattan Lawrence Emporia

KDHE SRF CONTRACT PROVISIONS FOR CONSULTANT CONTRACTS

STATE OF KANSAS
 ACT AGAINST DISCRIMINATION
 CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

KPWSLF NO. _____

DATE _____



KDHE PROJECT #

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

Contract Provisions for Equal Opportunity

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Contract Provisions for the Kansas Act Against Discrimination

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

- (1) Who employs fewer than four employees during the term of such contract; or
- (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

Contract Provisions for Restrictions on Lobbying

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

Contract Provisions for the Trafficking Victims Protection Act of 2000

The Contractor, its employees, sub-contractors, and sub-contractors employees under any KPWSLF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

Contract Provisions for Suspension and Debarment

The Contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions.” The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. The Contractor agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Contract Provisions for Non Discrimination

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

Contract Provisions for Non Segregated Facilities

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; *Provided*, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 02/08/2022

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

Title: _____

Date Signed: _____

By: _____
Print
name: _____

Title: _____

Date Signed: _____

RESOLUTION NO. 978

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH BG CONSULTANTS FOR THE DESIGN AND CONSTRUCTION CONTRACT ENGINEERING REVIEW WORK FOR THE WATER TREATMENT PLANT.

WHEREAS, the City of Osawatomie provides clean, potable drinking water to the citizens of Osawatomie, employees and patients of the Osawatomie State Hospital, as well as Rural Water Districts 1 and 3; and

WHEREAS, the city council accepted the recommendation of the water study committee at its January 13, 2022 council meeting; and

WHEREAS, the city council recognizes the importance of applying for, and obtaining grants such as this to help minimize the financial impact to the water utility's end consumer; and

WHEREAS, the City of Osawatomie, Kansas is a legal governmental entity as provided by the laws of the State of Kansas; and

WHEREAS, the city intends to submit an application for assistance in the design and construction of the new water treatment plant from the United States Department of Agriculture – Rural Development (USDA-RD);

WHEREAS, BG Consultants has served as City Engineer for at least 20 years and is qualified to perform the work described in the Water Treatment Plant Design Contract; and

WHEREAS, City staff, including the City Attorney have reviewed the contract to ensure the best interests of the city and its residents are protected;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION ONE: The Governing Body of Osawatomie, Kansas hereby authorizes the Mayor to enter into an Agreement with BG Consultants for the design and construction engineering services for the water treatment plant, paid for with funds from the Water Fund and reimbursed with proceeds from the USDA Loan/Grant as adopted in Resolution 977.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 24th day of March, 2022, a majority voting in favor of.

APPROVED and signed by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	10.C.
	Date:	02/17/2022
Deputy City Manager	From:	Bret Glendening

RE: Execution of the Power Purchase Agreement.

RECOMMENDATION: Review Power Purchase Agreement and Resolution 979

DETAILS: City staff has been operating under the MOU approved by the City Council back in October 2021 (Resolution 934) and the Solar Development Agreement approved in January 2022 (Resolution 952). The time has come to move on to the next phase of the development of this project. We (city staff with the assistance of KMEA) have finished negotiations of the power purchase agreement with Evergy. Once this agreement is executed, Evergy will be released to begin engineering of the facility. Procurement of the materials for the facility will likely need to be held off on until 10MW of solar energy has been committed under PPA's with other cities as well in order to capitalize on economies of scale.

Please note that the execution of the PPA will need to be withheld until the final cost per MWh and purchase price of the facility, beginning in year 8 is known. Unfortunately, this cannot be known until there are sufficient enough cities interested in total capacity equaling 10MW.

Related Statute / City Ordinances	934, 952
Line-Item Code/Description	N/A
Available Budget:	N/A

RENEWABLE POWER PURCHASE AGREEMENT

BETWEEN

[COMPANY]

AND

EVERGY KANSAS CENTRAL, INC.

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND OTHER APPROVALS (INCLUDING FINAL LEGAL APPROVAL). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY EACH PARTY, EXECUTED, AND DELIVERED, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

RENEWABLE POWER PURCHASE AGREEMENT

This RENEWABLE POWER PURCHASE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2022 ("Contract Date"), by and between [Company], [State], an [Type of company] in the state of [State] ("Buyer"), and Evergy Kansas Central, Inc. ("Seller"), a corporation organized under the laws of the State of Kansas with a principal place of business at 818 South Kansas Ave., Topeka, KS 66612. The Seller and Buyer each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

1. Seller plans to develop, design, construct, own and operate a photovoltaic generating facility ("Generating Facility") with an aggregate nameplate capacity of approximately [XXX.XX[A1]] MW AC, as further described in Exhibit C.
2. Seller intends to locate the Generating Facility as described in the Interconnection Agreement and to interconnect the Generating Facility with Buyer's distribution system.
3. Buyer is willing to purchase, and Seller is willing to sell, the Energy produced by the Generating Facility and associated Environmental and Renewable Energy Credits.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and Buyer agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Article I, whether in the singular or the plural or in the present or past tense. Words, phrases or expressions not otherwise defined herein that (i) have a generally

accepted meaning in Good Utility Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Good Utility Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings.

Affiliate. Any named Person or any Person that controls, is under the control of, or is under common control with, the named Person. The term “control” (including the terms “controls”, “under the control of”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a Person, whether through ownership interest, by contract or otherwise. For purposes of this definition of Affiliate, the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any Person having ordinary voting power shall be deemed to be “control.” Notwithstanding the foregoing, a Tax Investor shall not be considered to be an Affiliate of Seller.

Agreement. This contract, including all exhibits, for the purchase of Capacity and Net Energy entered into between Seller and Buyer and as amended by the Parties from time to time.

A.M. Best. Means A.M. Best Company, or any successor to its statistical rating business.

Business Day. Any day except Saturday, Sunday, a holiday on which banks in the State of Kansas are permitted to close, or a Federal Reserve Bank holiday.

Buyer. [Company] based in the city of [City], [State] and its permitted successors and assigns. [A2][A3][A4]

Capacity. The output potential that the Generating Facility can produce under specified conditions as of a given moment, taking into account the operating condition of the equipment at that time, the auxiliary loads and other relevant factors. The capacity of generating equipment is generally expressed in kW or MW AC.

Claim. Any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, initiated or pressed by any third party in connection with the Generating Facility or this Agreement.

Commercial Operation Date. The Commercial Operation Date is the first calendar day following a successful demonstration that the Generating Facility is capable of delivering power to Seller’s meter and has reached an operating level which is capable of reaching the Generating Facility’s full nameplate capacity, as adjusted for the conversion from DC to AC and the estimated loss from the inverter to the Point of Delivery where the meter is measuring the output of the Generating Facility.

Contract Date. The date of execution of this Agreement as set forth in the first paragraph above.

Contract Year. The Contract Year is each period of one (1) year during the Purchase Term commencing on the Generating Facility’s Commercial Operation Date or anniversary thereof and ending on the day immediately prior to the next anniversary of the Commercial Operation Date.

Costs. Means, with respect to a non-defaulting Party after terminating this Agreement in accordance with Section 8.4, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by such Party either in terminating any arrangement pursuant to which it has hedged its obligations hereunder or entering into new arrangements to replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

Deemed Generated Energy^{[A5][A6]}. The quantity of Energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Generating Facility and made available at the Point of Delivery as determined during the relevant measurement period by the Generating Facility's monitoring system^{[A7][A8]}; *provided*, if such systems are unavailable during a relevant interval, then determined in accordance with Good Utility Practices using the best available data or interpolated data including weather conditions, power curves, number of operational panels, station service, transmission line losses, physical limitations and any other factors relevant to the computation.

Emergency^{[A9][A10]}. Any condition or situation requiring actions or inactions deemed necessary by the sole but reasonable judgment of the Party in order to (i) comply with any order issued by the applicable Reliability Coordinator under NERC reliability standards, (ii) preserve public health and safety, (iii) limit or prevent damage, or (iv) expedite restoration of service

Energy. The amount of electricity either used or generated exclusively by the Generating Facility over a period of time (which is electric energy derived from a technology that exclusively relies on a renewable energy source) including any and all associated Environmental Attributes and Capacity, and delivered to the Point of Delivery as measured by the electric metering devices installed pursuant to Section 3.1, and expressed in terms of kilowatt-hour (kWh) or megawatt-hour (MWh). Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

Environmental Attributes. All attributes (environmental or other) that are created or otherwise arise from the Generating Facility's generation of electricity using sunlight as a fuel in contrast to the generation of electricity using nuclear or fossil fuels or non-renewable resources, including, but not limited to, renewable energy credits, solar renewable energy credits, tags, certificates or similar products or rights associated with solar as a "green" or "renewable" electric generation resource pursuant to any federal, state or local legislation, directive, regulation, green pricing program, or other environmental or renewable energy credit trading program derived from the use, purchase or distribution arising from the Generating Facility's generation of Energy. These attributes include all local, state or federal credits, allowances, offsets and similar rights issued, recognized, created or otherwise arising from the photovoltaic Generating Facility, Energy, or the delivery of the Net Energy to Buyer, which can be used to claim responsibility for any avoidance or reduction of emissions or pollutants, including, but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other program. Notwithstanding the foregoing, the term "Environmental Attributes" shall not include investment tax credits (ITC's) within the meaning of Section 48 of the Internal Revenue Code or any successor to such section.

Environmental Law. Any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances as amended from time to time.

Environmental Liability. Any and all liability arising under, resulting from or imposed by any Environmental Law.

Facility Debt. The obligations of Seller to any lender pursuant to the Financing Documents, including distributions, indemnities, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts to fund reserves, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims of interest due with respect to any of the foregoing, including reasonable attorney fees. For the avoidance of doubt, Facility Debt shall include tax equity transactions.

Facility Lender. Collectively, (a) with respect to Seller, any lender(s) (including any trustee or agent on behalf of such lenders) providing any Facility Debt and any successors and assigns thereof.

Financing Documents. The loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, pledge agreements, swap agreements, letters of credit, back leverage loan documentation and other documents evidencing, securing or otherwise relating to the development, bridge, tax equity, construction or permanent debt or equity financing or other extension(s) of credit for the Facility (including, if applicable, any portfolio or back-levered financing in which the Facility is included), including any credit enhancement, credit support, swaps, caps, floors, collars, hedging agreements, working capital financing, letter of credit facilities or refinancing documents and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Generating Facility.

Force Majeure. Has the meaning provided in Section 6.1.

Gains. Means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement that would have occurred but for the occurrence of the termination, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, and shall include the value of Environmental Attributes. Only if the non-defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the non-defaulting Party may

use information available to it internally suitable for such purpose in accordance with Good Utility Practice.

Generating Facility. The Seller's facilities and equipment installed and used to generate and transmit electricity to the Point of Delivery pursuant to this Agreement, as described in greater detail in the Interconnection Agreement and Exhibit C. For purposes of Section 2.9, the Generating Facility shall include all leasehold, ownership or option for ownership, or similar rights and interests of Seller pursuant to arrangements entered into by Seller in connection with the Generating Facility, as well as all real property interests of any nature held by Seller with respect to the Site.

GSO or Generation System Operator. The Buyer's representative(s) responsible for dispatch of Buyer's generating units. As of the Effective Date, the Buyer's GSO is [_____]. The Buyer may, by notice to Seller, designate other representative(s) as Buyer's GSO at any later date during the Term.

Good Utility Practice. Any of the practices, methods and acts engaged in or approved by a significant portion of the solar power generation industry within the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. With respect to the Generating Facility, Good Utility Practice includes, but is not limited to, taking reasonable steps to ensure that:

(a) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;

(b) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly, efficiently and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(c) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;

(d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to Environmental Laws or permits or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity synchronization and/or control system limits; and

(f) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over

the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.

Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts relevant to the activity and facts in question and generally accepted in the industry.

Governmental Approval. Any valid waiver, exemption, variance, franchise, permit, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority having jurisdiction over the matter in question.

Governmental Authority. Any nation or government, any state or other political subdivision thereof, ~~any quasi-governmental, regulatory or administrative agency, commission, body or other authority, whether foreign or domestic~~^{[A11][A12]}, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory-, taxing, or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

Interconnection Agreement. The agreement between Seller and Buyer governing the interconnection of the Generating Facility to Buyer's distribution system.

ITC. The investment tax credit arising under 26 U.S.C. § 48, or any replacement therefor.

kW. Kilowatt.

Law. Law means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, common law, holding, injunction, Governmental Approval or requirement of such Governmental Authority. Unless the context clearly requires otherwise, the term "Law" shall include each of the foregoing (and each provision thereof) as in effect at the time in question, including any amendments, supplements, replacements, or other modifications thereto or thereof, and ~~whether~~ or not in effect as of the date of this Agreement^{[A13][A14]}.

Letter of Credit. One or more irrevocable, transferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form and from a bank acceptable to the Requesting Party. All costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Losses. Means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term that would not have occurred but for the occurrence of the termination, determined in a commercially reasonable manner. Factors used in determining the economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this

Agreement, and shall include the value of Environmental Attributes. Only if the non-defaulting Party is unable, after using commercially reasonable efforts, to obtain third-party information to determine the economic loss, then the non-defaulting Party may use information available to it internally suitable for such purpose in accordance with Good Utility Practice.

MW. Megawatt.

Modification. Has the meaning provided in Section 10.4.

Moody's. Means Moody's Investors Service, Inc., or any successor to its statistical rating business.

NERC. North American Electric Reliability Corporation and its successors, if any.

Net Energy. The actual number of kWh generated by the Generating Facility at the Point of Delivery during the period being considered, net of any generating output in kWh used for the Generating Facility's Station Auxiliary power needs, as measured by the meters installed pursuant to Section 3.1. Net Energy will also include any Deemed Generated Energy for purposes of payment invoicing pursuant to Section 3.5[A15][A16].

Outage. A physical state in which all or a portion of the Generating Facility is unavailable to provide Energy, or in which any other system, facility or equipment is unable to perform its intended function.

Parties. Buyer and Seller, and their respective successors and permitted assignees.

Party. Buyer or Seller, and its respective successors and permitted assignees.

Performance Security. A Letter of Credit, cash, parental guarantee from an entity with a senior unsecured and credit-unenhanced long term debt investment grade credit rating by S&P or Moody's, or other form of collateral reasonably acceptable to the Requesting Party that the Receiving Party is required to establish and maintain, pursuant to Article VII, as security for such Party's performance under this Agreement, in an amount not to exceed [\$XX,XXX,XXX]

Permits. All state, federal, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Generating Facility.

Permitted Transfer. Any of the following shall qualify as a "Permitted Transfer": (a) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates, *provided*, that with respect to such transfer among Affiliates either (i) Seller or its parent company, Evergy, Inc., retains the authority, directly or indirectly, to control the Seller (as the term "control" is used in the definition of "Affiliate"), or (ii) a wholly-owned, indirect subsidiary of Seller operates the Facility, (b) any exercise by a Facility Lender or Tax Investor of its rights and remedies under the Financing Documents, (c) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had

no such rights immediately prior to the change, (d) the direct or indirect transfer of shares of, or equity interests in, the Seller to a Tax Investor, or (e) the transfer or assignment by either Party of its rights and obligations hereunder to an Affiliate or any Person succeeding to all or substantially all of the assets of the assigning Party, where such Affiliate or Person has equal or greater creditworthiness as determined by the non-assigning Party using commercially reasonable credit standards.

Person. An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.

Planned Outage. The prescheduled removal of all or any portion of the Generating Facility of ten percent (10%) or greater from service to perform routine maintenance or improvement including, but not limited to, periodic cleaning, repair or replacement of photovoltaic panels or other components, inspections and testing where such removal reduces or eliminates the ability of the Generating Facility to generate and deliver Energy to the Point of Delivery or the ability to transmit Net Energy to Buyer.

Point of Delivery. The electric system point at which Seller makes available to Buyer the Energy being provided by Seller to Buyer under this Agreement. The Point of Delivery is specified in the Interconnection Agreement.

Proposal. Has the meaning provided in Section 10.4.

Purchase Term. The period of time from the Commercial Operation Date until the end of thirty (30) years after the Commercial Operation Date.

Receiving Party. Has the meaning provided in Section 7.1(i).

Reliability Coordinator. The entity that is the highest level of authority who is responsible for the reliable operation of the bulk electric system, has the wide area view of the bulk electric system, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next day analysis and real-time operations.

Renewable Energy Payment Rate. [\$0.XXXXX]/kWh escalated annually at [X.X%].

Requesting Party. Has the meaning provided in Section 7.1(i).

Requirements of Law. The certificate of incorporation and bylaws or other organizational or governing documents of Seller or Buyer, respectively, and any material United States federal, state, county or local law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer, respectively or to any of its respective property.

Site. The parcel of real property on which the Generating Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or

rights in real estate reasonably necessary for the construction, operation and maintenance of the Generating Facility, as further identified in the scaled map in Exhibit C.

Seller. Evergy Kansas Central, Inc., and its permitted successors and assigns.

S&P. Means Standard & Poor's Rating Group, a division of McGraw Hill, Inc., or any successor to its statistical rating business

Station Auxiliary. Energy used by Seller to operate the Generating Facility.

Tax Benefits. Has the meaning provided in Section ~~11.18(ii)~~~~11.17(ii)~~.

Tax Investor. Collectively, any Persons who acquire a direct or indirect interest in Seller as a part of a transaction to ensure that the Generating Facility is owned at least in part by a Person able to use the ITCs, depreciation and other tax and financial benefits associated with holding an ownership interest in the Generating Facility (including any subsequent transferees of any such Persons).

Term. Has the meaning given to such term in Section 2.1 hereof.

Test Energy. Any Net Energy generated by the Generating Facility and delivered to the Point of Delivery prior to the Commercial Operation Date.

ARTICLE II PURCHASE AND SALE

2.1 Term. The term of this Agreement shall commence on the Contract Date, and shall continue unless otherwise terminated in accordance with its terms until the end of the thirtieth (30th) year after the Commercial Operation Date ("Term"). Notwithstanding the foregoing, if the Interconnection Agreement is terminated in accordance with its terms prior to the thirtieth (30th) anniversary of the Commercial Operation Date due to a breach by Seller, this Agreement shall terminate at the same time as the Interconnection Agreement. Subject to Sections 2.5 and 2.9, Buyer's obligation to purchase and Seller's obligation to sell the Capacity and Net Energy created by the Generating Facility as set forth herein shall be effective when the Generating Facility begins to generate Test Energy.

2.2 Sale and Purchase. Buyer agrees to purchase the entire Capacity and Net Energy of the Generating Facility during the Term and to accept delivery of the Capacity and Net Energy at the Point of Delivery during the Term, subject to the terms of the Agreement. Seller agrees to sell to Buyer the entire Capacity and Net Energy of the Generating Facility during the Term and to deliver the entire Capacity and Net Energy from the Generating Facility to Buyer at the Point of Delivery during the Term. The Net Energy will be provided on a unit-contingent basis. Seller shall not contract to sell any Capacity or Net Energy from the Generating Facility to any Person other than Buyer at any time during the Term, and Seller acknowledges that Buyer is entitled to receive all Capacity and Net Energy from the Generating Facility during the applicable Purchase Term. Net Energy will be delivered at 12.470 kilovolts, or such other voltage as is specified for the Generating Facility in the Interconnection Agreement. Title to and risk of loss for the Capacity and Net Energy from the Generating Facility shall transfer to Buyer at the Point of Delivery. Seller

warrants that it will deliver to Buyer the Capacity and Net Energy at the Point of Delivery free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

2.3 Buyer Curtailment. Buyer shall not curtail Energy from the Generating Facility except in the event of an Emergency or for scheduled maintenance on the circuit to which the Generating Facility is connected (which scheduled maintenance is to be limited to no more than ~~40-60~~ hours per calendar year ^[A17]^[A18] and coordinated with Seller). If it is ultimately determined that a requested Buyer curtailment, (i) did not qualify as an Emergency, or (ii) was not for scheduled maintenance on the circuit, ~~or (iii) and Buyer exceeded the 80-120 hour cap~~^[A19]^[A20]^[A21] within the applicable calendar year, Seller shall calculate the Deemed Generated Energy that would have been produced by the Generating Facility for that curtailment period had the Generating Facility's generation not been so curtailed, and Buyer shall pay to Seller all amounts that Seller would have received from Buyer under this Agreement had production not been so curtailed. Seller shall install sufficient measuring equipment at the Generating Facility to collect data necessary to reasonably determine the amount of Generating Facility generation subject to the aforementioned curtailment, which shall include solar panel and inverter equipment availability and sufficient meteorological equipment near the Site or in conjunction with the solar panels to provide the capability of measuring and recording representative weather data twenty four (24) hours per Day, which data shall be used to calculate any amounts due Seller under this Section 2.3.

2.4 Renewable Energy Payment Rate. Buyer shall pay Seller for the Net Energy delivered to Buyer at the Renewable Energy Payment Rate, as defined in Article I. Buyer shall purchase all Test Energy produced by the Generating Facility prior to the Commercial Operation Date at 90% of the Renewable Energy Payment Rate. Buyer and Seller agree that the applicable Renewable Energy Payment Rate is intended to compensate Seller for the Net Energy and Capacity delivered to Buyer, and that ~~Seller is not entitled to a separate price or payment for the Capacity associated with the Generating Facility to which Buyer is entitled or for Buyer's rights with respect to Environmental Attributes as set forth in Section 2.8~~^[A22]^[A23].

2.5 Seller Conditions Precedent. Seller's obligations to deliver Net Energy and Capacity to Buyer from the Generating Facility under this Agreement shall be subject to the satisfaction or waiver of the conditions precedent listed below. Seller shall make commercially reasonable efforts to ensure that all such conditions precedent are satisfied by ^[Date]. In the event any of the conditions listed below are not satisfied or waived in writing by Seller by such date, either Party shall have the right to terminate this Agreement, without any liability or further obligation to the other Party as a result of such termination, by notice at any time within ten (10) Business Days following such failure to satisfy the condition. These conditions are as follows:

(i) Seller and the Buyer entering into an Interconnection Agreement for the Generating Facility which shall (i) not require Seller to incur any costs above ^[\$XX,XXX] for interconnection beyond the Point of Delivery, and (ii) provide for the installation and energization of the Generating Facility within a time that will permit Seller to place the Generating Facility in service in time to claim the ITC for the Generating Facility;

(ii) Seller receiving all Permits and Governmental Approvals for the Generating Facility in form and substance satisfactory to Seller; and

(iii) Seller and Buyer entering into mutually agreeable lease arrangements for the Site.

2.6 Capacity Accreditation. Seller agrees to cooperate with Buyer in taking such reasonable actions as are necessary for Buyer to obtain accreditation of the Capacity of the Generating Facility to the maximum extent practicable, in order to permit Buyer to (a) count such Capacity in connection with satisfying applicable resource adequacy requirements and (b) designate this Agreement as a designated network resource under the terms of any applicable transmission tariff; provided however, that this provision shall not impose on Seller any obligation to incur third-party fees or costs associated with such cooperation.

2.7 Environmental Attribute Accreditation. Buyer agrees to cooperate with Seller in taking such reasonable actions as are necessary to obtain accreditation of Environmental Attributes associated with the Generating Facility to the maximum extent practicable; provided however, this provision shall not impose on Buyer any obligation to incur costs associated with such cooperation, and Seller shall reimburse (or pay directly, if permitted) for any costs or expenses which are identified by Buyer and which are agreed to be paid by Seller in writing.

2.8 Environmental Attributes Entitlements. Buyer shall be entitled to the Environmental Attributes [A24][A25] associated with the Generating Facility and the Net Energy purchased by Buyer hereunder.

2.9 Buyer Option to Purchase Generating Facility and Terminate Agreement. Buyer may (but is under no obligation to) acquire the Generating Facility and terminate this Agreement on or after the eighth (8th) anniversary of the Commercial Operation Date. The purchase price for such acquisition shall be the greater of: (a) the amount identified in Exhibit A, or (b) the fair market value of the Generating Facility equipment as determined by an agreed upon nationally recognized independent appraiser with experience and expertise in the U.S. solar energy industry and purchased assuming the equipment is ~~removed not installed and operating for its intended purpose at from its current location~~ the Site; but rather resides and placed in a warehouse, with no warranty or other obligation on the part of Seller after such purchase [A26][A27][A28], provided that Seller will use commercially reasonable efforts to assign any remaining manufacturer warranty that is assignable in accordance with its terms to Buyer. Buyer shall be obligated to provide written notice to Seller of: (i) Buyer's intention to exercise its purchase rights under this option, and (ii) Buyer's proposed closing date for the acquisition, with such notice being provided no later than eight months prior to the proposed closing date for the acquisition. Within sixty (60) days of such written notification, Seller shall provide to Buyer a good-faith estimate of any anticipated major expenses or capital costs to be incurred in the next 24-month period, and such other information as Buyer reasonably requests in connection with its due diligence review. Within thirty (30) days after its receipt of such data (or, if later, within thirty (30) days after the Parties have received the appraiser's report of the fair market value of the Generating Facility equipment as described above), Buyer shall either withdraw its notice or confirm its continued intention to exercise its purchase rights under this option. If Buyer elects to acquire the Generating Facility, the Parties shall negotiate, execute, and close on an asset purchase agreement and all necessary related documents to convey ownership of the Generating Facility (including all necessary Permits and Governmental Approvals) to Buyer effective as of the acquisition date. For purposes of clarity, upon Buyer's acquisition of the Generating Facility, (a) Buyer shall have all rights and entitlements

to the Environmental Attributes associated with the Generating Facility, and (b) this Agreement shall be terminated in its entirety.

2.10 Obligations After Contract Term. Upon termination of this Agreement, other than pursuant to acquisition of the Generating Facility by Buyer in accordance with Section 2.9, Buyer shall have no entitlement to the Capacity and Net Energy from the Generating Facility, and Seller shall be free to sell the Generating Facility and/or Capacity and Net Energy from the Generating Facility to any other Person(s) (subject to the Parties reaching a suitable agreement on the terms for delivery of the Generating Facility's output over Buyer's distribution system), unless the Parties mutually agree to a new contract.

2.11 Investment Tax Credits. Any ITC attributable to the Generating Facility shall remain the entitlement of Seller (or its designee).

ARTICLE III METERING AND PAYMENT

3.1 Metering Equipment. Seller shall, at its own expense, provide, install, own, operate, and maintain revenue-quality meters that measure the power at the Point of Delivery and utilizing Buyer's provided telecommunications equipment necessary for accurately determining the Capacity and Net Energy delivered under this Agreement. Except as provided in Sections 3.2 and 3.3, Seller's meters shall be used for quantity measurements and billing under this Agreement. Buyer, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Capacity and Net Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Seller's meters. Buyer and Seller shall each provide to the other: (a) real-time power generation data obtained from Buyer's and Seller's metering equipment, and (b) consistent with Section 3.3, reasonable access to test the other Party's metering equipment. [At Buyer's request and sole expense, Seller shall cooperate with Buyer to make the real-time power generation data obtained from Seller's metering equipment available to Buyer and Buyer's GSO and any mutually agreed upon third parties and which consent by Seller will not be unreasonably withheld.] [A29][A30]

3.2 Measurements. Readings of Seller's meters made by Seller shall be conclusive as to the amount of Capacity and Net Energy delivered to Buyer hereunder; provided, however, that if any of Seller's meters is out of service or is determined, pursuant to Section 3.3 hereof, to be registering inaccurately, measurement of Capacity and Net Energy delivered hereunder shall be determined by, in the following order:

(i) Buyer's check meter at the Point of Delivery, if installed, annually tested and registering accurately; or

(ii) in the absence of an installed, annually tested and accurately registering check meter belonging to Buyer, making a mathematical calculation if, upon a calibration test of Seller's meter, a percentage error is ascertainable; or

(iii) in the absence of an installed, annually tested and properly registering check meter belonging to the Buyer, and an ascertainable percentage of error in Seller's meter,

estimating by reference to quantities measured during periods of similar conditions when Seller's meter was registering accurately.

If no reliable information exists as to the period over which Seller's meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

3.3 Testing and Correction. The accuracy of Seller's metering equipment shall be tested and verified by Seller annually. Buyer and Seller shall each have the right, at its own expense, to test and verify the other's meters upon reasonable notice, provided such testing shall not exceed one test of the meter(s) during a calendar year, or more frequently if there is just cause. If Buyer has installed check meters in accordance with Section 3.1 hereof, Buyer shall test and verify such meters annually. Each Party shall bear the cost of the annual testing of its own meters. Each meter shall be accurate within a one-percent (1%) variance. If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter. Should the meter be found to be registering within the permitted one-percent (1%) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, the cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond the permitted variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount exceeding the permitted one-percent (1%) variance, such meter shall be promptly adjusted to record properly, any previous recordings by such meter shall be adjusted in accordance with Section 3.2, and any prior payments made for Capacity and Net Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 3.2. If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest as described in Section 3.5(iii) for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

3.4 Maintenance and Records. In addition to providing real-time generation data pursuant to Section 3.1, Seller shall provide Buyer on a monthly basis reports indicating Seller's daily production of Capacity and Net Energy. Buyer shall have the right to be present whenever Seller tests and/or calibrates the equipment used in measuring or checking the measurement of the Capacity and Net Energy delivered hereunder. Seller shall endeavor to give five (5) days, but in no event less than forty-eight (48) hours, notice to Buyer in advance of taking any such actions. Seller will also use best efforts to provide Buyer advance notice when Seller reads, cleans, adjusts, changes or repairs the equipment to allow Buyer to be present. The records from the measuring equipment shall remain the property of Seller or Buyer, respectively, but, upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to

review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify the accuracy of bills. Each Party shall be permitted to audit such records of the other Party no more frequently than once each calendar year.

3.5 Invoicing and Payment.

(i) Seller shall read the meters or cause the meters to be read as soon as practicable after the last day of the previous calendar month and shall invoice Buyer based on such readings for the total Net Energy delivered for the previous calendar month.

(ii) Buyer's payment to Seller for the total Net Energy received shall be paid by electronic funds transfer by the twentieth (20th) day following Buyer's receipt of Seller's invoice. If such date falls on a weekend or legal holiday, the due date shall be the next Business Day.

(iii) Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to an annual rate of two percent (2%) calculated daily plus the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of the *Wall Street Journal*, for the days of the late payment period multiplied by the number of days elapsed from and including the due date, to but excluding the payment date. In the event this index is discontinued, or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

(iv) Buyer may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement within twelve (12) months of the date of the invoice. If Buyer, in good faith, disputes the amount of any invoice, Buyer shall promptly notify Seller in writing of the disputed amount and the reason therefor and shall pay the undisputed amount of such invoice. All invoices shall be conclusively presumed to be true and correct after twelve (12) months of the date on which the invoice is sent, except that, if Buyer has disputed the invoice within that period, Buyer's rights shall continue as to that invoice until the dispute is resolved. Any billing disputes shall be settled in accordance with the provisions of Article X. Payments (or refunds) determined to be due by one Party to the other shall be made within five (5) Business Days of the conclusion of the dispute resolution, with interest as provided for in Section 3.5(iii).

ARTICLE IV SELLER'S OBLIGATIONS

4.1 Design, Construction and Operation of the Generating Facility. Subject to the provisions of Article VI, Seller shall:

(i) At its sole expense, design and construct the Generating Facility in accordance with Good Utility Practice. The nominal nameplate capacity of the Generating Facility will be [X.XX] MW DC. The voltage of the power delivered by the Generating Facility to the Point of Delivery will be 12.47 kV^{[A31][A32]}, or as otherwise specified in the Interconnection Agreement.

(ii) Seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any Requirement of Law or Governmental Authority as prerequisites to engaging in the sale of Capacity and Net Energy at the Point of Delivery as envisioned by the Agreement and to meeting Seller's obligation to operate the Generating Facility consistently with the terms of the Agreement.

(iii) At Seller's sole expense, operate, maintain, repair and provide security[A33][A34][A35] for the Generating Facility in accordance with this Agreement and Good Utility Practice.

(iv) At Seller's sole expense, obtain and maintain throughout the Term of the Agreement insurance policies that meet the requirements set forth in Exhibit B. Any third-party insurance policies shall (i) be obtained from insurers rated at least A-/VII by A.M. Best (or a comparable rating agency), (ii) [A36]list Buyer as an additional insured and additional party for the receipt of all notices; and (iii) not be cancelable without ten (10) days' prior written notice for nonpayment of premium or thirty (30) days prior written notice for all other events, such notice to be provided by the insurer to Buyer. Seller's insurance shall in all cases be primary and non-contributory. Any insurance proceeds received with respect to the destruction of all or any part of the Generating Facility shall be applied to the reconstruction of the Generating Facility or the affected portion unless Seller can demonstrate to Buyer that it is not commercially reasonable to do so[A37][A38][A39].

(v) Use reasonable endeavors to schedule Planned Outages in conjunction with Buyer and make commercially reasonable efforts to schedule Planned Outages for off-peak hours and the non-peak season; provided, however, Seller's reasonable endeavors and commercially reasonable efforts shall not include Seller altering its planned or scheduled maintenance if making such alterations would cause Seller to (i) violate any operating guidelines of the generator manufacturer for solar panels or inverters included in the Generating Facility; or (ii) take an action inconsistent with Good Utility Practice with respect to the care of any of the equipment in the Generating Facility. All Planned Outages shall have an estimated duration and be communicated by Seller to Buyer and Buyer's GSO in an applicable monthly or weekly notification. Seller shall also provide to Buyer and Buyer's GSO, as soon as practicable, information relating to full or partial unplanned Outages of the Generating Facility, including Seller's estimate of the duration of any such Outages.

(vi) Allow Buyer reasonable access to the Generating Facility and the Site, subject to reasonable advance notice and Buyer's compliance with Seller's safety and security measures.

(vii) If Seller produces, on a daily basis, an hourly forecast for projected energy, not to exceed seven (7) days into the future, for the Generating Facility, then such forecast will be made available to Buyer and Buyer's GSO each Business Day by 9 a.m. Central Prevailing Time (CPT).

4.2 General Obligations.

(i) Except as specified in Section 5.3, Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller, or the Generating Facility, ~~or by reason of the sale of Energy or Capacity to the Buyer up to the Point of Delivery~~^{[A40][A41]}.

(ii) Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Generating Facility in compliance with Environmental Laws.

(iii) Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all Requirements of Law applicable to Seller, and (iii) comply with all material agreements, instruments and undertakings related to the Generating Facility except to the extent that any failure to so comply has not had, or is not reasonably likely to have, a material adverse effect on Seller's performance of its material obligations under this Agreement.

(iv) ~~Upon execution of this PPA, and On a monthly basis thereafter until the Generation Facility achieves its Commercial Operation Date,~~ Seller shall ~~make available~~^{provide} for Buyer's review ~~such other~~ information regarding the permitting, engineering, construction, condition and operations of the Generating Facility, as Buyer may, from time to time, reasonably request, subject to pricing redaction where Seller deems appropriate.^{[A42][A43]} ~~Additionally, Pprior to the Commercial Operation Date, Seller will hold monthly construction update meetings with Buyer.~~

(v) As between Seller and Buyer, Seller shall be exclusively responsible for all Environmental Liability at the Site and shall indemnify Buyer from and against all such liability; provided that Buyer shall be liable for, and shall indemnify Seller from and against, any Environmental Liability ~~due to any pre-existing conditions or~~ ^{[A44][A45]} resulting from a release of hazardous substances by Buyer or its contractors or subcontractors.

4.3 ~~Interconnection.~~ ^{[A46][A47]} Seller shall comply with all obligations of the "Interconnection Customer" under the Interconnection Agreement.

ARTICLE V BUYER OBLIGATIONS

5.1 Delivery. Buyer shall, at its expense, be responsible for obtaining any service necessary for delivery of the Net Energy and Capacity of the Generating Facility from the Point of Delivery.

5.2 Cooperation. Buyer agrees to cooperate with Seller in any applications for permits, certificates or other authorizations as described in Section 4.1(ii). Buyer's obligation under this section shall consist only of providing nonproprietary information in its possession, custody or control necessary to complete any applications and responding to requests from the relevant Governmental Authorities or other Person.

5.3 Permitting Fees, Sales Tax, and Property Tax. Buyer shall waive or incur (as a pass-through charge) the following for Seller as of the Contract Date through the Term:

- (i) any [local City or local County, State] permitting fees required for the construction of the Generating Facility;
- (ii) any applicable [City or County, State] sales taxes;
- (iii) any applicable property taxes; and
- (iv) any new applicable taxes not assessed as of the Contract Date.

5.4 General Buyer Obligations. Buyer shall arrange and be solely responsible for:

(i) ~~Providing around-the-clock 120/240 volt electrical service: (i) during construction, and (ii) for Site auxiliary power not provided by the Generating Facility itself for the Term~~.

(ii) ~~Providing fiber optic line(s) and internet services to the necessary Generating Facility equipment identified by Seller~~.

~~(iii) [Additional parameters]~~

~~(iv)(iii) Maintaining any shade easement as identified in Exhibit C~~ ~~[A48]~~ ~~[A49]~~.

~~(v) NOT USED~~ ~~[A50]~~ ~~[A51]~~.

~~(vi)(iv) Arrangement with distribution system owner to purchase, construct and maintain interconnection from each Point of Delivery, including the agreed upon transformers and metering cabinets (including PT's and CT's), to the Buyer's distribution system~~.

~~(vii)(v) During the Term of the Agreement, shall pay, or reimburse, Seller for all subsequent future federal, state, municipal, or other lawful taxes or fees applicable to the Generating Facility that are not in place at time of execution of the Agreement.~~ ~~[A52]~~ ~~[A53]~~

ARTICLE VI FORCE MAJEURE; REGIONAL TRANSMISSION ORGANIZATION

6.1 Force Majeure. The performance of each Party under the Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, which, by exercise of reasonable diligence and foresight, could not reasonably have been avoided, including, but not limited to, an ~~Emergency~~ ~~[A54]~~ ~~[A55]~~, flood, earthquake, storm, fire, lightning, hurricanes, heavy rains, tornadoes, ice storms, landslides, mudslides, any new and previously unknown ~~epidemic~~ ~~[A56]~~ specifically excluding Covid 19 and any past ~~or future or future~~ variants thereof, war, riot, civil disturbance, sabotage ~~(but only when Seller fails properly to maintaining security systems commonly used under Good Utility Practice)~~, strike, and/or act of God ~~or any similar cause beyond the control of the Party claiming Force Majeure~~. However, the obligation to

use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. A Party's obligations to make payments already due and/or related to partial performance shall not be suspended by Force Majeure.

6.2 Remedial Action. A Party shall not be liable to the other Party to the extent it is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practices.

6.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary other than as stated in this Article VI, "Force Majeure" shall not mean:

(i) Inclement weather common to the geographic region affecting construction, start-up, or operation of the Generating Facility or related facilities that does not otherwise meet the definition of "Force Majeure."

(ii) Changes in market conditions or governmental action that affect Buyer or Seller, as applicable, the cost of Seller's supply of Net Energy from the Generating Facility, or the ability of Buyer to obtain energy at a rate lower than the Renewable Energy Payment Rate.

(iii) Unavailability of sunlight.

(iv) Unavailability of equipment, repairs or spare parts for the Generating Facility, except to the extent due to a qualifying event of Force Majeure by the third-party provider.

(v) Inability to obtain, maintain or renew any Permit or any undue delay in obtaining, maintaining, or renewing any Permit, in either case, due to Seller's failure to diligently pursue obtaining, maintaining or renewing such Permit.

(vi) Scheduled maintenance on any distribution or transmission system the availability of which is needed for the receipt and/or delivery of Net Energy from the Generating Facility;

(vii) Litigation or administrative or judicial action pertaining to the Agreement, the Generating Facility, the Site, the acquisition, maintenance or renewal of any Permits, or the design, construction, maintenance or operation of the Generating Facility that are (i) the result of the actions or omissions of either Buyer or Seller, or (ii) instituted by the Buyer or Seller.

6.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, the anticipated extent of any delay or interruption in performance, and the measures the affected Party is taking to overcome the event of Force Majeure.

6.5 Regional Transmission Organization. In the event that the Generating Facility is required to be registered in the centralized energy markets operated by the Southwest Power Pool, Inc. or any other regional transmission organization, the Parties shall in good faith negotiate changes to this Agreement to provide for its implementation within the context of such markets in a manner that to the greatest extent possible preserves the value to each Party of the original Agreement. If the Parties cannot reach agreement upon such amendments to the Agreement within ninety (90) days prior to the date on which the regional transmission organization's market rules are scheduled to apply to the Generating Facility, the dispute shall be resolved pursuant to Section 10.4.

ARTICLE VII SECURITY FOR PERFORMANCE

7.1 Performance Security.

(i) If at any time either Party has reasonable grounds to believe that the other Party's creditworthiness or performance under this Agreement has suffered a material adverse change, the requesting Party (the "Requesting Party") may provide the receiving Party (the "Receiving Party") with written notice indicating with specificity the reasonable grounds for its belief and requesting Performance Security in an amount determined by the Requesting Party in a commercially reasonable manner, consistent with the definition of Performance Security in Article 1 above. ~~Buyer-Neither Party may not~~ make a claim of a material adverse change in creditworthiness of ~~the other Party Seller~~ so long as Receiving Party's Seller's (or, if applicable, the Receiving Party's Seller's credit support guarantor's), long-term senior unsecured debt is at or above BBB- by Standard & Poor's Rating Group, a division of McGraw Hill, Inc., or any successor to its statistical rating business, or Baa3 by Moody's Investors Service, Inc. or any successor to its statistical rating business^[A57]^[A58]. The Parties agree that Buyer is a municipal corporation organized under the laws of the State of Kansas and may have certain debt issuances that are unrated. The Parties also agree that those unrated issuances are excluded from consideration of the Buyer's credit worthiness.-

(ii) Upon receipt of such notice, the Receiving Party shall have three (3) Business Days to address the perceived grounds and to propose an agreement on steps to remove or remedy the material adverse change to Receiving Party's creditworthiness or performance. If agreement cannot be reached after such timely consultation, the Requesting Party may require the Receiving Party to remedy the situation by providing such Performance Security to the Requesting Party within five (5) Business Days (or such other date as mutually agreed to by the Parties in writing); provided, however, that by so providing the Performance Security, the Receiving Party is not waiving its rights to challenge the propriety of the Requesting Party's actions hereunder.

(iii) In the event that the Receiving Party fails to provide such Performance Security or other credit assurance acceptable to the Requesting Party within the time frame provided in Section 7.1(ii) above, then Requesting Party may declare an Event of Default under Article VIII.

(iv) Not more than once per month, the Receiving Party may inquire as to whether the Receiving Party's creditworthiness or performance has returned to a level where a

material adverse change no longer exists and Requesting Party should therefore return the Performance Security to Receiving Party. If the basis for the material adverse change no longer exists or if, in Requesting Party's reasonable and good faith judgement, Performance Security is no longer necessary, Receiving Party's obligation to provide Performance Security to Requesting Party will cease, and the Requesting Party will promptly return any unused Performance Security with interest, as applicable.

(v) Promptly following the end of the Term and the completion of all of Seller's obligations under this Agreement, Requesting Party shall release the Performance Security (including any accumulated interest, if applicable) back to Receiving Party.

7.2 Remedies.^[A59]^[A60]^[A61] In addition to any other remedy available to Requesting Party, Requesting Party may, before or after termination of this Agreement, draw from the Performance Security such amounts as are necessary to recover amounts owed to Requesting Party pursuant to this Agreement including any damages due to Requesting Party and any amounts for which Requesting Party is entitled to indemnification under this Agreement. Requesting Party may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article VII, and from all such forms, and in any sequence Requesting Party may select. Any failure to draw upon the Performance Security or other security for any damages or other amounts due to Requesting Party shall not prejudice Requesting Party's rights to recover such damages or amounts in any other manner.

7.3 Interest Rate on Cash Amounts Held as Performance Security. For Performance Security in the form of cash that is held by a Party pursuant to this Article VII, the interest rate shall be equal to the Federal Funds Effective Rate as published under "Money Rates" in the *Wall Street Journal* minus one quarter (1/4) percentage point, and such interest shall apply from the date Performance Security in the form of cash is received by a Party to but excluding the earlier of: (i) the date Performance Security in the form of cash is returned to a Party; or (ii) the date Performance Security in the form of cash is applied to the Requesting Party's obligations pursuant to Section 7.2. If the Receiving Party posts cash as Performance Security, Seller shall set forth the calculation of the interest amount due to the Receiving Party in the monthly invoice issued to Buyer.

ARTICLE VIII TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

(i) Buyer fails to make any payment due under the Agreement within thirty (30) days after such payment is due and fails to cure such non-payment within five (5) Business Days after receipt of written notice of such delinquent payment by Seller, unless such payment is contested or a right of set-off has been claimed by Buyer.

(ii) Any other material breach of the Agreement by Buyer not specifically enumerated in this Section 8.1, which is not cured within thirty (30) days after notification by Seller of the breach by Buyer.

(iii) Buyer is in default under the Interconnection Agreement.

(iv) Buyer ceases making payments under this Agreement pursuant to the filing of a petition for voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Buyer voluntarily takes advantage of any such law or act by answer or otherwise, or Buyer makes an assignment of all or a significant part of its assets for the benefit of creditors.

(v) Buyer's failure to establish and maintain the Performance Security if and as required in accordance with Section 7.1, and such failure continues for more than fifteen (15) Business Days following written notice of such failure from Seller to Buyer.

(vi) A case in bankruptcy or any proceeding under any other insolvency law is filed against Buyer as debtor that materially impacts Buyer's ability to perform its obligations hereunder and Buyer has failed to have such proceeding dismissed or stayed within one hundred eighty (180) days after the date of the filing of such proceeding.

8.2 Events of Default by Seller. The following shall each constitute an Event of Default by the Seller:

(i) Seller fails to make any payment due under the Agreement within thirty (30) days after such payment is due and fails to cure such non-payment within five (5) Business Days after receipt of written notice of such delinquent payment by Buyer, unless such payment is contested or a right of set-off has been claimed by Seller.

(ii) Any other material breach of the Agreement by Seller not specifically enumerated in this Section 8.2, which is not cured within thirty (30) days after notification by Buyer of the breach by Seller.

(iii) Seller is in default under the Interconnection Agreement.

(iv) Seller ceases to generate power at the Generating Facility or makes a sale to a party other than the Buyer pursuant to the filing of a petition for voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily takes advantage of any such law or act by answer or otherwise, or Seller makes an assignment of all or a significant part of its assets for the benefit of creditors.

(v) Seller's failure to establish and maintain the Performance Security if and as required in accordance with Section 7.1, and such failure continues for more than fifteen (15) Business Days following written notice of such failure from Buyer to Seller and the Facility Lenders and Tax Investors (if applicable).

(vi) A case in bankruptcy or any proceeding under any other insolvency law is filed against Seller as debtor that materially impacts Seller's ability to perform its obligations hereunder and Seller has failed to have such proceeding dismissed or stayed within one hundred eighty (180) days after the date of the filing of such proceeding.

8.3 Facility Lenders' and Tax Investors' Right to Cure Default of Seller. Seller shall provide Buyer with a notice identifying any Facility Lender and any Tax Investor and providing

appropriate contact information for any Facility Lender and any Tax Investor. Following receipt of such notice, Buyer shall provide written notice of any Event of Default of Seller to such Facility Lenders and Tax Investors simultaneously with the delivery of any such notice to Seller, and Buyer will accept a cure to an Event of Default of Seller performed by such Facility Lenders or Tax Investors, consistent with the terms of any consent or similar agreement entered into by Buyer and such Facility Lenders and/or Tax Investors.

8.4 Termination.

(i) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Section 8.1 or 8.2, as applicable, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of the decision to terminate and the effective date of the termination; provided, however, that the non-defaulting Party shall not be entitled to terminate this Agreement in the case of an Event of Default that is not reasonably capable of being cured within the applicable cure period, if the Event of Default is not a payment default and the defaulting Party (i) has commenced to cure the default within such applicable cure period, (ii) is diligently pursuing such cure, (iii) such Event of Default is capable of being cured by the defaulting Party within a reasonable time (not to exceed an additional ninety (90) days) after the expiration of such cure period, and (iv) such Event of Default is in fact cured within such reasonable period of time; provided, further, that the extended cure period provided for in this Section 8.4(i) shall in no case be for longer than three (3) months after the date of expiration of the original cure period set out in either Section 8.1 or 8.2.

(ii) If the non-defaulting Party has elected to terminate the Agreement, it shall calculate (and provide detailed calculations to the defaulting Party), in a commercially reasonable manner, the net amount of its Gains, Losses and Costs as of the termination date, and any other amounts due by either Party to the other under this Agreement for the period prior to termination. If the net of these calculations is an amount owed by the defaulting Party to the non-defaulting Party, the defaulting Party shall pay such termination settlement amount within ten (10) Business Days of receipt of the calculation from the non-defaulting Party. If the defaulting Party disputes the non-defaulting Party's calculation, in whole or in part, the defaulting Party shall, within ten (10) Business Days of receipt of the non-defaulting Party's calculation of the termination payment, deliver a written notice of dispute and commence the dispute resolution procedure provided in Article X; provided, however, the defaulting Party shall first post collateral in the form of either cash, Letter of Credit or other security reasonably acceptable to the non-defaulting Party in an amount equal to the non-defaulting Party's calculated termination payment. In no event shall the non-defaulting Party be obligated to make a termination payment to the defaulting Party.

(iii) Upon termination of the Agreement by Buyer due to an Event of Default by Seller pursuant to Section 8.4(i), Buyer shall have no future or further obligation to purchase the Capacity or Net Energy of the Generating Facility from Seller or to satisfy any other obligation under this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination.

(iv) Upon termination of the Agreement by Seller due to an Event of Default by Buyer pursuant to Section 8.4(i), Seller shall have no future or further obligation to deliver the

Capacity or Net Energy of the Generating Facility to Buyer or to satisfy any other obligation under this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination.

8.5 **LIMITATIONS OF LIABILITIES.**~~Other Damages~~~~A62~~~~A63~~ EXCEPT IN THE CASE OF FRAUD OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES WHETHER THE CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE AS A RESULT OF THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT. FOR ALL OTHER CLAIMS, CAUSES OF ACTION AND DAMAGES THE PARTIES SHALL BE ENTITLED TO THE RECOVERY OF ACTUAL DAMAGES ALLOWED BY LAW UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT. EXCEPT AS PROVIDED HEREIN, NEITHER THE ENUMERATION OF EVENTS OF DEFAULT IN SECTIONS ~~8.18.1~~ AND ~~8.28.2~~, NOR THE TERMINATION OF THIS AGREEMENT BY A NON-DEFAULTING PARTY PURSUANT TO SECTION ~~8.4(D)~~~~8.4(I)~~, SHALL LIMIT THE RIGHT OF A NON-DEFAULTING PARTY TO RIGHTS AND REMEDIES AVAILABLE AT LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR BREACH OF CONTRACT OR FAILURE TO PERFORM BY THE OTHER PARTY.

ARTICLE IX INDEMNIFICATION

9.1 **General.** Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Net Energy was vested in such Party, unless a Claim is due to such Party's willful misconduct or gross negligence. Each Party shall indemnify, defend and hold harmless the other Party against charges assessed by any Governmental Authority for which the indemnifying Party is responsible. No individual representative of either Party shall have any personal liability to the other Party as a result of the breach of any representation, warranty, covenant or agreement contained herein.

9.2 **Penalties.** Each Party shall indemnify and hold the other Party harmless against all penalties or other charges imposed by NERC, the Federal Energy Regulatory Commission, or any transmission provider or market operator due to the violation by the indemnifying Party of the terms of this Agreement or the requirements of applicable law.

ARTICLE X DISPUTE RESOLUTION

10.1 **Informal Resolution.** It is the intent of the Parties that the sole remedy available to either Party for any breach of or dispute arising under or in relation to or connection with this Agreement or the matters set forth herein shall be the dispute resolution procedure set forth in this Article X. If a dispute arises between the Parties, arising out of or relating to this Agreement or any breach hereof or default hereunder, then the aggrieved Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute. Representatives of the Parties involved in the dispute shall in good faith attempt to resolve such

dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under this Section 10.1.

10.2 Senior Executives. If the dispute is not resolved within ten (10) Business Days following receipt of the dispute notice or such later date as the Parties may mutually agree, then each Party shall promptly designate a senior executive responsible for the subject matter of the dispute who shall have authority to resolve the dispute through negotiations. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute, provided that no document discovery or depositions shall be required during negotiation and any document exchange shall be voluntary. The negotiation and any documents exchanged in connection with the negotiation shall be confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law, evidentiary rules or doctrines. The senior executives shall meet within twenty (20) Business Days, at a time and place mutually acceptable to the senior executives.

10.3 Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the Parties may agree to arbitrate the dispute. The following arbitration procedures will be used absent agreement of the Parties to different procedures for a given arbitration:

(i) The dispute shall be finally settled by binding arbitration, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect, except as modified herein.

(ii) The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the “Demand”), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(iii) Arbitration shall be held in Overland Park, Kansas. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(iv) The arbitrator must be an individual with knowledge and experience in the electric industry and shall be selected by the Parties or (failing their agreement on an arbitrator) by the AAA in accordance with Rule 11 of the AAA Commercial Arbitration Rules.

(v) Each Party shall have the right to limited discovery from the other Party including the right to demand the production of documents, the right to inspect things or places and the right to call expert witnesses following the procedures and requirements set forth in the Federal Rules of Civil Procedure 26(a)(2); provided, however, that all requests are served within a time and in a manner that requires the production/inspection to take place at least twenty (20) days before the hearing.

(vi) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator.

The arbitrator shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vii) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(viii) Unless otherwise ordered by the arbitrator, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrator shall have no power to consider or award any form of damages barred by this Agreement, or any other multiple or enhanced damages, whether statutory or common law.

10.4 Binding Arbitration for Certain Disputes. Following failure of negotiations regarding a dispute arising under Section 6.5, and if the dispute is not within the exclusive jurisdiction of the FERC, either Party may require that the dispute be resolved by binding arbitration, which shall generally follow the procedures specified in Section 10.3, except as follows. Each Party shall submit to the arbitrators and exchange with each other thirty (30) days in advance of the hearing its proposed contractual provisions (a "Proposal") together with its arguments and other materials to support its Proposal; (ii) a Party may modify its Proposal (a "Modification") and any Modification and support therefor shall be submitted to the arbitrators and to the opposing Party no later than ten (10) days before the arbitration hearing; (iii) the arbitrators shall only consider the most recent Modification submitted by a Party, and shall not consider any previous Proposal or Modification submitted by a Party; and (iv) in reaching their decision, the arbitrators shall be limited to selecting only one or the other of the Proposals (or Modifications, if applicable) submitted by the Parties.

ARTICLE XI MISCELLANEOUS

11.1 Assignment.

(i) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties. Subject to this Section 11.1 and except in connection with a Permitted Transfer, the rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Any purported assignment of this Agreement in the absence of the required consent shall be void. All permitted successors and assigns shall be subject to all rights and obligations contemplated herein. In the event that Seller proposes to transfer ownership of the Generating Facility to a third party, Seller shall (subject to the aforementioned consent requirement) assign this Agreement to such third-party purchaser of the Generating Facility, and Seller shall only be relieved of its obligations hereunder upon the execution by the assignee of an assignment and assumption agreement that is in form and substance reasonably acceptable to Buyer.

(ii) Buyer's consent shall not be required for Seller to assign this Agreement directly or for collateral purposes to the Facility Lenders or Tax Investors. Seller shall notify Buyer in writing of any such assignment to the Facility Lenders or Tax Investors no later than ten (10) Days after the assignment.

11.2 Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to Seller:

Evergy Kansas Central, Inc.
818 South Kansas Avenue
Topeka, KS 66612
Attention: Senior Director, Power Marketing
Telephone. 785-575-8005
Email: solar.partners@evergy.com

With a copy to:

Evergy Kansas Central, Inc.
818 South Kansas Avenue
Topeka, KS 66612
Attention: Law Department
Telephone: 785-508-2382

If to Buyer:

[Buyer]
[Address]
[City, State, Zip]
Attention: [Representative]
Telephone: [XXX-XXX-XXXX]

Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending Party if delivered by courier or U.S. mail.

11.3 Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

11.4 No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

11.5 No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public.

11.6 Integration; Amendment. The Agreement, together with all Exhibits attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

11.7 Governing Law.^[A64] The Agreement is made in the State of Kansas and shall be interpreted and governed by the laws of such State and/or the laws of the United States, as applicable.

11.8 Relationship -of Parties.

(i) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(ii) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.

(iii) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee or agent.

11.9 Good Faith and Fair Dealing; Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of the Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

11.10 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be

affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

11.11 Representations and Warranties.

- (a) Each Party represents and warrants to the other Party that as of the Contract Date:
- (i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;
 - (ii) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
 - (iii) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Laws applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;
 - (iv) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;
 - (v) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Governmental Authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and
 - (vi) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law).
- (b) Buyer represents and warrants to Seller that, with respect to its contractual obligations hereunder and performance thereof, Buyer will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction or order for specific performance or recovery of property, or (d) execution or enforcement of any judgment.

11.12 Confidentiality.

(i) This Agreement and amendments hereto shall be considered proprietary and shall not be provided to a third party without prior written approval of the other Party, provided, however, that (i) either Party may disclose the terms of this Agreement and amendments hereto if a Party is required to disclose such information by law or court order, or (ii) either Party may disclose such information that is already in the public domain. In the event certain information must be provided pursuant to a regulatory proceeding, the Parties shall take reasonable steps to protect the confidentiality of proprietary information.

(ii) Either Party shall be entitled to disclose or use proprietary data in any proceeding before the Federal Energy Regulatory Commission, the Kansas Corporation Commission, the Missouri Public Service Commission, the Environmental Protection Agency, the Kansas Department of Health and Environment or any similar regulatory commission or agency if it is required or advantageous to do so, in the Party's sole discretion and upon written notice to the other Party. In such an event, the disclosing Party will take all reasonable actions to limit the scope of any disclosure, shall only disclose any proprietary data subject to applicable rules and regulations protecting its proprietary nature, and shall resist the efforts by any Person to obtain, any such proprietary data. It shall not be a violation of this Section 11.12 for Buyer to disclose any proprietary data as required pursuant to its obligations under applicable public records, open-records statutes, or similar laws.

~~(iii)~~ — Seller recognizes that Buyer is a public body and, as such, is subject to certain open records laws in the State of Kansas. In the event Buyer receives a request or claim under the open records law, Buyer shall notify Seller within three (3) business days of the nature of any such claim. If the Buyer determines that it is required to comply with the open records law request and will release certain information that otherwise would be covered by the confidentiality provisions set out in this Agreement, Buyer will notify Seller. If Seller does not agree to the release of the information, then Seller will assume all obligation to pursue any necessary legal action with respect to the claim or request under the open records law, and shall indemnify and hold Buyer harmless from any and all legal expenses, including costs and attorney's fees, arising out of such open records request.

11.13 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement; without limitation, Buyer shall have no obligation to agree to any documents that would diminish Buyer's rights or increase Buyer's obligations hereunder in any respect.

~~11.13~~ 11.14 Change In Law.
— If a change in Law renders this Agreement or any terms herein incapable of being performed or administered or results in a material adverse impact on a Party's performance obligations herein,

then either Party, on written notice to the other Party, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered without material adverse impact, while attempting to preserve, to the maximum extent possible, the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. Upon receipt of a written notice requesting negotiations, the Parties shall negotiate in good faith. If the Parties are unable, within thirty (30) Days of the sending of the written notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution proceedings as provided in Article X. A change in normal operating cost shall not, in itself, be deemed to render this Agreement or any terms herein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure event.

11.1411.15 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that, by their nature, should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation. For the avoidance of doubt, in the event of an early termination of this Agreement due to an Event of Default by Buyer, Buyer will continue to: (i) provide the Generating Facility with around-the-clock auxiliary power at the Buyer's current retail rate for service, and (ii) provide and maintain fiber optic line(s) and/or adequate internet services to the necessary Generating Facility equipment.

11.1511.16 Accommodation of Facility Lenders and Tax Investors. Buyer shall (a) make commercially reasonable efforts to accommodate the Facility Lenders' or Tax Investors' requests to vary the terms and conditions of this Agreement to protect the Facility Lender's or Tax Investors' interests so long as such requests do not materially adversely affect any of Buyer's rights, benefits, risks and/or obligations under this Agreement or Buyer's regulatory approvals or financing, and (b) provide such consents to collateral assignment, certifications, representations, information, legal opinions, inter-creditor agreements or other documents (including estoppel certificates related to a tax equity financing) as may be reasonably requested by Seller, the Facility Lenders or Tax Investors in connection with the financing of the Generating Facility; provided that in responding to any such request, Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially adversely affects any of Buyer's rights, benefits, risks and/or obligations under this Agreement. Seller shall reimburse, or shall cause the Facility Lenders or Tax Investors to reimburse, Buyer for the reasonable incremental out-of-pocket expenses (including the reasonable fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller, the Facility Lenders or Tax Investors, and provided by Buyer pursuant to this Section 11.1611.15.

11.1611.17 Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer; provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder, and provided further that such subcontractor has all necessary insurance coverages.

(i) The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

(ii) Seller shall be entitled to all (a) ITCs and state investment tax credits and any other tax credits which are or will be generated by the Generating Facility, (b) any cash payments or outright grants of money relating in any way to the Generating Facility, and (c) any credits that Buyer is not otherwise entitled to pursuant to the provisions of Section 2.8 ((a), (b) and (c) being the “Tax Benefits”). Buyer acknowledges that Seller has the right to sell any Tax Benefits to which it is entitled pursuant to this Section ~~11.18~~~~11.17~~ to any Person at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such credits or in any amount that Seller realized from the sale of such Tax Benefits.

(i) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term of the transaction described herein. Absent the Parties’ written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(ii) Absent the agreement of both Parties to the proposed change, the standard of review for changes to any section of this Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting *sua sponte*, shall be the public interest application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

to the provisions of Section 3.5(iv), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect. No waiver by a Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by a Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller and Buyer are “forward contract merchants” within the meaning of the United States Bankruptcy Code.

Statements. Neither Party shall issue, or permit any agent, member or Affiliate of such Party to issue, any press releases or otherwise make any public statements with respect to this Agreement or the transactions contemplated hereby, except (a) when such release or statement is deemed in good faith by the releasing Party to be required by law or (b) with the prior consent of the other Party, which shall not be unreasonably conditioned or delayed. In each case to which such exception applies, the releasing Party shall provide a copy of such proposed release or statement to the other Party at least two (2) Business Days before releasing it to the public and incorporate any reasonable changes which are suggested by the non-releasing Party prior to issuing the release or making the statement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Evergy Kansas Central, Inc.

By: _____

Name: _____

Title: _____

[Legal Name]

By: _____

Name: _____

Title: _____

Exhibit A

PURCHASE PRICE FOR OPTION

Contract Years 8 through 10	\$[X,XXX,XXX]
Contract Years 11 through 15	\$[X,XXX,XXX]
Contract Years 16 through 20	\$[X,XXX,XXX]
Contract Years 21 through 30	\$[X,XXX,XXX]

Exhibit B

REQUIRED INSURANCE COVERAGES

Notwithstanding the following, Seller may elect to self-insure or maintain standard insurance policies to the extent of the insurance requirements in this contract without approval of Buyer; provided that, in the event of self-insurance, Seller must maintain an investment grade credit rating from both Standard & Poor's and Moody's.

Contractor shall provide, and require the same of any of Contractor's subcontractors, Comprehensive General Liability insurance as follows:

General Liability -	Bodily Injury:	\$2,000,000 each occurrence
		\$2,000,000 annual aggregate
	Property Damage:	\$2,000,000 each occurrence
		\$2,000,000 annual aggregate
	Personal Injury:	\$2,000,000 annual aggregate
Comprehensive Auto Liability - Bodily Injury:		\$1,000,000 each person
		\$1,000,000 each occurrence
		\$2,000,000 annual aggregate
	Property Damage:	\$1,000,000 each occurrence or a combined single limit of \$2,000,000.

Worker's Compensation - In accordance with the laws of the State of Kansas

Exhibit C

FACILITY DESCRIPTION, SHADE EASEMENT, AND SITE MAP

Site: [Address]

Gross power rating (DC): [XX] MW

Net power rating (AC): [XX] MW

Point of Delivery: Tap into [Local three phase distribution system]

RESOLUTION NO. 979

**A RESOLUTION AUTHORIZING THE EXECUTION OF THE
SOLAR DEVELOPMENT AGREEMENT**

WHEREAS, the City of Osawatomie, Kansas, owns and operates an electric utility; and

WHEREAS, The City has three power purchase agreements in place as well as the capability to generate its own power when necessary; and

WHEREAS, the city has been working with Evergy Kansas Central, Inc. (Evergy) under a Memorandum of Understand and a Solar Development Agreement since October of 2021; and

WHEREAS, Evergy has presented a cost-effective means by which the city can purchase renewable energy from a solar facility that is planned for construction on city-controlled land commonly referred to as “the Northland”; and

WHEREAS, both the City of Osawatomie and Evergy have negotiated in good faith on behalf of both parties to purchase the power generated from the solar facility; and

WHEREAS, the council has heard the presentation on the planned solar array and deems it in the best interests of the city in general as well as its electric utility customers specifically, to purchase the power from the solar facility from Evergy and add this power to its existing electrical generation portfolio.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Osawatomie, Kansas, in regular meeting duly assembled this 24th day of March, 2022 that the Governing Body authorizes the Mayor to execute the Power Purchase Agreement as presented to the City Council at its regularly scheduled council meetings on both March 10th, 2022 and March 24th, 2022.

PASSED AND ADOPTED by the Governing Body of the City of Osawatomie, Kansas this 24th day of March, 2022, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	
	Date:	March 3, 2022
Golf Course Superintendent	From:	Eric Draper

RE: Purchase of golf carts from Masek Golf Car Company

RECOMMENDATION: That the City Council approve the bid of \$267,500 for the purchase of 50 Yamaha golf carts for the golf course.

DETAILS: As part of our replacement and master plan, request for bids for a new fleet of 50 golf carts were asked from the three major golf car distributors in our area. Included within the bids are the trade in value for 38 of our Club Car golf carts. Yamaha is willing to give us \$3,600 per cart for trade value. This price is more than what we paid for each cart in 2019. The other companies were not able to quote prices on trades. The following prices are per cart from each distributor.

Club Car: \$5,300

Ez-Go: \$5,600

Yamaha: \$5,350

This purchase will be funded by using cash on hand, and financing through a local lender.

RESOLUTION NO. 982

**A RESOLUTION ACCEPTING THE PROPOSAL OF YAMAHA AND DIRECTING THE CITY
MANAGER TO EXECUTE THE PURCHASE OF FIFTY (50) GOLF CARTS AT THE
OSAWATOMIE GOLF COURSE.**

WHEREAS, replacing golf carts on a regular basis ensures that the golf course is encouraging and maintaining revenues for the operation of the golf course; and

WHEREAS, the City needs to also try and maximize the amount of money that can be generated by trade-ins of golf course.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY
OF OSAWATOMIE, KANSAS:**

SECTION ONE: The Governing Body hereby accepts the bid of Masek Golf Car Company for the purchase of 50 Yamaha golf carts for the golf course at a cost \$5,350 per cart for a total of \$267,500.

SECTION TWO: The Governing Body hereby accepts the per cart trade-in value of \$3,600 per cart (38 total carts) for \$136,800.

SECTION THREE: The Governing Body hereby directs city staff to develop a 3- or 4- year lease purchase agreement for the payment on the balance owed if \$130,700.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 10th day of March, 2022, a majority voting in favor of.

APPROVED and signed by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	10.E
	Date:	03/10/2022
City Manager	From:	Mike Scanlon

RE: Resolution 983 – Resolution designating the application of \$125,000 of the 2022 allocation of the American Rescue Plan Act grant to the first phase of Camp MoPac.

RECOMMENDATION: Approve Resolution 983 – Resolution designating the application of \$125,000 of the 2022 allocation of the American Rescue Plan Act grant to the first phase of Camp MoPac.

DETAILS: We are applying for a Tourism Attraction Sub-grant for Kansas **(TASK)**. This is a 50/50 grant in which you can ask for up to \$250,000 in matching funds for a project. The project has to be capital investment in nature and it needs to attract people to Kansas. **The types of projects this grant is trying to attract will bring new visitors to Kansas.** Examples include but not limited to: museums, sports facilities, major attractions, significant permanent exhibits, unique or destination-type lodging, conference centers, trails, and outdoor activities that spur visitation. We believe that the bike-hike hut ideas that were presented last spring to the City Council and the expansion of our Mile Zero development fits the criteria and offers us yet another way to leverage the Flint Hills Trail to the benefit of our community. One of the things important in any funding/grant request is to show both the financial commitment of the City and support for the project community-wide. Resolution 983 is the financial commitment piece.

We will receive approximately \$364,000 in ARPA dollars that we did not use in our 2022 budget. Subtracting this amount would leave another \$239,000 to be allocated. **We are allowed to leverage ARPA dollars with this grant – this has not been typical.**

Related Statute / City Ordinances	Resolutions 878, 913
Line-Item Code/Description	ARPA Grant Dollars – 2022 Allocation
Available Budget:	\$364,000

RESOLUTION NO. 983

**A RESOLUTION DESIGNATING THE APPLICATION OF \$125,000 OF THE 2022
ALLOCATION OF THE AMERICAN RESCUE PLAN ACT GRANT TO THE FIRST PHASE
OF CAMP MOPAC.**

WHEREAS, the City of Osawatomie established the Task Force for Rails for Trails on September 27, 2018; and

WHEREAS, the Task Force for Rails for Trails became known as the Osawatomie Trails Task Force; and

WHEREAS, the Osawatomie Trails Task Force took on the completion of the Flint Hills Trail segment connecting the City of Osawatomie to the Flint Hills Trail and creating Mile Zero of the Flint Hills Trails State Park; and

WHEREAS, the City of Osawatomie has worked hand-in-hand with the Osawatomie Trails Task Force to get the Osawatomie connection finished which included the creation of Walker Station at Mile Zero, a pedestrian bridge and other trail amenities; and

WHEREAS, the City of Osawatomie through its Planning Sustainable Places grant sponsored by the Mid-America Regional Council (MARC) developed transportation corridors and planning elements to tie the Flint Hills trail to the Osawatomie Downtown corridor; and

WHEREAS, the City of Osawatomie began exploring in the spring of 2021 the development of a camp ground at Mile Zero in partnership with and in cooperation with the Osawatomie School District (USD 367) and the Greater Osawatomie Foundation; and

WHEREAS, the City of Osawatomie believes that Walker Station at Mile Zero and Camp MoPac can become an economic driver that pulls people into our community and builds off the City's historic ties to John Brown and the Border Wars of the mid-19th Century.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY
OF OSAWATOMIE, KANSAS:**

SECTION ONE: The Governing Body hereby allocates \$125,000 in 2022 ARPA grant dollars to the Phase I development of Camp MoPac.

SECTION TWO: The Governing Body will on an ongoing basis dedicate \$50,000 for the continued development of Mile Zero and Camp MoPac.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 10th day of March, 2022, a majority voting in favor of.

APPROVED and signed by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk

CITY OF OSAWATOMIE
YTD TREASURERS REPORT
AS OF: JANUARY 31ST, 2022

FUND	BEGINNING CASH BALANCE	Y-T-D REVENUES W/ACCRUAL	Y-T-D EXPENSES W/ACCRUAL	ACCRUAL ENDING CASH BALANCE	NET CHANGE OTHER ASSETS	NET CHANGE LIABILITIES	ENDING CASH BALANCE
01 -GENERAL OPERATING	760,097.03	555,430.39	150,300.30	1,165,227.12	0.00	(6,565.98)	1,158,661.14
02 -WATER	56,598.44	81,871.12	40,122.83	98,346.73	0.00	(545.27)	97,801.46
03 -ELECTRIC	661,818.85	313,124.21	206,416.92	768,526.14	0.00	(57,115.17)	711,410.97
04 -SEWER	105,840.60	83,518.75	21,151.33	168,208.02	0.00	(13,000.00)	155,208.02
05 -REFUSE	6,902.64	194,257.56	30,680.68	170,479.52	0.00	0.00	170,479.52
06 -LIBRARY	113,332.56	25.00	0.00	113,357.56	0.00	0.00	113,357.56
07 -RECREATION	0.00	0.00	0.00	0.00	0.00	0.00	0.00
08 -RURAL FIRE	1,385.00	0.00	8,215.02	(6,830.02)	0.00	0.00	(6,830.02)
09 -INDUSTRIAL PROMOTION	12,548.42	16,739.45	0.00	29,287.87	0.00	(1,435.00)	27,852.87
10 -REVOLVING LOAN	0.00	0.00	0.00	0.00	0.00	0.00	0.00
11 -SPECIAL PARK & RECREATION	159.99	0.00	0.00	159.99	0.00	0.00	159.99
12 -STREET IMPROVEMENTS	105,915.44	30,154.12	703.91	135,365.65	0.00	(1,452.25)	133,913.40
13 -TOURISM	48,591.23	1,521.50	2,388.87	47,723.86	0.00	(3,600.00)	44,123.86
14 -PUBLIC SAFETY EQUIPMENT	1,470.98	13,915.77	0.00	15,386.75	0.00	0.00	15,386.75
15 -SPECIAL 911 REVENUE	0.00	0.00	0.00	0.00	0.00	0.00	0.00
17 -RECREATION EMPLOYEE BENEF	0.00	0.00	0.00	0.00	0.00	0.00	0.00
18 -GOLF COURSE	142,584.28	5,662.75	14,364.84	133,882.19	0.00	(2,693.13)	131,189.06
21 -CIP - GENERAL	155,212.81	0.00	0.00	155,212.81	0.00	0.00	155,212.81
22 -CIP -WATER	51,235.20	0.00	0.00	51,235.20	0.00	0.00	51,235.20
23 -CIP - ELECTRIC	33,294.86	0.00	0.00	33,294.86	0.00	0.00	33,294.86
24 -CIP - SEWER	157,128.86	0.00	0.00	157,128.86	0.00	0.00	157,128.86
25 -CIP - STREET PROJECT	223,796.76	0.00	0.00	223,796.76	0.00	0.00	223,796.76
27 -CIP - GRANTS	3,556.79	0.00	0.00	3,556.79	0.00	0.00	3,556.79
29 -CIP - SPECIAL PROJECTS	0.00	0.00	0.00	0.00	0.00	0.00	0.00
31 -EMPLOYEE BENEFITS	78,035.92	280,105.35	69,468.97	288,672.30	0.00	(1,502.29)	287,170.01
32 -CAFETERIA 125	88,906.32	1,335.76	2,572.55	87,669.53	0.00	0.00	87,669.53
35 -TECHNOLOGY FUND - CIP	28,849.87	3,126.46	0.00	31,976.33	0.00	0.00	31,976.33
41 -BOND & INTEREST	309,904.70	461,658.26	0.00	771,562.96	0.00	0.00	771,562.96
43 -ELECTRIC DEBT SERVICE	164,634.73	37,500.00	0.00	202,134.73	0.00	0.00	202,134.73
51 -COURT ADSAP	7,401.00	0.00	0.00	7,401.00	0.00	0.00	7,401.00
52 -COURT BONDS	21,890.08	4,008.00	208.00	25,690.08	0.00	0.00	25,690.08
53 -FORFEITURES	26,466.76	669.00	0.00	27,135.76	0.00	0.00	27,135.76
54 -EVIDENCE LIABILITY	12,899.79	0.00	0.00	12,899.79	0.00	0.00	12,899.79
57 -FIRE INSURANCE PROCEEDS	0.00	0.00	0.00	0.00	0.00	0.00	0.00
58 -MAYOR'S CHRISTMAS TREE FU	2,780.01	0.00	0.00	2,780.01	0.00	0.00	2,780.01
93 -CREDIT CARD CLEARING FUND	13,637.46	(13,637.46)	0.00	0.00	0.00	0.00	0.00
95 -CLEARING ACCOUNT	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GRAND TOTAL	3,396,877.38	2,070,985.99	546,594.22	4,921,269.15	0.00	(87,909.09)	4,833,360.06
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*** END OF REPORT ***