AGENDA
GARDNER CITY COUNCIL
City Hall – 120 East Main Street -- Gardner, Kansas
Monday, August 19, 2019
7:00 p.m.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
PRESENTATION
1. Proclaim August 31, 2019 as Gardner Day at the K

PUBLIC HEARING
PUBLIC COMMENTS
Members of the public are welcome to use this time to make comments about City matters or items on the agenda that are not part of a public hearing

CONSENT AGENDA
1. Standing approval of the minutes as written for the regular meeting on August 5, 2019.
2. Standing approval of City expenditures prepared July 31, 2019, in the amount of $226,361.20; August 2, 2019, in the amount of $405,386.57; and August 9, 2019, in the amount of $594,663.05.
3. Consider authorizing the purchase of 800 tons of deicing salt from Independent Salt Co.
4. Consider authorizing the purchase of a new grinder at the Big Bull Creek Lift Station
5. Consider authorizing the purchase of a compact excavator and a skid loader for the Line Maintenance Division

PLANNING AND ZONING CONSENT AGENDA
COMMITTEE RECOMMENDATIONS
OLD BUSINESS
NEW BUSINESS
1. Consider adopting an ordinance rezoning Z-19-03 property located at the northwest corner of Moonlight Road and University Drive from RP-3, R-3, and RP-4 to RP-3 with an associated preliminary development plan PDP-19-03 for Tallgrass
2. Consider authorizing the execution of a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project
3. Consider authorizing the execution of Amendment 1 to Hillsdale WTP Expansion Phase I agreement with Burns & McDonnell-CAS Constructors for easement acquisition support

COUNCIL UPDATE – Oral presentation unless otherwise noted

EXECUTIVE SESSION

ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Gardner will provide reasonable accommodations for all public meetings. Persons requiring accommodations in attending any of our public meetings should contact the City Clerk's Office at 913-856-0945 a minimum of 48 hours prior to the meeting.
PROCLAMATION

WHEREAS, Derek “Bubba” Starling was born and raised in Gardner, Kansas; and
WHEREAS, John Means was born in Olathe and raised in Gardner, Kansas; and
WHEREAS, both Means and Starling played on, and starred on, the Gardner-Edgerton boys baseball team; and
WHEREAS, both Starling and Means were proud 2011 graduates of Gardner-Edgerton High School; and
WHEREAS, Starling, an outfielder and two-sport star in both baseball and football, was drafted by the hometown Kansas City Royals with the #5 overall pick in the 2011 Major League Baseball Entry Draft; and
WHEREAS, Means, a pitcher, went on to Fort Scott Community College and West Virginia University, excelling on the field at both institutions; and
WHEREAS, Means was subsequently drafted in the 11th round of the 2014 MLB Entry Draft by the Baltimore Orioles; and
WHEREAS, Baltimore promoted Means to their major league roster on September 24th, 2018, and after a sensational first half to the 2019 Major League Baseball season, Means was selected to play in the All-Star game; and
WHEREAS, Starling was also promoted to the Major Leagues on July 12th, 2019 and made his debut at home that evening, playing center field; and
WHEREAS, both Starling and Means will be playing at Kauffman Stadium when the Orioles visit the Royals August 30th-September 1;

NOW, THEREFORE BE IT RESOLVED, that I, Steve Shute, Mayor of the City of Gardner, Kansas, do hereby proclaim August 31, 2019 as

Gardner Day at the K

in the City of Gardner, Kansas and urge our citizens to recognize the Gardner pride and perseverance these men have epitomized in achieving their dreams of making the “big leagues”. In witness whereof, I have hereunto set my hand and caused the Seal of the City of Gardner, Kansas to be affixed this 19th day of August 2019.

CITY OF GARDNER, KANSAS

Steve Shute, Mayor

(SEAL)

Attest:

Sharon Rose, City Clerk
The City Council of the City of Gardner, Kansas met in regular session on July 15, 2019, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Mayor Steve Shute presiding. Present were Councilmembers Lee Moore, Rich Melton, Mark Baldwin, Randy Gregorcyk, and Todd Winters. City staff present were City Administrator James Prueting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Finance Director Matthew Wolff; Police Captain Lee Krout; City Clerk Sharon Rose; and City Attorney Ryan Denk. Others present included those listed on the attached sign-in sheet and others who did not sign in.

CALL TO ORDER
There being a quorum of Councilmembers present, the meeting was called to order by Mayor Shute at 7:00 p.m.

PLEDGE OF ALLEGIANCE
Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

PUBLIC HEARING

PUBLIC COMMENTS

Heath Freeman, 602 N. Walnut St. - I would like to see council direct staff to begin discussions with local government partners, especially the school district, to turn homecoming into more of a city event, with a parade or bonfire. Until now, the school district has been leaned upon to do this, and they’ve done what they can, but I’d like to see the city get more involved. We’ve had some tremendous success over the past decade so as a city. Those quality of life small town events, we’ve become amazing at those. I’d like to see that carry over into the homecoming event. It’s too late for 2020, but I’d like to see that as part of the 2021 budget process. If there’s a need for a citizen committee, I would volunteer my time to be on a committee. One of the things that helps us shine is the fact that we are a one high school town, and Blazer pride can shine all the way. I’m also going to give the same spiel to the school district because it’s important to me. We need to maintain what we see in the surveys, that small town feel that makes people move to Gardner. Even though we’re still part of JoCo, one of the things that makes us unique is that one high school. In addition, in reaction to the fair, I would like the city as a whole to have more assertive education and information sharing about the fair. There were some facebook posts, but they were day-of. I’d like to see that start a little further ahead and engage that, because it brings so many individuals to town. You do see many in the area unaware that we host the fair every year. Talking about how proud we are to host that incorporated into our website, into the calendar with links, some of those things we aren’t doing now, and use our email channels and social media platforms to do that.

Dennis Watson, 670 S. Mulberry - My wife and I are new residents of Gardner of the past 2.5 years. We’ve been residents of Johnson County for 40 years. It’s been my pleasure to do business in this town often through all those years. We are pleased to be in this town, and are excited to watch the process of the city. We are part of group that prays for city on a regular basis, for the operation of the city council and all the administration and employees, especially those first responders. We are just glad to be a part of this city, and thank you for what you do.

Todd Chappell, 29410 W. 153rd Terr, Gardner Lake – I’m speaking about item on the agenda, #7, the purchase of the tracts of land between my property and the water. I’ve been in discussion with Mr. Kramer this afternoon, and all the way back to June when I began this process to purchase that piece of land. I’ve gone through all the steps per our original agreement. The item of concern was when I saw the verbiage for what’s being brought forth tonight. There is a new article, 4, that talks about annexation of additional property that was added in, it was not
part of the original discussions or agreements that we’ve had. It’s raised a lot of concerns in our community, certainly as a property owner that raised concerns for me, as a full understanding of just this simple purchase if I’m giving up any rights. Mr. Kramer said he would be addressing that with council tonight and with legal. I do have some significant concerns regarding that. I love living in Gardner. I stay active and keep the lake clean, use my tractor to pull trees out of the dam to help out, but I am concerned about giving up any rights on that, and would ask that the verbiage be removed, at least for myself.

Jan Pringle, 15271 Lake Road 1 – I’m speaking on same issue as Mr. Chappell. Mr. Mayor, I remember at this spring’s Gardner Lake Association general membership meeting, you appeared to talk to us briefly about being friendly and establishing good relationships, but then we discover there’s something slipped into page 63 of the agenda talking about the homeowners – just in order to buy that parcel of land and improve their lives and the property – literally being forced to agree to annexation by the city. For something like that to suddenly appear, that just doesn’t look all that friendly. I’m afraid relations with the lake have been set back immeasurably. We just happened to notice that, thank goodness, so we can have our say about this. I can’t think this is what you could call consent to annexation, it sounds like extortion, forcing them to agree to annexation. You already know how the people at the lake feel about annexation. They don’t want to be annexed by the city. They've made that clear. We've been perfectly happy in unincorporated Johnson County. Not that we don't love the city of Gardner. We do all our shopping here, spend money here, pay taxes, but we have been happy in unincorporated JoCo. They've been good to us. They’ve always dealt with us respectfully and with transparency. And now we’re going to be forced to be annexed by the city, again it’s more like extortion to force them to do that to by that slip of land. You already have the 10 foot easement around the lake, I don’t know what more you could want. We have to consider that the City Administrator receives a bonus to his compensation for annexing land, and this make the whole idea look incredibly suspect. If it’s annexation you want, this isn’t the way to go about it. I’m speaking on behalf of many people at the lake who think you should abandon this idea. It’s going to cause problems and a patchwork of ownership.

CONSENT AGENDA

1. Standing approval of the minutes as written for the regular meeting on July 15, 2019

2. Standing approval of City expenditures prepared July 11, 2019, in the amount of $1,241,690.44; July 18, 2019, in the amount of $756,352.88; July 19, 2019, in the amount of $786,857.17; and July 25, 2019, in the amount of $266,051.80.

Councilmember Melton made a motion to approve the Consent Agenda.

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PLANNING & ZONING CONSENT AGENDA

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS

1. Consider approving the payments of the amounts included in the Order for Payment for the acquisition by condemnation of real property interest in fee simple for the use of the City of Gardner, Kansas, for public use associated with the city's use and operation of the Gardner Municipal Airport

Public Works Director Michael Kramer spoke on the acquisition of the Baker Tract on the east side of the airport, between Waverly Rd and the airport. Previous council action and ordinances authorized eminent domain
proceedings. The court appoints three appraisers to submit a value. Within 30 days, we are required to submit funds as ordered in the appraiser’s award. That property then becomes our property for use as described. There is an appeal process where either party can appeal that award. Kramer believes this is also a 30-day window. The total valuation for the property based on the appraisers is $500,000, and $9,900 in court expenses.

Councilmember Melton asked for a quick update on why we are doing this for the folks who are here for the first time. Director Kramer said this is to protect the east-west runway. Ultimately this is funded by the FAA, and this is the FAA’s highest priority project for our airport. We must move forward with this prior to any other project. This allows us, in the future, to move that runway south slightly and expand the buildings at the airport. City Attorney Ryan Denk clarified that the piece we are required to obtain is in the runway protection zone. The FAA regulation dictates that if it’s in runway protection zone, RPZ, it’s not sufficient anymore to have an easement over that. We actually have to own it in fee simple, which is what this is. Councilmember Moore said the reason it’s a runway protection zone is to prevent the landowner from building a structure that could interfere with the approach path of an aircraft.

Councilmember Gregorczyk asked if mineral rights go with this, or remain the ownership of the original landowner. Director Kramer said there was a very old oil/gas lease, which was part of the condemnation case and will no longer be in effect. City Attorney Denk confirmed that when you acquire a property in fee simple, you get the mineral rights as well. The old oil and gas lease on that property was in the 1940s, but the way the lease was termed was that it was good for a period of three years or until the reserves are spent or oil and gas production expired. No one can remember oil wells or gas production on that site ever, so we consulted with the title company and they were of the opinion that it had expired. To be safe, we went ahead and condemned that interest.

Councilmember Moore made a motion to approve the payments of the amounts included in the Order for Payment for the acquisition by condemnation of real property interest in fee simple for the use of the City of Gardner, Kansas, for public use associated with the city’s use and operation of the Gardner Municipal Airport.

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

2. **Consider adopting a resolution determining the intent of the City of Gardner, Kansas, to enter into a lease-purchase agreement to finance the acquisition of real property, authorizing the solicitation of bids for lease-purchase financing and evidencing the intent to finance the acquisition of land with federally tax-exempt debt**

Director Kramer presented this to allow the Finance Department to seek lease bids and finance the payment until such time as the airport grant is closed and we can receive funds back to pay it off. Mayor Shute clarified this is stopgap funding or bridge funding. Finance Director Matthew Wolff clarified that when we get grant proceeds back, it will go back to reimburse for eligible project costs, like land acquisition and some of the professional service fees. The interest on the debt service and costs of issuance will be straight from the airport fund.

Councilmember Moore made a motion to adopt a resolution determining the intent of the City of Gardner, Kansas, to enter into a lease-purchase agreement to finance the acquisition of real property, authorizing the solicitation of bids for lease-purchase financing and evidencing the intent to finance the acquisition of land with federally tax-exempt debt.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution 2028.
3. Consider adopting an ordinance authorizing the issuance of general obligation bonds in an amount not to exceed $25,250,000 to pay the cost of an expansion to the Hillsdale Water Treatment Plant, all pursuant to Charter Ordinance No. 12 of the City of Gardner, Kansas

Finance Director Matthew Wolff recommends adopting this ordinance authorizing the issuance of general obligation bonds in an amount not to exceed $25,250,000 to pay the cost of expansion of the water treatment plant. These improvements will allow for an additional 3 million gallons per day (MGD) of water to be treated at the plant. This will help accommodate the city for future growth and current development projects. Staff brings this authorization tonight for transparency. The contract will follow in coming months, but our budget, the next agenda item, basically assumes that you will be entering into a contract later this year. This project was originally scheduled for 2021, but at council’s direction, it was moved to 2019. We have to encumber the entire contract this year and at year-end account, we will see the water fund go negative. This is allowed under Kansas budget law and cash law as long as we have a debt financing plan in place. I wanted this to come before budget approval. The city will go negative at the end of this year in the water fund, the bond proceeds will come in next year, and at the end of 2020 we will have a healthy fund balance.

Councilmember Baldwin asked Utilities Director Gonz Garcia if they ever got a number that if they just went with 2 MGD was going to be $17 million. Director Garcia provided an update in previous meeting stating that due to the type of clarifier that was selected, they had to go on 3 MGD increments. The original cost for the 2MGD facility was $21.5 million, because of clarifier chosen only goes 3mgd increments. Would have to go with a different clarifier.

Councilmember Melton made a motion to adopt an ordinance authorizing the issuance of general obligation bonds in an amount not to exceed $25,250,000 to pay the cost of an expansion to the Hillsdale Water Treatment Plant, all pursuant to Charter Ordinance No. 12 of the City of Gardner, Kansas

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance 2619.

Melton: Yes
Moore: Yes
Winters: Yes
Baldwin: Yes
Gregorcyk: Yes

4. Consider adopting an ordinance adopting the Fiscal Year 2020 Budget

Finance Director Wolff reminded council that last year they adopted the 2019 budget with concurrent conditional adoption of the 2020 budget. Although the city prepared a biennial budget for 2019 and 2020, Kansas law requires annual budget approval. The proposed 2020 budget was presented to council on June 17th and on July 15th, we held the statutorily required budget hearing, which was held in compliance with Kansas statutes. The budget is structurally sound, which was represented by the adequate reserves in both tax levy funds and utility funds at end of year 2020. Projected end of year 2020 general fund balance is 23%. The budget provides continued service for
excellence and infrastructure needs for our residents and businesses while preparing for long-term growth. It balances fiscal stewardship and strategic positioning. It includes a water rate increase of 3.7% in 2020. There is no mill levy increase. The estimated FY 2020 mill levy is 20.720, same as FY 2019.

Councilmember Melton made a motion to adopt an ordinance adopting the Fiscal Year 2020 Budget.

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance 2620.

Gregorcyk:  Yes  
Melton:  Yes  
Moore:  Yes  
Winters:  Yes  
Baldwin  Yes

5. Consider adopting a resolution approving the issuance of revenue bonds by the City of Olathe, Kansas to finance facilities located within the corporate limits of the City of Gardner, Kansas.

Olathe Medical Center has asked the City of Olathe to issue revenue bonds to finance certain healthcare facilities, not only in Gardner or Olathe and in Miami County. To streamline the project, they want to do it all through the City of Olathe. These are industrial revenue bonds, so they won’t be on our books. It’s easier for them to go through on entity rather than multiple entities. Staff and bond counsel recommend approving the resolution.

Mayor Shute asked if the reason we have to issue approval for bonds being issued by Olathe is because the actual construction is taking place within the corporate boundaries of Garner. Director Wolff confirmed it’s being built in the corporate limits of Gardner, and by Kansas law, they have to ask us for permission. Councilmember Gregorcyk said if we had business interests in Olathe, we could ask them, Mayor Shute said not us, but a developer.

Councilmember Melton made a motion to adopt a resolution approving the issuance of revenue bonds by the City of Olathe, Kansas to finance facilities located within the corporate limits of the City of Gardner, Kansas

Councilmember Gregorcyk Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution 2029.

Baldwin  Yes  
Gregorcyk:  Yes  
Melton:  Yes  
Moore:  Yes  
Winters:  Yes

6. Consider approving revisions to the policy for property sales at Gardner Lake authorizing the City Administrator to sign Quit Claim deeds for future sales conforming to the policy, and authorize the Mayor to sign the Declaration of Easements, Covenants, Conditions and Restrictions to be attached to the property sales

Public Works Director Michael Kramer explained the reason he created the document for approval, which is the declaration of easements, covenants, conditions and restrictions is to clean up the process and ensure those restrictions move forward with the property. Prior to this, they were very simply stated on the quitclaim deed. We
believe it was sufficient to move forward and protect those property interests in the future on sales that have occurred, but this will ensure that those would survive with future property sales. The restrictions are no fences over 4 ft, no structures such as sheds and gazebos higher than 10 ft or with a footprint larger than 120 sq ft, 10 ft easement at the water’s edge for use by city employees and fulfilling duties related to the lake. Based on the Nov 5, 2018 council meeting, we talked about adding a consent to annexation. It doesn’t mean immediate annexation for the property, but if the city should move to annex in the future, the property owner cannot oppose annexation. This is typically done with other municipalities when they dispose of excess property. Clarification is in Article 4.1 of the covenants and deed restrictions. Kramer said he believed that was added to create that consent to annexation, and it’s not. That article is dealing strictly with those covenants and restrictions and properties being added to those covenants and restrictions – not annexation to the City of Gardner proper. Should the city want to have that as a requirement, there’s a separate form that’s a consent to annexation that would be included as another exhibit.

City Attorney Denk said by way of background, these covenants, easements, conditions and restrictions are kind of like subdivisions. The developer will file the covenants and restrictions when they develop the first phase. They’ll have a clause like what’s in 4.1 here that if they add additional real property to the subdivision, the developer has the right to add property to the covenants and restrictions. That’s the model I used. We looked at all of the city owned property and it’s a mess. We own the lake; we sold different parcels out over time. To pay a surveyor to prepare legals for city owned properties, you’d be spending a lot of money. This concept is that we would have a master declaration of easements and restrictions, and as we sold these parcels off, we would add the parcels we’re selling off into the master covenant. This is not a consent to annex into the city. Through this clause, you’re acknowledging that the covenants, easements and restrictions apply to the property. Additional properties may be added as we go down the road. Article 4.1 doesn’t say anything about the annexation of the city, it says ‘may be annexed to and become subject to this declaration’. This clause doesn’t provide for dictate annexation into the city.

Mayor Shute said this is why the consent is filed with the JoCo Register of Deeds and not with the City of Gardner. Annexation of real property into the city would require a consent form to be filed with the City and not with the Register of Deeds, so this has to do with restrictive covenants and not with city annexation. That needed to be made clear because they used the term ‘annexation’. When people see ‘annexation’, they think annexation into a city, but in this case it’s just to annex into the restricted covenant arrangements with all the other properties that are also being held to this agreement. Councilmember Winters ask if we should re-word the article. Attorney Denk said no. Councilmember Melton said it doesn’t say Gardner in it, so you can’t enter into something generically. It would have to spell out where it would be annexed to. Mayor Shute said it reads annexed into the declaration. Denk defined annexation as to add land to a greater mass.

Mayor Shute said this explains the issues that folks at the lake might have had because they thought this was a sneaky way to annex them into the city, but that’s not the intent. The intent is to make our covenants consistent. Director Kramer said we have discussed previously requiring a consent to annexation, and he did believe that’s what this meant and completely misread it. If council wishes to require that, it would require a completely separate document.

Todd Chappell commented that he appreciated the clarification on that, and it’s part of record. When he started the process, he knew there would be restrictions on there. He understood there to be easements, but he thinks the wording is poor. It may be boilerplate from other contracts, but it concerns him as a property owner. It’s very vague the way it’s spelled out. He recommends rewording it, but as long as they are clear that he’s not giving up his rights to his existing property. He’s already paid for surveys, and saved money to buy the lot and everything is done.

Councilmember Baldwin asked if the restrictions in listed in item 5 were based on past precedent. Director Kramer said yes, back in 2011 this policy was developed that included what the restrictions would be and set the sale price on the properties. Those restrictions haven’t changed. Councilmember Baldwin asked how we define an easement when the water’s edge moves based on how high the water table is at the time. Kramer said it’s defined from the normal pool elevation.
Mayor Shute revisited what Mr. Chappell said about the wording of article 4.1 of the agreements, and asked if there is anything we can add to the end of it that says this section in no way binds the applicants to any formal annexation to parts of a city. Councilmember Baldwin asked if the lack of the additional form already doing that. Mayor Shute said that’s a clarification because that’s not said in here so people are assuming it does. Councilmember Baldwin said we just laid that out here. Councilmember Melton said we just clarified that. You don’t want to add any more to it confuse future property owners. Attorney Denk said it doesn’t say it’s annexed into the corporate limits of the City of Gardner, Kansas. It’s annexed to this declaration. Even if we were to say annexed to the City of Gardner, Kansas, it would be ineffectual because that doesn’t follow the proper process, it would not have the legal compliance, it wouldn’t go through all those steps for annexation. Councilmember Winters said article 4 makes sense, but he was looking at the summary initially that’s what was contested, and now it seems more clarified. Councilmember Gregorcyk asked if Attorney Denk was comparing this to an HOA set of rules and guidelines for a neighborhood. Attorney Denk did so by analogy. Gregorcyk said with that in mind, it would be based on a new neighborhood. Attorney Denk said there are circumstances where this has been done, but they’d have to go back and get 100% consent of everyone. This declaration will not be filed on any property that is not city owned. We’re not going back in time and apply these covenants and restrictions to parcels. Councilmember Gregorcyk said he received many phone calls that people were concerned that this would be in arrears versus moving forward. Mayor Shute said that would be the 95 parcels already sold. Denk said the declaration executed by the mayor today, if you read the whereas clause, it’s forward looking. It talks about the property that the city owns presently, not about the land we’ve sold in the past. It doesn’t purport to apply the covenants and restrictions to those, and for covenants and restrictions to have legal effect they have to be filed with the Register of Deeds as against the legal description of the property. In this case, we are only filing these with the next agenda item with the quitclaim. Councilmember Gregorcyk said he would give his interpretation of 4.1 after reading it: “such annexation may be effectuated by a written consent filed with the Johnson County Register of Deeds to be bound by this declaration”. Gregorcyk interpreted this as the landowner would ask to be annexed. Attorney Denk confirmed, the next agenda item are the quitclaim deeds, along with the entire packet that's attached, exhibit A is the legal description, exhibit B is the covenants and restriction, and exhibit C is the consent. The mayor will only sign this once. By the consent, they are agreeing that their property will be bound in perpetuity, meaning the former city owned property on the lake, will be bound by the covenants and restrictions. Councilmember Gregorcyk further clarified that anyone at Gardner Lake has no cause for heartache about annexation. Attorney Denk confirmed, subject to what Director Kramer said earlier about direction from the governing body. We are not going to unilaterally annex anybody into the City of Gardner who doesn’t want to be. The only parcels talking about the annexation or removing an element of consent for these city parcels that we may sell in the future, but that’s a policy decision council has to provide. Jan Pringle said prior conveyances are fine, they’re exempt from that, but for future the city could say they won’t sell a parcel unless the buyer agrees to come to annexation. Denk said that’s what Kramer said earlier, and that the policy decision, so there’s the possibility that the condition of the sale of city owned property would be conditioned upon consent to annexation. That was the guidance that was received in the past. Ultimately it’s up to this governing body whether they want to condition the annexation. Ms. Pringle said that’s the problem. Mayor Shute said there’s no problem, because they haven’t discussed that. He has already instructed staff to not require annexation of anyone at Gardner Lake. Ms. Pringle said it’s on record. Mayor Shute said yes, it’s on record and he’ll vouch for it. Councilmember Moore said that’s only good for this current governing body.

Mayor Shute said they’ve had productive discussions with Larry Desmarteau and the Gardner Lake Association. He understands the relationship they have is unique. They want to cultivate a better relationship and intend to be wholly transparent with any discussions regarding annexation, now and in the future. If an individual doesn’t wish to be annexed, they are not required to annex. No one will be forcibly annexed in this city as long as Shute is mayor.
Councilmember Winters made a motion to approve revisions to the policy for property sales at Gardner Lake authorizing the City Administrator to sign Quit Claim deeds for future sales conforming to the policy, and authorize the Mayor to sign the Declaration of Easements, Covenants, Conditions and Restrictions to be attached to the property sales.

Councilmember Melton Seconded. With all of the Councilmembers voting in favor of the motion, the motion carried.

7. Consider authorizing the sale of three properties at Gardner Lake and authorizing the City Administrator to execute the Quit Claim deeds

Director Kramer said this was pretty much covered in the last item. By council authorizing the City Administrator to do the sales, this item is a moot point. There are three property sales pending. They have completed their surveys and recorded them.

Mr. Chappell asked for clarification if Article 4.1 could be removed from these three sales. Attorney Denk said no, Article 4.1 stays in because it’s consent to annex the properties to the declaration in the covenants and easements, and not to the City of Gardner.

Councilmember Melton made a motion to authorize the sale of three properties at Gardner Lake and authorizing the City Administrator to execute the Quit Claim deeds

Councilmember Moore Seconded. With all of the Councilmembers voting in favor of the motion, the motion carried.

COUNCIL UPDATES

Police Captain Lee Krout said they finished another successful fair week. The parade went well. He thanks all the departments for their help.

Business & Economic Development Director Larry Powell has been working with developers on Plaza South, Tuscan Farms, and Waverly Plaza. These developments are going through financial reviews. Items will be brought before council in the coming weeks. Tuscan Farms is completed as far as the benefit districts are concerned and the money has been received, but they are waiting on a review of the sewer project and engineering.

Public Works Director Michael Kramer expects Gardner Lake spillway plans soon. Staff will review in house and then send to the state for review. Staff made some changes to the airport sewer plans to ensure the connection to the restroom could be paid for through the grant process and he expects to go out for bid soon.

Parks Director Jason Bruce said staff are gearing up for the Gardner Grind adventure race next weekend. 8am start, 15+ obstacles, a DJ, snacks, event shirts. It’s a family friendly event. They hope to see a lot of people there, August 17 at Celebration Park.

Utilities Director Gonz Garcia updated council on Senate Bill 69. It’s alive and well. The legislative coordinating council hired a firm to conduct the first phase of the electric study for the entire state of Kansas. Gardner is the 3rd largest municipal electric utility. The cost for the first phase is around $309,000. Mayor Shute asked if the city is expected to absorb that cost. Garcia said he doesn’t have all the details, but the city is expected to contribute to that study, but he doesn’t have the exact amount. Garcia received a letter from the KCC requesting information
needed to provide within 7 days, but it’s fairly simple, they only want one number. Garcia will keep council up to date on how these rate studies go. Mayor Shute asked how the city is doing on water usage right now. Garcia said last year we were at 2.5MGD with water restrictions, and this weekend we were at the same level with no water restrictions. He said it’s a combination of weather and rain.

Councilmember Gregorcyk enjoyed the fair and offered thanks to the men and women who kept us safe. He sent an email to Director Kramer regarding asphalt in curbs. They are all tired of failing curbing. Could they asphalt the gaping holes in front of driveways? He knows of a certain curb that was audited 3 years ago, and it’s still not replaced. Moving on, can City Administrator Pruett get him the meeting minutes from last Planning Commission meeting on Tallgrass Properties? Director Powell said the draft of minutes will be available soon. They are written, but under review. Gregorcyk said Divine Mercy got permission to build new house on the southeast corner, but somehow they moved it east, and now blocks access to community garden. Can they gain access from the east, through ball field parking lot, or the other option would be to swing around the house?

Mayor Shute asked if there was a gate there at one time. Director Powell said the fence on the parking lot is permanent, never been gated. This item was discussed heavily at Planning Commission. The PC made attempts to ensure access to the gardens. At the time, a request was made to go through the ball park property, but from a liability standpoint, it was decided the risks were too great. They have plenty of room to swing that driveway around the other side. If they come off the existing driveway that comes to the west side of the structure, there’s room to go past the house and connect to the original road. That’s the solution the PC gave approval for at the construction of that facility. It was originally moved over to make room for the extra garage.

Councilmember Melton liked Heath Freeman’s idea for next year, and he’d like staff to follow up on that. He also offered thanks for everyone’s help with the fair and parade. Melton said it’s awesome when he was out to see lots of people from out of town. He is trying to figure out how the city can get the county to do more to promote the county fair. There’s talk about how much we see in Gardner, but the county does very little. There was no mention of it at the county commission meeting. The county as a whole doesn’t buy in. We have always seen Gardner schools, but no other schools come in from any other cities. But it was a great time, was glad to see everyone out.

Councilmember Moore shared what could be possible for aviation for Gardner. He spent time in Oshkosh, WI, during a 50th anniversary of a fly-in. People from all over the world flew in to Oshkosh. It’s a small town, only 3x the size of Gardner with 66,000 people. More than 10,000 planes will fly there, people camp with their planes, drive in with RVs. This year they had 642,000 people attend, and staffed by 5500 volunteers. They held 1500 workshops and forums for people interested in building planes. The economic impact was $170 million this year, and this event happens annually. This is why this airport is important to the city. It won’t necessarily get to that scale because of neighboring houses and warehouses, but New Century could handle something like that. Also, been riding a bike recently for a fundraiser, and noticed the condition of our streets is horrific in a lot of places. Even roads that have recently been chip sealed, the chip seal is in good condition, but the underlying surface is cracked and uneven and broken. To continue what Gregorcyk mentioned, it’s not just the curbs. There are serious problems with the streets. There’s going to be a sunset to the existing sales tax, so we need to be thinking about how we’re going to budget for the upkeep of these streets. The number’s been somewhere between half a million and $600,000 a year to properly maintain the streets. Mayor Shute reminded that the more streets are built the more that number grows. Shute said this is a discussion that will have to take place in the next six months to start preparing. They don’t want to wait until six months before the sales tax expires and it becomes an emergency. Decisions made in reactionary mode are usually not good decisions. They need to be proactive.

Mayor Shute shared kudos to city staff and the fair association for a tremendous event. The attendance was good; the weather helped. The parade had a record breaking number of floats this year. Kudos to Jason Camis, Chamber of Commerce, for spearheading that and working hard to organize that in the last couple of years. His efforts are bearing fruit. Shute said there are a lot of things happening soon. A camera crew will be in town next week to do some shoots on Gardner. There are other potentially neat opportunities from a media perspective. They are building relationships with the Kansas City Business Journal and other entities, and building a closer
relationship with our newspaper of record. He thanked Daneeka Marshall-Oquendo for her efforts. She’s been working hard on a lot of projects.

**EXECUTIVE SESSION**

1. **Consider entering into executive session to discuss matters related to pending litigation covered under attorney/client privilege.**

   Recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss matters related to pending litigation covered under attorney-client privilege beginning at 8:07 pm; returning to regular session at 8:17 pm.

   Councilmember Melton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss advise of counsel covered under attorney/client privilege, beginning at 8:07 p.m.; and returning to regular session at 8:17 p.m.

   Councilmember Winters Seconded.

   With all of the Councilmembers voting in favor of the motion, the motion carried.

   Councilmember Melton made a motion to resume regular session at 8:17 p.m.;

   Councilmember Baldwin Seconded.

   With all of the Councilmembers voting in favor of the motion, the motion carried.

2. **Consider entering into executive session to discuss matters of attorney/client privilege.**

   Recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss matters related to advise of counsel covered under attorney-client privilege beginning at 8:18 pm; returning to regular session at 8:48 pm.

   Councilmember Melton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss advise of counsel covered under attorney/client privilege, beginning at 8:18 p.m.; and returning to regular session at 8:48 p.m.

   Councilmember Baldwin Seconded.

   With all of the Councilmembers voting in favor of the motion, the motion carried.

   Councilmember Gregorcyk made a motion to resume regular session at 8:48 p.m.;

   Councilmember Melton Seconded.

   With all of the Councilmembers voting in favor of the motion, the motion carried.

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Gregorcyk and seconded by Councilmember Winters the meeting adjourned at 8:48 p.m.

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**EFT/EPAY TOTAL ***

EFT/EPAY TOTAL ***

TOTAL EXPENDITURES ****

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GRAND TOTAL *********************

594,663.05
Agenda Item: Consider authorizing the purchase of 800 tons of deicing salt from Independent Salt Co.

Strategic Priority: Quality of Life
Asset and Infrastructure Management

Department: Public Works

Staff Recommendation:
Staff recommends authorizing the City Administrator to execute an agreement with Independent Salt Co, for the purchase of 800 tons of deicing salt.

Background/Description of Item:
The Streets Division requested informal quotes, per the city’s purchasing policy, for the supply of 800 tons of deicing salt for the 2019-2020 winter season. The quotes received are as follows:

- Independent Salt Co. $61.25/ton
- Central Salt $62.02/ton
- Dale Brothers (no bid)
- Cargill Salt (no bid)

Financial Impact:
Cost for the 2019-2020 winter season will be $49,000.00. Depending on the severity of the winter and the amount of snow versus ice, costs for 2019-2020 may be more or less. The 2019 budget does have funds to cover this amount.

Suggested Motion:
Authorize the City Administrator to execute an agreement with Independent Salt Co, in the amount of $49,000.00, for the purchase of 800 tons of deicing salt.
Agenda Item: Consider authorizing the purchase of a new grinder at the Big Bull Creek lift station

Strategic Priority: Fiscal Stewardship  
Infrastructure and Asset Management

Department: Utilities – Line Maintenance Division

Board/Committee Recommendation:
On August 1, 2019, the Utilities Advisory Commission approved a recommendation to City Council to authorize the purchase of a new grinder from Fluid Equipment in the amount $39,977.64.

Staff Recommendation:
Staff recommends authorizing the purchase of a new grinder from Fluid Equipment in the amount $39,977.64.

Background/Description of Item:
The city’s wastewater is collected in the collection system through 21 lift stations. The Big Bull Creek lift station located 329 S. Meadowbrook Circle consists of two submersible pumps and one grinder. The current grinder at the Big Bull Creek lift station needs replaced. Cutter teeth and bottom housing are beyond repair. The grinder accepts and grinds all flows going into the lift station. The grinder operates 24/7, with an average daily flow rate of roughly 250,000 GPD.

The existing grinder was installed in 2008 during the construction of the new Bull Creek lift station. The flow channel that houses the grinder was built and designed to directly fit a JWC channel grinder. Staff will reuse the existing controls and wiring, saving $8,023.00

Due to sizing of the flow channel and ability to reuse existing controls, Staff contacted Fluid Equipment for a direct JWC channel grinder replacement.

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Financial Impact:
The 2019-2020 Wastewater Budget includes Big Bull Creek grinder replacement, CIP WW1906, for $70,000. With a direct replacement, the city saves $30,022.36.

Attachments:
- August 1, 2019, UAC Staff Report
- August 1, 2019, UAC Draft Meeting Minutes Excerpt
Fluid Equipment Quote
Competitive Bid Waiver Request

**Suggested Motion:**
Authorize the City Administrator to purchase a new grinder from Fluid Equipment in the amount of $39,977.64 as part of CIP WW1906.
AGENDA ITEM: Consider a recommendation to the City Council to replace the grinder at the Big Bull Creek lift station.

Background:

The City wastewater is collected in the City's collection system through 21 lift stations. The Big Bull Creek lift station located 329 S. Meadowbrook Circle consists of two submersible pumps and one grinder. The current grinder at the Big Bull Creek lift station needs replaced. Cutter teeth and bottom housing are beyond repair. The grinder accepts and grinds all flows going into the lift station. The grinder operates 24/7 with an average daily flow rate of roughly 250,000 GPD.

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Staff Recommendation:

Approve a recommendation to the City Council to purchase a new grinder from Fluid equipment in the amount $39,977.64. This item was included in Kill Creek grinder replacement Improvement Project, CIP WW1906

Attachments:

- Pictures of flow channel and grinder
- Fluid equipment Quote
The Utilities Advisory Commission of Gardner, Kansas, met in Regular Session on August 1, 2019, at City Hall. Present were Chairman Andrew Krievins, Commissioner Gary Williams, Commissioner Barbara Coleman, Commissioner Kristina Harrison, Commissioner Andrew Taylor, Utilities Department Director Gonzalo Garcia and Administrative Assistant Erin Groh.

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Andrew Krievins.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

There were no public comments.

CONSENT AGENDA

1. Standing approval of the minutes as written for the July 11, 2019, meeting of the Utility Advisory Commission.

   Motion by Commissioner Kristina Harrison, seconded by Commissioner Gary Williams, to approve the Consent Agenda.

   Motion carried 5-0 Aye

OLD BUSINESS

NEW BUSINESS

1. Consider a recommendation to the City Council the purchase of a Compact Excavator and Skid Loader for the Line Maintenance Division.

   Director Gonz Garcia presented the staff report.

   Motion by Commissioner Williams, seconded by Commissioner Taylor to forward a recommendation to purchase a Compact Excavator for the Line Maintenance Division from K.C. Bobcat for the amount of $45,126.00 and to approve the purchase of a Skid Loader for the Line Maintenance Division from K.C. Bobcat for the amount of $46,565.00.

   Motion carried 5-0 Aye

2. Consider a recommendation to the City Council to replace the grinder at the Big Bull Creek Lift Station.

   Kill Creek Water Resource Recovery Facility Superintendent Scott Millholland presented the staff report.

   Motion by Commissioner Harrison, seconded by Commissioner Coleman to forward a recommendation to purchase a new grinder from Fluid Equipment in the amount of $39,977.64, as part of the Kill Creek grinder replacement improvement project, CIP WW1906.

   Motion carried 5-0 Aye
DISCUSSION ITEMS

1. Project Updates- Wastewater and Water.

Superintendent Scott Millholland gave an update on the South Lift Station project:
The South Lift Station is progressing towards substantial completion. Programming of electrical components, pump installation, tank testing and site grading/cleanup is occurring.

- Water line and hydro testing completed.
- Asco ATS completed start up on July 22nd.
- Worked with DXP to start up pump on August 1st.
- Storage tank continues to fill, which should be done around September 6th.
- Met with Yates on pump alarm controls and Siemens radar unit.

Director Garcia gave the Water Treatment facility project updates:

Hillsdale Water Treatment Plant Expansion

- In 1995, The Hillsdale Water Treatment Plant was constructed. In 2008, the plant was expanded from 2 MGD to 4 MGD.
- In 2017, a Master Plan was created for water treatment, and an interconnection was suggested, but it was determined that the best alternative was to do an expansion.
- On April 1, 2019, City Council awarded a contract to the Joint Venture Burns & McDonnell-CAS Construction for the engineering design of a 3 MGD water treatment expansion. Estimated cost will be under $25,000,000.00. Final numbers and designs will be finalized soon.
- The current plan is to have an additional 1 MGD by Summer 2020 and total expansion completion (3 MGD total) by approximately April 2021.

OTHER BUSINESS

ADJOURNMENT

Motion by Commissioner Coleman, seconded by Commissioner Harrison, to adjourn the meeting at 7:35 p.m.

Motion carried 5-0 Aye

/s/ Erin Groh
Utilities Department Administrative Assistant
QUOTATION

318 Broadway
Kansas City, MO 64105
US
816-795-8511

Bill To: 413760
City of Gardner
120 E. Main St.
Gardner, KS 66030
US
913-238-4154
Att: Cindy Weeks

Ship To: 413760
City of Gardner
120 E. Main St.
Gardner, KS 66030
US

Requested By: Scott Millholland
913-238-4154

Terms
Upon Receipt

Carrier
JENNIFER POWELL

616-460-1664
jpowell@fluidequip.com

Entered By

Quoted Item ID
1.0000 CMD3210-XDS2.0

Item Description
CHANNEL MONSTER SINGLE DRUM

UOM
EA

Unit Price
39,977.640

Ext Price
39,977.64

Delivery Instructions: Lead Time 4-8 Weeks ARO

Total Lines: 1

SUB-TOTAL: 39,977.64
TAX: 0.00

THANK YOU FOR YOUR BUSINESS:

AMOUNT DUE: 39,977.64
U.S. Dollars

Please see our terms and conditions at: http://www.cogentcompanies.com/tandc/
STANDARD TERMS AND CONDITIONS

Price is FOB shipping point and does not include any freight charges. Price does not include any applicable duties or sales tax, use tax, excise tax, value-added or other similar taxes that may apply to this equipment and/or project. Unless specifically stated, price does not include manual or automatic controls, starters, protective or signal devices, wiring, anchor bolts, gauges, vibration isolation devices, installation, startup or testing.

If the price is included in a proposal, the price is firm for receipt of an order within 30 days of the date shown on the proposal. Any additional terms and conditions included in the proposal are specifically included in these terms and conditions.

Unless otherwise expressly agreed to in writing by Seller, all shipments are FOB Seller shipping point at which point title also transfers.

Payment is due upon receipt of the invoice. An interest charge of 1-1/2% per month will be added to past due balances. Retainage of any invoiced amount is unacceptable unless specifically agreed to by Company at the time of order, and shall in no case exceed a period of 120 days. If payments are not timely received by Company, and this account is turned over to an attorney for collections, Customer agrees to pay all reasonable costs and attorney fees incurred in collection of the past due amounts.

Payment of 'commercial transaction' invoices by credit card will be charged a fee based upon Cogent's average discount rate for credit card transactions for the prior calendar year. This fee will change annually and is currently 2.55%.

All equipment either rented from or through Company is subject to all of the terms and conditions listed on the back of the rental contract. Pricing does not include any overtime running of power equipment.

In no event shall Company's obligations and liabilities under this Agreement include any direct, indirect, punitive, special, incidental or consequential damages or losses that Customer may suffer or incur in connection with this sale, service or rental, including, but not limited to, loss of revenue or profits, damages or losses as a result of Customer's inability to operate, perform its obligations to third persons or injuries to goodwill; nor shall Company's liability extend to damages or losses Customer may suffer or incur as a result of such claims, suits or other proceedings made or instituted against Customer by third parties. Customer remises, releases and discharges Company from any and all liability or damages which might be caused by failure to deliver any equipment within the agreed time by Company.

Customer shall be responsible for determining the good operating condition of all materials and equipment prior to accepting the materials and equipment. NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE IS IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE IS MADE UNLESS THE SAME IS SPECIFICALLY SET FORTH IN WRITING AND ACCEPTED IN WRITING BY COMPANY, BUT IN SUCH CASE THE WARRANTY OR GUARANTEE IS LIMITED AS ABOVE PROVIDED. Notwithstanding the foregoing, Company will pass through to the Customer any warranty provided by the manufacturer of any equipment supplied by Company.

Customer covenants and agrees to defend, indemnify and hold Company harmless from any claims, damages or liability arising out of the use, maintenance or delivery of the equipment or materials purchased or rented hereunder. Customer shall further defend, indemnify and hold Company harmless from any and all damages to third persons or to property caused by Customer's use or possession of the equipment or materials, to the fullest extent allowable by law.

In connection with a proposal, if Customer has any further questions or comments regarding the proposal, please feel free to contact Company. If the proposal meets with Customer's approval, please sign, date and mail or fax a copy of the proposal back to Company's office, and the identified equipment will be ordered and/or scheduled for delivery.

This agreement shall be governed by the laws of the state where the Company's branch office is located from which the equipment is rented or purchased. Customer further agrees that venue and jurisdiction shall be appropriate in the county in which Company's branch office is located from which the equipment was rented or purchased. Any provisions hereof which may prove unenforceable under any law shall not affect the validity of any other provision hereof.

Revised January 2019
The Kill Creek Water Resource Recovery Facility (KCWRFF) was originally built in 2001 with a capacity of 2.5 million gallons per day (MGD) and a peak capacity of 7.5 MGD.

The City wastewater is collected in the City's collection system through 21 lift stations. The Big Bull Creek lift station located 329 S. Meadowbrook Circle consists of two submersible pumps and a one grinder. The grinder accepts and grinds all flows going into the lift station. The grinder operates 24/7 with an average daily flow rate of roughly 250,000 GPD.

The existing grinder was installed in 2008, during the construction of the new Bull creek lift station. The flow channel that houses the grinder was built and designed to directly fit the JWC channel grinder. Staff will reuse the existing controls and wiring saving $8,023.00 due to sizing of the flow channel and ability to reuse existing controls. Staff contacted Fluid Equipment for a direct JWC channel grinder replacement.

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fluid Equipment</td>
<td>$ 39,977.64</td>
</tr>
</tbody>
</table>

Staff recommends purchasing a JWC grinder for the following reasons:

1. OEM: existing grinder is JWC.
2. No modification: using same model grinder will eliminate any structural modifications to the existing intake
3. Standardization: all grinders currently in use are JWC so it is imperative to keep all grinders the same to eliminate the need to buy different and additional spare parts.
4. Service: Fluid Equipment is the sole representative in Kansas City, Kansas having local service and readily spare parts in case of an emergency.

Based on the reasons exposed above, I strongly recommend using JWC grinder and request a Competitive Bid Waiver to the Purchasing Policy under Paragraph 30.6.
Flow Channel and Grinder Pictures
Agenda Item: Consider authorizing the purchase of a Compact Excavator and a Skid Loader for the Line Maintenance Division.

Strategic Priority: Fiscal Stewardship
Infrastructure and Asset Management

Department: Utilities – Line Maintenance Division

Board/Committee Recommendation:
On August 1, 2019, the Utilities Advisory Commission approved a recommendation to the City Council to authorize the purchase of a compact excavator for $45,126.00 and a skid loader for $46,565.00 from K.C. Bobcat for the Line Maintenance Division.

Staff Recommendation:
Staff recommends purchasing a compact excavator and a skid loader from KC Bobcat, per proposal.

Background/Description of Item:
This spring, the Utilities Line Maintenance Division received quotes from three (3) suppliers that can provide both a compact excavator and a skid loader to the city for purchase. These three quotes are listed below in the table.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Equipment Brand</th>
<th>Compact Excavator Quote</th>
<th>Skid Steer Quote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heritage Tractor</td>
<td>John Deer</td>
<td>$79,535.00</td>
<td>$64,153.00</td>
</tr>
<tr>
<td>Coleman Equipment, Inc</td>
<td>Kubota</td>
<td>$49,763.42</td>
<td>$52,114.96</td>
</tr>
<tr>
<td>K.C. Bobcat</td>
<td>Bobcat</td>
<td>$45,126.00</td>
<td>$46,565.00</td>
</tr>
</tbody>
</table>

Line maintenance crews will use this equipment to perform water meter repairs and replacements, hydrant repairs and replacements, water service line repairs and replacements, water valve repair and replacements, water main repairs, as well as similar sanitary sewer repairs and replacements throughout the system. The quoted pieces of equipment have rubber tracks versus wheels, to help minimize damage to private property while performing yard restorations required due to the work that occurs within the right-of-way and easements.

All manufacturers provide a two-year warranty on the equipment and provide local service through these suppliers.

City staff is recommending the purchase of the K.C. Bobcat equipment based on the reputation of the manufacturer and the experience of staff operating their equipment.

Financial Impact:
The 2019-2020 Wastewater Budget includes a total of $100,000.00 for the acquisition of both a compact excavator and a skid loader.

**Attachments:**
- August 1, 2019, UAC Staff Report
- August 1, 2019, UAC Draft Meeting Minutes Excerpt
- Supplier Quotes

**Suggested Motion:**
Authorize the City Administrator to purchase a compact excavator for $45,126.00 and a skid loader for $46,565.00 from K.C. Bobcat for the Line Maintenance Division
UTILITY ADVISORY COMMISSION STAFF REPORT

MEETING DATE: AUGUST 1, 2019

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Consider a recommendation to the City Council the purchase of a Compact Excavator and Skid Loader for the Line Maintenance Division.

Background:

This spring the Utilities Line Maintenance Division received quotes from three (3) suppliers that can provide both a Compact Excavator and Skid Loader to the City for purchase. These three quotes are listed below in the table.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Equipment Brand</th>
<th>Compact Excavator Quote</th>
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<tr>
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<td>Bobcat</td>
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<td>$46,565.00</td>
</tr>
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Line maintenance crews will use this equipment to perform water meter repairs and replacements, hydrant repairs and replacements, water service line repairs and replacements, water valve repair and replacements, water main repairs, as well as similar sanitary sewer repairs and replacements throughout the system. The quoted equipment all have rubber tracks versus wheeled based equipment to help minimize damage to private property while performing yard restorations required due to the work that occurred within the right-of-way and easements.

All manufacturers provide a two-year warranty on the equipment and provide local service through these suppliers.

City staff is recommending the purchase of the Bobcat equipment based on the reputation of the manufacturer and the experience of staff operating Bobcat equipment.

Staff Recommendation:

1. Approve the purchase of a Compact Excavator for the Line Maintenance Division from K.C. Bobcat for the amount of $45,126.00.

2. Approve the purchase of a Skid Loader for the Line Maintenance Division from K.C. Bobcat for the amount of $46,565.00.

Attachments:

- Supplier Quotes
The Utilities Advisory Commission of Gardner, Kansas, met in Regular Session on August 1, 2019, at City Hall. Present were Chairman Andrew Krievins, Commissioner Gary Williams, Commissioner Barbara Coleman, Commissioner Kristina Harrison, Commissioner Andrew Taylor, Utilities Department Director Gonzalo Garcia and Administrative Assistant Erin Groh.

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Andrew Krievins.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

There were no public comments.

CONSENT AGENDA

1. Standing approval of the minutes as written for the July 11, 2019, meeting of the Utility Advisory Commission.

   Motion by Commissioner Kristina Harrison, seconded by Commissioner Gary Williams, to approve the Consent Agenda.

   Motion carried 5-0 Aye

OLD BUSINESS

NEW BUSINESS

1. Consider a recommendation to the City Council the purchase of a Compact Excavator and Skid Loader for the Line Maintenance Division.

   Director Gonz Garcia presented the staff report.

   Motion by Commissioner Williams, seconded by Commissioner Taylor to forward a recommendation to purchase a Compact Excavator for the Line Maintenance Division from K.C. Bobcat for the amount of $45,126.00 and to approve the purchase of a Skid Loader for the Line Maintenance Division from K.C. Bobcat for the amount of $46,565.00.

   Motion carried 5-0 Aye

2. Consider a recommendation to the City Council to replace the grinder at the Big Bull Creek Lift Station.

   Kill Creek Water Resource Recovery Facility Superintendent Scott Millholland presented the staff report.

   Motion by Commissioner Harrison, seconded by Commissioner Coleman to forward a recommendation to purchase a new grinder from Fluid Equipment in the amount of $39,977.64, as part of the Kill Creek grinder replacement improvement project, CIP WW1906.

   Motion carried 5-0 Aye
DISCUSSION ITEMS

1. Project Updates- Wastewater and Water.
   Superintendent Scott Millholland gave an update on the South Lift Station project:
   The South Lift Station is progressing towards substantial completion. Programming of electrical components, pump installation, tank testing and site grading/cleanup is occurring.
   - Water line and hydro testing completed.
   - Asco ATS completed start up on July 22nd.
   - Worked with DXP to start up pump on August 1st.
   - Storage tank continues to fill, which should be done around September 6th.
   - Met with Yates on pump alarm controls and Siemens radar unit.

   Director Garcia gave the Water Treatment facility project updates:

   Hillsdale Water Treatment Plant Expansion
   - In 1995, The Hillsdale Water Treatment Plant was constructed. In 2008, the plant was expanded from 2 MGD to 4 MGD.
   - In 2017, a Master Plan was created for water treatment, and an interconnection was suggested, but it was determined that the best alternative was to do an expansion.
   - On April 1, 2019, City Council awarded a contract to the Joint Venture Burns & McDonnell-CAS Construction for the engineering design of a 3 MGD water treatment expansion. Estimated cost will be under $25,000,000.00. Final numbers and designs will be finalized soon.
   - The current plan is to have an additional 1 MGD by Summer 2020 and total expansion completion (3 MGD total) by approximately April 2021.

OTHER BUSINESS

ADJOURNMENT

Motion by Commissioner Coleman, seconded by Commissioner Harrison, to adjourn the meeting at 7:35 p.m.

Motion carried 5-0 Aye

/s/ Erin Groh
Utilities Department Administrative Assistant
**Quotation Number:** 29597D030022  
**Date:** 2019-02-11 22:40:31

**Ship to**  
City of Gardner  
329 Meadowbrook Circle  
Gardner, KS 66030  
Phone: 913 856-6945

**Bobcat Specialist**  
Eddie Keating  
Phone: 9138294600  
Fax: 9138291552  
Cellular: 9139278862  
E Mail: ekeating@kcbobcat.com

<table>
<thead>
<tr>
<th>Description</th>
<th>Part No</th>
<th>Qty</th>
<th>Price Ea.</th>
<th>Total</th>
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<tr>
<td>Fingertip Auxiliary Hydraulic Control</td>
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<td></td>
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</tr>
<tr>
<td>Fingertip Boom Swing Control</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Horn</td>
<td></td>
<td></td>
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<tr>
<td>Hydraulic Joystick Controls</td>
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</tr>
<tr>
<td>Two-Speed Travel (with Auto-Shift)</td>
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<tr>
<td>Vandalism Protection</td>
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</tr>
<tr>
<td>Work Lights</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>X-Change (Attachment Mounting System)</td>
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</tr>
<tr>
<td>Warranty: 2 years, or 2000 hours whichever occurs first</td>
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<td></td>
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</tr>
<tr>
<td>Control Console Locks</td>
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<tr>
<td>Control Pattern Selector Valve (ISO/STD)</td>
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<tr>
<td>Dozer Blade with Float</td>
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<td>A40 Option Package</td>
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<td>Hydraulic X-Change</td>
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<td>Hydraulic Clamp (Class IV)</td>
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<tr>
<td>Telematics US</td>
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<tr>
<td>18&quot; MX4 XCHG TEETH</td>
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</table>

**Total of Items Quoted**  
$69,632.00

**Discount Discounts/Rebates Municipal**  
($24,506.00)

**Quote Total - US dollars**  
$45,126.00

**Notes:**
All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.

**Customer Acceptance:**
Purchase Order: ___________________________

**Authorized Signature:**
Print:_________________________  Sign:_________________________   Date: ________
**Ship to**
City of Gardner  
329 Meadowbrook Circle  
Gardner, KS 66030  
Phone: 913 856-6945

**Bobcat Specialist**
Eddie Keating  
Phone: 9138294600  
Fax: 9138291552  
Cellular: 9139278862  
E Mail: ekeating@kcbobcat.com

**Description**
T595 T4 Bobcat Compact Track Loader  
74.0 HP Tier 4 Turbo Diesel Engine  
Auxiliary Hydraulics: Variable Flow  
Backup Alarm  
Bob-Tach  
Bobcat Interlock Control System (BICS)  
Controls: Bobcat Standard  
Cylinder Cushioning - Lift, Tilt  
Engine/Hydraulic Systems Shutdown  
Glow Plugs (Automatically Activated)  
Horn  
Instrumentation: Engine Temperature & Fuel Gauges, Hourmeter, RPM and Warning Lights  
Lift Arm Support

**Part No** | **Qty** | **Price Ea.** | **Total**  
--- | --- | --- | ---  
M0249 | 1 | $57,271.00 | $57,271.00

Lift Path: Vertical  
Lights, Front & Rear  
Operator Cab

- Includes: Adjustable Suspension Seat, Top & Rear Windows, Parking Brake, Seat Bar & Belt  
- Roll Over Protective Structure (ROPS) meets SAE-J1040 & ISO 3471  
- Falling Object Protective Structure (FOPS) meets SAE-J1043 & ISO 3449, Level I; Level II is available through Bobcat Parts

Parking Brake: Spring Applied, Pressure Released (SAPR)  
Solid Mounted Carriage with 4 Rollers  
Tracks: Rubber, 12.6" Wide  
Warranty: 2 years, or 2000 hours whichever occurs first

<table>
<thead>
<tr>
<th>Part No</th>
<th>Qty</th>
<th>Price Ea.</th>
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<tbody>
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<td>M0249-R09-C02</td>
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<td>M0249-R11-C02</td>
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<td>M0249-R26-C02</td>
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<td>M0249-R51-C02</td>
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<td>7249240</td>
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<td>6731421</td>
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<tr>
<td>6718007</td>
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</table>

**Total of Items Quoted**  
$71,658.00

**Discount**  
Discounts/Rebates Municipal  
($25,093.00)

**Quote Total - US dollars**  
$46,565.00

**Notes:**
All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.
Customer Acceptance:

Authorized Signature:

Print:_________________________  Sign:_________________________   Date: ________
Quote Id: 20020428

Prepared For:

City Of Gardner

Heritage Tractor, Inc.
19905 W 157th Street
Olathe, KS  66062

Tel: 913-529-2376
Fax: 913-529-8138
Email: lelliott@heritagetractor.com
## Quote Summary

**Prepared For:**
City Of Gardner  
120 E. Main  
329 Meadowbrook Cir  
Gardner, KS 66030

**Prepared By:**  
Luke Elliott  
Heritage Tractor, Inc.  
19905 W 157th Street  
Olathe, KS 66062  
Phone: 913-529-2376  
lelliott@heritagetractor.com

<table>
<thead>
<tr>
<th>Equipment Summary</th>
<th>Suggested List</th>
<th>Selling Price</th>
<th>Qty</th>
<th>Extended</th>
</tr>
</thead>
<tbody>
<tr>
<td>JOHN DEERE 50G Compact Excavator</td>
<td>$ 79,535.00</td>
<td>$ 55,000.00</td>
<td>X 1</td>
<td>$ 55,000.00</td>
</tr>
<tr>
<td>JOHN DEERE 317G COMPACT TRACK LOADER</td>
<td>$ 64,153.00</td>
<td>$ 43,622.00</td>
<td>X 1</td>
<td>$ 43,622.00</td>
</tr>
</tbody>
</table>

### Equipment Total

$ 98,622.00

### Quote Summary

- Equipment Total: $ 98,622.00
- SubTotal: $ 98,622.00
- Est. Service Agreement Tax: $ 0.00
- Total: $ 98,622.00
- Down Payment: (0.00)
- Rental Applied: (0.00)
- **Balance Due**: $ 98,622.00

---

Salesperson : X ______________

Accepted By : X ______________

Confidential
### JOHN DEERE 50G Compact Excavator

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Qty</th>
</tr>
</thead>
<tbody>
<tr>
<td>0060FF</td>
<td>50G Compact Excavator</td>
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</tbody>
</table>

#### Standard Options - Per Unit

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Qty</th>
</tr>
</thead>
<tbody>
<tr>
<td>3125</td>
<td>Rubber Track</td>
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<tr>
<td>4150</td>
<td>Suspension Seat - Cloth</td>
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<tr>
<td>7110</td>
<td>Standard Arm</td>
<td>1</td>
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<tr>
<td>8185</td>
<td>ROPS / FOPS Cab</td>
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<tr>
<td>9555</td>
<td>Angle Blade</td>
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</tbody>
</table>

#### Dealer Attachments

<table>
<thead>
<tr>
<th>Code</th>
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<tbody>
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#### Other Charges

<table>
<thead>
<tr>
<th>Description</th>
<th>Qty</th>
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<tbody>
<tr>
<td>Freight</td>
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### JOHN DEERE 317G COMPACT TRACK LOADER

<table>
<thead>
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<th>Code</th>
<th>Description</th>
<th>Qty</th>
</tr>
</thead>
<tbody>
<tr>
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<td>317G COMPACT TRACK LOADER</td>
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</table>

#### Standard Options - Per Unit

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<tbody>
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<td>Standard Compact Track Loader</td>
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<td>0985</td>
<td>E-H (ISO or H Pattern Switchable) with Performance Package</td>
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<tr>
<td>1025</td>
<td>SINGLE-SPEED</td>
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<tr>
<td>1301</td>
<td>Engine - Turbocharged</td>
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<tr>
<td>1501</td>
<td>English Operator's Manual &amp; Decals</td>
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<td>2510</td>
<td>Offset Block Lug Tread Pattern - 12.6 in. (320mm) Tracks</td>
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<td>3000</td>
<td>Standard Hydraulics</td>
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## Selling Equipment

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<th>Quantity</th>
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</tr>
<tr>
<td>5000</td>
<td>Manual Quik-Tatch</td>
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<tr>
<td>5204</td>
<td>Cab Enclosure with Air-Conditioning, Heat and Defrost</td>
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<tr>
<td>6001</td>
<td>Mechanical Suspension Seat (Vinyl)</td>
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<tr>
<td>8050</td>
<td>Cold Start Package</td>
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<tr>
<td>8340</td>
<td>Radio, AM/FM/WB with Aux Input</td>
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<tr>
<td>8395</td>
<td>Keyless Start (Sealed Switch Module)</td>
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<tr>
<td>9041</td>
<td>72 in. Construction Bucket (17.8 cu. ft.) with Edge</td>
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### Other Charges

<table>
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<th>Description</th>
<th>Quantity</th>
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<tr>
<td>Freight</td>
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</table>
Extended Repair Plan Proposal

<table>
<thead>
<tr>
<th>Date</th>
<th>July 12, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machine/Use Information</td>
<td></td>
</tr>
<tr>
<td>Manufacturer</td>
<td>JOHN DEERE</td>
</tr>
<tr>
<td>Equipment Type</td>
<td>50G COMPACT EXC</td>
</tr>
<tr>
<td>Model</td>
<td>50G COMPACT EXC</td>
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</tbody>
</table>

**Plan Description**

**Price**

- **Plan Type:**
- **Coverage:**
- **Deductible:**
- **Quoted Price:** $0.00
- **Total Months:**
- **Total Hours:**

**Proposal Prepared for:**

- **I have been offered this coverage and**
  - [ ] I ACCEPT the Residential plan
  - [✓] I DECLINE the Residential plan

**Customer Name - Please Print**

**Customer Signature**

**Note:** This is **not** a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere’s public website (www.JohnDeere.com) under Services & Support > Warranty > Extended Warranties > PowerGard protection plan Residential.

---

PowerGard™ Protection Plan Residential

<table>
<thead>
<tr>
<th>Date</th>
<th>July 12, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machine/Use Information</td>
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<td>Manufacturer</td>
<td>JOHN DEERE</td>
</tr>
<tr>
<td>Equipment Type</td>
<td>317G COMPACT TRACK LOADER</td>
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<tr>
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</tbody>
</table>

**Plan Description**

**Price**

- **Plan Type:**
- **Coverage:**
- **Deductible:**
- **Quoted Price:** $0.00
- **Total Months:**
- **Total Hours:**

**Proposal Prepared for:**

- **I have been offered this coverage and**
  - [ ] I ACCEPT the Residential plan
  - [✓] I DECLINE the Residential plan

**Customer Name - Please Print**

**Customer Signature**

**Note:** This is **not** a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere’s public website (www.JohnDeere.com) under Services & Support > Warranty > Extended Warranties > PowerGard protection plan Residential.
Proposal Prepared for:  

Customer Name - Please Print

Customer Signature

I have been offered this coverage and

☐ I ACCEPT the Residential plan

☑ I DECLINE the Residential plan

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note: This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere’s public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

PowerGard™ Protection Plan Residential (Residential plan) is:
The PowerGard™ Protection Plan Residential is an extended repair plan that provides parts and labor coverage up to four years beyond the manufacturer’s warranty. It is available on all riding lawn equipment, zero-turn radius mowers, utility vehicles, utility tractors and compact utility tractors. Your John Deere equipment will be in the hands of qualified, certified technicians from John Deere dealers using Genuine John Deere Parts.

Not covered under a Residential plan:
Residential plans do not cover routine maintenance services or items normally designed to be replaced by the purchaser due to normal wear and tear. They do not cover any product used for commercial or rental applications. They also do not cover repairs for damage from accident, misuse, fire, theft, or exposure to weather conditions such as lightning, hail, flood or water. See the actual PowerGard™ Protection Plan Residential Terms and Conditions for a complete listing of coverage and limitations and conditions under the program.

Benefits of a Residential plan:

- Offer the choice of adding up to 4 years of repair coverage beyond the machine’s factory warranty.
- Do not require preapproval before repairs are made by the authorized John Deere dealership.
- Is transferable by the original purchaser for the balance of the original agreement period.
- Ensures higher resale value and makes equipment more marketable during sale or trade-in.
- Comprehensive Plans:
  - No deductibles and no out-of-pocket costs on covered repairs.
  - Free transportation for factory warranty and extended repair plan repairs for the term of the plan (Note: A surcharge may apply for machines located outside of the dealership’s normal service area).

- Limited Powertrain Plans:
  - Low deductibles on covered repairs
  - Do not provide transportation coverage
**Standard Features**

**K Series**

KX040-4R3A

***EQUIPMENT IN STANDARD MACHINE***

**FEATURES**
- **Eco Plus System**
- **Auto Idler**
- **Rubber Track Model**
- **ROPS/Cage (Top Guard, Level)**
- **Air Conditioning Cab**
- **Suspension Seat**
- **Kubota 1 Hydraulic Pump Load Sensing System**
- **1 Variable Displacement Pump**
- **All Controls Hydraulic Pilot**
- **Two Operating Pattern Selection System**
- **Accumulator Digital Control Panel**
- **Attachment Flow Presets, Service Alerts**
- **Float Angle Blade w/ Bolt-on Cutting Edge**
- **360 Degree Full Rotation**
- **70 Degree Left, 55 Degree Right Boom Swing**
- **17.2 gpm Adjustable Auxiliary Hydraulics Port 1**
- **Auxiliary Hydraulics Diverter Valve**
- **Thumb Bracket and Relief Valves**
- **Five Second Quick Preheat System**
- **Key Switch Stop System**
- **Half Pitch Rubber Tracks**
- **Self Bleed Fuel System**
- **Auto-Downshift Two Speed Travel System**
- **Swivel Negative Brake**
- **Travel Negative Brake**
- **Third Line**

**ENGINE**
- **D1603 Kubota D1 Turbo CRS Tier 4**
- **Diesel Engine**
- **3 Cylinder, 4 Cycle**
- **38.9 Net HP @ 2200 rpm**

**OPERATIONAL DIMENSIONS**
- **Max Digging Depth 11' 2.7”**
- **Max Digging Radius @ Ground Level 17’ 9”**
- **Max Vertical Digging Depth 7’ 4.8”**
- **Max Dumping Height 12’ 9.5”**

**DOZER BLADE DIMENSIONS**
- **Width 96.9”**
- **Height 15.75”**
- **Lift Above Ground 15.17”**
- **Drop Below Ground 15.94”**

**PERFORMANCE**
- **Digging Force @ Bucket (K7875) 9,535 lbs.**
- **Digging Force @ Dipper Arm 4,112 lbs.**
- **Travel Speed (Low) 1.8 mph**
- **Travel Speed (High) 3.1 mph**
- **Climbing Ability 55% / 20°**
- **Lift Capacity 4,090 lbs.**
- **Over Front Blade Grounded 2.0 ft. Load Point Height**
- **8.0 ft. Load radius**

**Dimensions and Operating Weight**
- **KX040-4R3A, Rubber Tracks**
- **Air Conditioned ROPS/Cage (Top Guard, Level II) Cab, Angle Dozer Blade**
- **Overall Length 16’ 8.2”**
- **Overall Width 5’ 6.9”**
- **Overall Height 8’ 1.8”**
- **Operating Weight 9,855 lbs.**
- **Ground Clearance 12.9”**
- **Includes operator’s weight, 175 lbs.**

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**KX040-4R3A Base Price:** $63,018.00

(1) **24” PIN ON 3-HOLE BUCKET**

K7758-24” PIN ON 3-HOLE BUCKET

**Configured Price:** $64,317.00

**Sourcewell Discount:** ($15,436.08)

**SUBTOTAL:** $48,880.92

**Dealer Assembly:** $42.50

**Freight Cost:** $590.00

**PDI:** $250.00

**Total Unit Price:** $49,763.42

**Quantity Ordered:** 1

**Final Sales Price:** $49,763.42

---

*All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.*

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**Standard Features**

**Kubota S Series**

**SVL 75-2HWC**

**EQUIPMENT IN STANDARD MACHINE**

**FEATURES**

- Vertical Lift Path Loader Frame
- Standard Front Quick Coupler
- Float Standard
- Hydraulic Quick Coupler
- Option, High Flow Hydraulics
- Loader Boom Lock
- Open ROPS & Air Conditioned ROPS/OPS Cab Models
- High Back, Adjustable, Vinyl, Suspension Seat
- 2" Retractable Seat Belt and 2 Piece Seat Bar
- 12V Electric Outlet
- 17.4 gpm Auxiliary Hydraulics standard, 29.3 gpm Option
- Direct To Tank Return Line
- Rigid Mounted Undercarriage
- Lower Track Rollers
- Rubber Tracks, 12.6" Standard, 15" Optional
- Two Speed Travel System
- Automatic Wet Disk Parking Brake
- Kubota 4 Hydraulic Pump Load Sensing System
- 2 Gear, 2 Variable Displacement Pump
- Hydraulic Joystick Controls
- ISO Operating Pattern
- Hand And Foot Throttle Controls
- Electronic Travel Torque Management
- Automatic Glow Plugs
- Key Switch Stop/Start System
- Self Bleed Fuel System
- 2 Front and 2 Rear Working Lights
- Hour Meter, Engine Temperature and Fuel Gauges and Warning Lights
- Horn and Backup Alarm
- Lockable Fuel Cap
- Bolt On Grab Handles to enter machine

**BASIC UNITS**

- SVL 75-2: 15.0" Rubber Tracks, A/C ROPS/OPS Cab
- SVL 75-3: Hydraulic Quick Coupler
- V3307 Kubota CR-TE4, Tier 4 Diesel Engine
- 4 Cylinder, 4 Cycle, Turbo Charged
- 74.3 Gross HP @ 2400 rpm

**DIMENSIONS**

- Cab Height: 82.0"
- Width (without attachment): 65.9"
- Width with wide track option (without attachment): 68.3"
- Length (without attachment): 109.0"
- Length of Track on Ground: 56.5"

**OPERATIONAL DIMENSIONS**

- Operating Weight*: SVL75H, 12.6" Rubber Tracks, Open
- ROPS/OPS Cab, Mechanical
- Quick Coupler: 9,039 lbs.
- Rated Operating Capacity (@ 35% of Tipping Load): 2,300 lbs.
- Rated Operating Capacity (ROC): @ 35% of Tipping Load complies with ISO 14391-1 Tmd SAE J 816
- Rated Operating Capacity (ROC): @ 50% of Tipping Load: 3,285 lbs.
- Tipping Load: 6,570 lbs.
- Auxiliary Hydraulics Flow: 17.4 gpm
- Travel Speed (Low / High): 4.7 / 7.1 mph
- Reach @ Maximum Height: 41.7"
- Height to Hinge Pin: 119.1"
- Ground Pressure: 5.6 psi

*All equipment specifications are as complete as possible as of the date on the quote. Attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.
COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 1

MEETING DATE: AUGUST 19, 2019

STAFF CONTACT: LARRY POWELL, DIRECTOR, BUSINESS & ECONOMIC DEVELOPMENT

Agenda Item: Consider adopting an ordinance rezoning Z-19-03 property located at the northwest corner of Moonlight Road and University Drive from RP-3, R-3, and RP-4 to RP-3 with an associated preliminary development plan PDP-19-03 for Tallgrass.

Strategic Priority: Economic Development, Asset and Infrastructure Management

Department: Business & Economic Development

Planning Commission Recommendation:
After review of Application Z-19-03 and PDP-19-03, a rezoning and preliminary development plan for (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary development plan dated July 1, 2019, and staff report dated July 23, 2019, the Planning Commission recommends approval the application as proposed, provided the following conditions are met:

1. Revise the plans to show 5’ sidewalk connections from the buildings that front and are adjacent to streets, to the public sidewalk, where feasible due to topography,
2. Revise the plans to show 8’ wide sidewalks along any building facade abutting a parking area,
3. Revise the plans to show 8’ wide sidewalks on primary routes between the street or parking area and the building entrance,
4. Revise the plans to show 8’ wide sidewalks along any parking with vehicle overhangs,
5. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary,
6. Revise the Duplex unit footprint/floorplans to provide for no more than 25% of the front facade as garage;

and recommends the Governing Body approve as recommended.

Staff Recommendation:
Staff recommended approval of the rezoning from RP-3, RP-4 and R-3 to RP-3 and the associated preliminary development plan for Tallgrass with the following conditions:

1. Revise the plans to show 5’ sidewalk connections from the buildings that front and are adjacent to streets, to the public sidewalk, where feasible due to topography,
2. Revise the plans to show 8’ wide sidewalks along any building facade abutting a parking area,
3. Revise the plans to show 8’ wide sidewalks on primary routes between the street or parking area and the building entrance,
4. Revise the plans to show 8’ wide sidewalks along any parking with vehicle overhangs,
5. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary,
6. Revise the Duplex unit footprint/floorplans to provide for no more than 25% of the front facade as garage;
and recommended the Planning Commission forward the recommendation for approval to the Governing Body.

**Background/Description of Item:**
The subject properties are currently a mix of the larger western parcel being zoned RP-3 (Planned Garden Apartment) and RP-4 (Planned Mixed-Density Neighborhood) Districts with an approved preliminary development plan for the Cottages at University Park, and the eastern parcel being zoned R-3 (Garden Apartment) District. The zoning designations on both parcels were approved in 2018.

Annexation of this property was approved by the Governing Body on March 3, 2003 (Ordinance No. 2054). That same year, a rezoning (Z-03-16) from the A (Agriculture) district to a mix of RP-2 (Planned Two-Family Residential) district, RP-3 (Planned Garden Apartment) district, RP-5 (Planned Apartment House) district, CP-2 (Planned General Business) district, and C-O (Commercial Office) district was approved for approximately 157.5 acres for University Park. Additionally, a preliminary development plan (PDP-03-04) for University Park was approved for a mix of multi-family and commercial uses. To date, only a portion of the multi-family in the RP-2 zoning district has been constructed. The remaining portion of the development remains vacant. The subject properties of this application were designated as the RP-2 zoning district in the 2003 plan, and included 100 duplex homes, or 200 dwelling units in addition to the eastern portion being zoned CP-2 District for a commercial strip center.

In 2018, approvals were obtained for Cottages at University Park for a rezoning (Z-18-01) from RP-2 (Planned Two-Family Residential) District to RP-3 (Planned Garden Apartment) District and RP-4 (Planned Mixed-Density Neighborhood) District, preliminary development plan PDP-18-01, and preliminary plat PP-18-01. This development included the larger parcel containing 33.639 acres and proposed 160 dwelling units in a mix of compact single-family residential, duplex and 4-plex pinwheel residential building types.

The eastern parcel was rezoned (Z-18-03) in 2018 from CP-2 (Planned General Business) District to R-3 (Garden Apartment) District with a tentative plan to construct approximately 60 units of apartments in the future.

The proposed rezoning is a request from the current RP-3, RP-4 and R-3 Districts to RP-3 with an associated preliminary development plan (PDP) for Tallgrass. The Tallgrass PDP includes 596 units which includes 2 duplex structures and 31 apartment structures (two and three story buildings), 19 garage structures, a clubhouse with pool, a maintenance structure. Also proposed are sport courts, play grounds, trails, a dog park and native vegetation areas for drainage.

The R-3 Garden Apartment District permits the following building types: Detached House Suburban, Duplex, Row House, Garden Apartment, and Small Civic. The proposed project includes the Small Civic Building Type for the clubhouse, Duplex Building Type, and the Garden Apartment Building Type. The Garden Apartment Building type is the least dense apartment building type and has the highest minimum open space requirement of all of the apartment building types. In other words, the Garden Apartment requires that less total lot area is covered by buildings.

As part of the preliminary development plan process, a traffic and stormwater study are required. The stormwater study showed that the proposed detention areas (3) onsite will
address the new stormwater runoff for the project at build-out. The traffic study indicated that no additional street improvements are required with the build-out of the proposed project. Project traffic is unlikely to head north through the Copper Springs subdivision but to go east out to Moonlight Rd., or south and west to 167th St. Moonlight Rd, north of the current city limits, is planned for widening and intersection improvements in the future.

The developer independently spoke with the Police Department, Johnson County Fire District #1, and a school district representative and all told the developer that they had no concerns with the additional residents with regards to their services. The developer has two apartment complexes in Olathe that they own and manage, including Homestead Apartments at 11800 S Shannan St. and Wyncroft Hill Apartments located at 12235 S Blackbob Rd.

At the July 23, 2019 Planning Commission meeting, the Commission held a public hearing regarding the rezoning and preliminary development plan. There were approximately 60 people in attendance. Of those that spoke, concerns included bonding for project completion; property tax revenue; impact on adjacent residential property assessments and value; impact on medical, police and school facilities; traffic impacts; improvements and safety; infrastructure impacts; proposed building heights; noise; the transition between single-family homes and apartments; speculation about income, crime, and Section 8 housing; City occupancy rates for apartments; and lighting. The Planning Commission recommended approval of the rezoning and preliminary development plan with conditions by a vote of 5-1-1 including one abstention.

Since the conclusion of the Planning Commission meeting, a protest petition was filed within the 14 day deadline. The protest petition is a mechanism provided for in State Statute to offer a written protest of a decision on a proposed zoning change. In order for the protest petition to be valid, it must be signed by the owners of record of 20% or more of the total real property within the area required to be notified of the proposed rezoning of a specific property, excluding streets and public ways, and excluding the subject property. If the petition is valid, the rezoning would need to be passed by at least a ¾ vote of all of the members of the Governing Body. A map showing the valid petitions has been included. The entire protest petition is on file with the Business & Economic Development Office. The protest petition included 84 signatures, of which 55 were determined valid as representing property within the statutory notice area. The protest petition reflected the signatures of owners of record of 10.49% of the total real property area within the area required to be notified of the rezoning. This is not a valid protest, and therefore a vote by the Governing Body shall follow the Actions section below from the Land Development Code.

**ACTIONS**

Per Section 17.03.030 (D) of the *Gardner Land Development Code*, the Governing Body may:

1. Adopt such recommendation by ordinance, (simple majority vote)
2. Override the Planning Commission’s recommendation by at least a two-thirds vote of the membership of the Governing Body, or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body’s failure to approve or disapprove. If the Governing Body returns the Planning Commission’s recommendation, the Planning Commission after considering the same may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendation, the Governing Body by a simple majority may adopt or may revise or amend and adopt such recommendation by ordinance or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the
Governing Body following the Planning Commission’s next regular meeting after receipt of the Governing Body’s report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

**Financial Impact:**
None at this time.

**Other Impacts:**
None

**Attachments included:**
- Vicinity Map
- Protest petition map
- Ordinance
- Preliminary development plan document
- July 23, 2019 draft Planning Commission minute excerpt
- Planning Commission packet

**Suggested Motion:**
Approve Ordinance _____ rezoning 43.05 acres of land located at the northwest corner of Moonlight Road and University Drive from RP-3, RP-4 and R-3 to RP-3 (Z-19-03) and associated preliminary development plan (PDP-19-03) for Tallgrass.
Gardner City Council
Meeting Date: August 19, 2019
10.49% of Land Area Included in Protest Petition
ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That having received a recommendation from the Planning Commission on July 23, 2019, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas Land Development Code, the zoning classification or districts of the lands legally described hereby are changed as follows:

The following described properties located at the northwest corner of Moonlight Road and University Drive shall hereafter have a zoning classification of RP-3 (Planned Garden Apartment) District in accordance with preliminary development plan PDP-19-03 Tallgrass dated July 1, 2019, and subject to the following conditions:

1. Revise the plans to show 5’ sidewalk connections from the buildings that front and are adjacent to streets, to the public sidewalk, where feasible due to topography.
2. Revise the plans to show 8’ wide sidewalks along any building facade abutting a parking area.
3. Revise the plans to show 8’ wide sidewalks on primary routes between the street or parking area and the building entrance.
4. Revise the plans to show 8’ wide sidewalks along any parking with vehicle overhangs.
5. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary.
6. Revise the Duplex unit footprint/floorplans to provide for no more than 25% of the front facade as garage.

CASE NO. Z-19-03(PDP-19-03)

Rezoning from RP-3 (Planned Garden Apartment) District, RP-4 (Planned Mixed-Density Neighborhood) District and R-3 (Garden Apartment) District to RP-3 (Planned Garden Apartment) District:

Legal Description:
Tracts C and D, UNIVERSITY PARK ADDITION NO. 1, a subdivision in the City of Gardner, Johnson County, Kansas.

...EXCEPT....

That part platted UNIVERSITY PARK ADDITION NO. 2, a subdivision in the City of Gardner, Johnson County, Kansas.

The above legal description contains 43.05 acres, more or less.

SECTION TWO: That upon the taking effect of this Ordinance, the above zoning changes shall be incorporated and shown on the Zoning District Map previously adopted by reference, and said
Zoning District Map is hereby reincorporated as a part of the Land Development Code as amended.

**SECTION THREE:** That this Ordinance shall take effect and be in force from and after its adoption by the Governing Body and publication in the official City Newspaper.

PASSED by the Governing Body this 19th day of August, 2019.

SIGNED by the Mayor this 19th day of August, 2019.

CITY OF GARDNER, KANSAS

(SEAL)

______________________________
Steve Shute, Mayor

Attest:

______________________________
Sharon Rose, City Clerk

Approved as to form:

______________________________
Ryan B. Denk, City Attorney

(Case No. Z-19-03(PDP-19-03))
LEFT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
CLOSE UP FRONT-LEFT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
CLOSE UP FRONT-LEFT ELEVATION

THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
FRONT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
RIGHT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
LEFT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
CLOSE UP FRONT-RIGHT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
FRONT ELEVATION

BACK ELEVATION

LEFT ELEVATION

RIGHT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
FRONT ELEVATION

THE GARDNER APARTMENTS
Clubhouse
Gardner, Kansas
BACK ELEVATION
THE GARDNER APARTMENTS
Clubhouse
Gardner, Kansas
CALL TO ORDER

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, July 23, 2019, by Commissioner Roberts.

PLEDGE OF ALLEGIANCE

Commissioner Roberts led the Pledge of Allegiance.

ROLL CALL

Commissioners present:
  Commissioner Roberts
  Commissioner Boden
  Commissioner Ford
  Commissioner Gardenhire
  Commissioner McNeer
  Commissioner Meder
  Commissioner Simmons-Lee

Staff members present:
  Larry Powell, Director, Business & Economic Development
  Kelly Drake Woodward, Chief Planner
  Michelle Leininger, Principal Planner
  Robert Case, Planner
  Kristie Hatley, Planning Technician
  Ryan Denk, City Attorney

There were approximately 60 members of the public in attendance.

REGULAR AGENDA

Commissioner Roberts asked each member of the Planning Commission if they had any ex parte communication regarding the Tallgrass Apartments project. Only Commissioners Meder and Roberts had spoken with the public answering questions.

1. TALLGRASS APARTMENTS
   Located at the northwest corner of Moonlight Rd and University Drive
   a. Z-19-03: Hold a public hearing and consider a rezoning from R-3, RP-3 and RP-4 to RP-3 with an associated preliminary development plan for Tallgrass Apartments, a 596 unit apartment complex.
b. **PP-19-05:** Consider a preliminary plat for a 43 acre, 5 lot multi-family residential subdivision.

Ms. Michelle Leininger, Principal Planner, presented both the rezoning/preliminary development plan and preliminary plat applications for this project with the public hearing, applicant’s comments and commission vote separating the two presentations. She started her presentation of Z-19-03 with an overview of the location and noted that the project contained two adjacent land parcels. Surrounding the properties were Copper Springs single-family housing to the north, duplexes to the west, County rural residential to the northeast, industrial on the east across Moonlight Road and the new Justice Center to the south. Over the years, different plans were approved for this property with the most recent being approved in 2018 which included a mix of compact single-family, duplexes, and four-plexes for a total of 160 units on the larger parcel. The eastern parcel was previously rezoned with a concept plan for three apartment buildings with 60 units, a clubhouse and common area. The both these plans together would total 220 units.

Staff findings for the rezoning are that it is consistent with the comprehensive plan regarding creating a variety of housing types for the area, improving connectivity (both street and trail), and providing open space as described in the “New Residential Growth Areas” section. This would allow for residents to “age in place” from apartment to single-family and back to housing that fits as one ages. Generally, the density calculations would be comparable to a medium-density residential instead of the low-density identified on the Future Land Use Map. Trails, including a 10’ wide trail along the west side of Moonlight Road as well as trails through the site, would provide connectivity. The development would provide transitions from lower-density residential to medium-density residential to commercial to the south. Also, removal of the current restrictions would not likely affect the nearby properties detrimentally as higher-density would offer a range of housing for the area and likely spur additional services and businesses. The relative gain with the current restrictions regarding economic development, public health, safety and welfare would be minimal as the property could likely remain undeveloped for an undetermined amount of time and the hardship for the developer is that they would have to build to someone else’s plan. This proposal would not adversely affect the capacity or safety of any utilities, infrastructure or public services. Fire and police services are nearby, water and sanitary sewer were addressed with the Utilities Department, and both storm water and traffic plans were proposed and approved. Traffic studies showed no improvements were necessary off-site.

She presented the preliminary development plan for the project that includes 31 two-story to three-story apartment buildings for a total of 592 units, a clubhouse with pool, maintenance building, 19 multi-stall garages, trails, playgrounds, a dog park, sports courts and landscape/drainage areas. The northwestern corner included 2 duplex buildings totaling 4 units as a transition from existing duplexes into the apartment complex. Staff found the plan reflected generally accepted and sound planning and urban design principles by providing a variety of housing types in the area and community, fiscally responsible extension of utilities and was located near employment corridors. The benefits from flexibility in the standards allows the project higher end amenities for the residential, such as garages. The project will benefit the general public health, safety and welfare of the community by providing park and
open space, utility extensions and public street extensions.

Deviations requested by the applicant as part of a planned development district:

1. **Design Standards – Terrace frontage type:** All buildings shall have a direct sidewalk connection at least 5’ wide between each front entrance and the sidewalk. **Applicant Proposed:** Sidewalks along driveways throughout the development but not directly from the buildings to the public sidewalk and street. **Staff Comment:** The Frontage Design standards are intended to establish the relationship of the building to the public realm, based upon the context, streetscape design, and the specific buildings and uses permitted on a block. The Code attempts to make the streetscape or public realm an inviting place to promote human-scale design and create meaningful and useable outdoor spaces. The proposed building elevations show that the structures are dual-sided with breezeways through the buildings. By connecting the buildings along the street frontages with sidewalks, this will allow for residents to access the street and public sidewalks from the buildings as opposed to walking along the parking lots. Staff feels that this is an important part of the Frontage Design standards of the LCD in creating an inviting streetscape. Adding the sidewalk connections from the adjacent buildings to the street, where feasible regarding topography, will be a recommended condition of approval.

2. **General Zoning Standards, Accessory Buildings:** No more than one per lot. **Applicant Proposed:** 19 garage structures and 1 maintenance structure. **Staff Comment:** The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building over 120 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex, reducing visual impact of vehicles. Staff supports this deviation.

3. **General Zoning Standards, Accessory Buildings:** Shall not exceed 250 square feet for each 3,000 square feet of lot area up to a maximum of 1,200 square feet. **Applicant Proposed:** Eighteen 1,400 sf garage structures and one 2,500 sf maintenance structure. **Staff Comment:** The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building with a maximum of 1,200 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex. Staff supports this deviation.

4. **Block and Lot Access, Sidewalks Standard:** Along any building facade abutting a parking area, a minimum 8’ width. **Applicant Proposed:** 6’ width. **Staff Comment:** Standards for minimum widths of sidewalks that are situated directly adjacent to parking allows for a vehicle overhang of approximately 2.5’.
With the proposed reduction in the sidewalk width from 8’ to 6’ wide, the usable portion of the sidewalks are narrowed down to 3.5’-4’ wide. The Code provides for sidewalks to provide a minimum of 5’ usable space. Staff does not support this deviation to reduce sidewalks along parking with vehicle overhangs to 6’ wide. This will be a recommended condition of approval.

5. **Block and Lot Access, Sidewalks Standard**: A primary route between the street or parking area and the building entrance, a minimum of 8’ wide.
   - **Applicant Proposed**: 5’-6’ wide.
   - **Staff Comment**: Connections from the street are shown at a range from 5’ to 6’ wide. Five feet is the minimum general width provided for in the Code. However, the Code requires for the primary route from the public streetscape to the building entrance to be 8’ wide and from a parking area to the building entrance to be 8’ wide. Sidewalks to the building entrances are intended to be wider to allow for people to pass and the door to be opened while people are passing in order to not have to step off the sidewalk. In order to maintain that additional space, staff recommends a minimum of 8’ wide to allow for space to either side of the door. This will be a recommended condition of approval.

6. **Block and Lot Access, Sidewalks Standard**: Along any parking with vehicle overhangs, a minimum of 8’ wide.
   - **Applicant Proposed**: 6’ wide.
   - **Staff Comment**: See comment for deviation #4. Staff does not support this deviation to reduce sidewalks along parking with vehicle overhangs to 6’ wide. This will be a recommended condition of approval.

7. **Required Parking, Bicycle Parking Standard**: Residential: 1 per dwelling unit and 5% of the required vehicle spaces for the entertainment (clubhouse) uses (593 bicycle parking)
   - **Applicant Proposed**: 102 Spaces
   - **Staff Comment**: Staff has found that this standard of 1 bicycle parking space per dwelling unit may be excessive. Additionally, bicycle owners may store the bicycle in a garage space which is not included in the onsite parking count. This is providing for 17% of the required spaces. Staff supports this deviation.

**Public Hearing**

Mr. George Rifford, 28604 W 162nd Place, had questions for the Tallgrass developer and asked if he has built in Gardner in the past and if the city planned on bonding this developer to make sure the project was completed. He also asked if the developers built a project of this scope and scale in the past anywhere and the success rate of it. He inquired what the 598 units would bring in for additional property tax revenue and the possible impact on the adjacent residential property tax assessments.

Ms. Kelly Ann Johnson, 16407 Blair St, said she is a retired firefighter paramedic and is concerned with public safety issues. The location of the emergency services center is wonderful but she questioned the amount of equipment and number of personnel for the additional apartment dwellers (2-4 persons per unit), 600-1200 vehicles, and 300-600 children living there. She also spoke of the busing, schooling and safety to
protect the new community. She put her life savings into this retirement home and
does not want her property values to decrease. She has spoken with several
neighbors and all feel the same way. Traffic off University through Blair to enter the
back of the apartment complex are a concern as well as emergency vehicle entry and
exit out. It is already difficult getting onto Moonlight Rd from University so additional
traffic will make it worse especially without a traffic light. The project is not well
planned nor fits the community. Many homes are being built and plenty of apartment
complexes already exist.

Mr. Tim Cooper, 28324 W 162nd Terr, voiced his concern for traffic safety and the
many children in the neighborhood. On average, he figured 1.5 cars per apartment
would be an additional 894 vehicles coming through his neighborhood. He chose to
live in Gardner because of the quietness and quaintness. He felt he was getting more
bang for his buck with a better value and believes this complex would not help his
property tax. He wanted reassurance about what would happen and wanted his
property value to rise. He did not see in the presentation any information about
properties affected and assessments and hoped that information would be available.
He researched to find five communities where things like this had happened and
houses in the area either stayed stagnant or dropped in value.

Mr. Michael Kane, 28318 W 162nd St, stated he was concerned about the increased
traffic on the two lane street and the number of kids. Property values were also an
issue and said he had looked around and found little higher end housing in Gardner
and now an apartment complex was being proposed next to one of the most thriving
areas of the City. He said it was a poor design decision. He felt that in addition to
these issues, the new complex would take up a lot of sewer water, internet and cause
infrastructure problems.

Mr. David Gardino, 16415 Blair St, said he agreed with everyone who had spoken
and added his concern of building height. The three stories would be 45’ tall and
would look like a skyscraper in the neighborhood. He felt that was much too tall.

Mr. Anthony Haug, 28404 W 162nd Terr, stated he agreed with the other comments
but also had concerns about the studies done such as the traffic study that concludes
an additional 1,000+ cars or 600+ cars would not impact the area. He regularly
struggles to turn left onto Moonlight Rd going north and adding more cars will not
help. As for utility studies, he does not want to see a decrease in his water pressure
and utility bills go through the roof to pay for this development. He wants to see his
property values rise and make money. There are more houses going to be built in
his neighborhood, he wants it to continue to build a great community and does not
want the economic train stopped because of an apartment complex.

Ms. Carmen Gardino, 16415 Blair St, said she was against this project and had
concerns with noise. She lived in an apartment in Gardner that was supposed to be
one of the better ones and the noise levels were loud because the tenants did not
care. She wanted a quiet neighborhood and chose Gardner because of the few
apartment buildings as she did not want to live near them.

Ms. Angela Woodward, 28507 W. 162nd Place, commented she raised her family in
Gardner and had built in the subdivision because it was not busy, quiet, friendly and
a close-knit neighborhood. Homeowners are more invested in the community and more apt to stay in Gardner than apartment renters who are not locked in. The City recently passed Waverly Plaza that has not been built yet so she wondered if the City really needed this apartment complex. She stated Gardner was land locked with little space to build out and with all the apartments coming she asked if there was enough space to build the needed schools. She likes having one high school and if Gardner continues to grow she feared having another high school would divide the town. These are middle range apartments which would increase crime as well as the traffic. She stated a major concern will be for everyone with the additional traffic and without a stoplight, someone will get hurt.

Ms. Megan Kane, 28318 W 162nd St, voiced her agreement on the tax loss and crime rate issues but her main concern was with the additional 1500+ adults and children. The staff review was this was a variety of housing types to add diversity but she felt it was one-sided since there was only an apartment complex planned. The developers made the point of including a dog park, smaller buildings and trails. She inquired if those areas were to be open to the public and if so, if the parking accommodations were included. School boundaries have been discussed recently with the City since some of the elementary schools are at capacity so she asked if this would warrant new schools. Apartments usually bring younger families with children into the neighborhood and she asked if that had been addressed.

Ms. Alicia Parker, 28321 W 162nd Terr, is a teacher in the Blue Valley district and has lived in Gardner six years. They had initially intended not to send their children to Gardner public schools because they wanted them in another district. She has researched and built trust in the Gardner district system and city. Now she questions their decision to build in Copper Springs versus neighboring cities with good education systems. She did not say children could not get a good education in Gardner but the more apartments built within a school district, oftentimes those schools go down to Title 1 mentality and do not attract the most quality teachers. Low income schools are the last to fill and the quality of teachers at Gardner elementary schools will go down if the clientele goes down.

Mr. Bob Montgomery, Realtor for the applicant, was a City Councilman for Olathe for several years and said he had not heard anything tonight that he didn’t hear when he was on the Olathe council. The concerns of the citizens are normal and Olathe 25 years ago was not much different than Gardner is now. Over time, and with the same fears and concerns, Olathe grew tremendously. Those fears never came true and all the concerns of lower income did not happen. As part of the whole growing community, young people first starting out must be included and head counts are needed to attract and build commercial projects. As for comments about kids playing in the streets, he said that no houses back up to University Drive and the residential areas all had their own streets, including the apartment complex. He believed the renters would come out of the apartments and be building or buying within the same area. Olathe went through many studies on evaluating school districts and as a realtor, he never saw a property value go down that was next to an apartment complex in that city. He felt this project would be an asset to the community. Good property management can calm the concern of increased crime. The owners of this project own two wonderful apartment complexes in Olathe that are well maintained and the property values have not gone down.
Mr. John Duggan, Attorney representing Martens Family Enterprises, the developer of Copper Springs subdivision, said the neighbors voiced their concerns but what needed to be understood was the process. This was the developer’s first attempt at getting an approval and oftentimes was where negotiations would begin. He felt this plan was ineffective because the apartment buildings were abutting backyards of single-family residential and should obviously have had a transition. The densities in this apartment community would be tripled. The staff report made it clear the approved densities were roughly 5.1 units per acre today and with this plan, it would roughly be 13.84 units per acre. 220 units were approved now and would skyrocket on a density level. The 43 acres would provide ample room to create transitions between single-family residential and apartment homes such as duplexes. He felt if this plan was approved, there would be an unintended consequence, this being the City wanted as many people buying $400K houses in Gardner as they could get. He stated the City could get apartments anytime because apartment developers were struggling to find places to build in Olathe and other cities so they would come to Gardner. Builders that would come to build subdivisions and make substantial investment like his clients and these homeowners who spent $400K to build in this community would back away because someone put up an apartment complex right in their backyard. The homeowners would see the 2 to 3-story buildings out of their backyards. He suggested the developer get a better plan with some transition to not scare away what was wanted – the $400-500K homes. He said not to scare away the developers and homeowners from buying in communities in the future because even though it’s approved for duplexes (220 units) it can change overnight to 600 units and property values will not be protected. He stated it was a huge mistake for this city to send the message to the developer to not create transitions for a better plan. The opposition is not to multi-family as it is zoned but to increase the densities threefold.

Mr. Todd Blakely, developer of Tallgrass, thanked staff for being interested in the project. He said he had been looking in Gardner for two years for the proper site to build a luxury multi-family community and felt this was the ideal site. This area was next to nearly 4,500 jobs in New Century, close to I-35 and 56 Highway and retail. This site was large enough to spread out the buildings to give a neighborhood feel with green, open, and civic rec spaces. It also provided room for the amenities of a clubhouse, 24-hour fitness, resort style pool, sports court, dog park and multiple picnic and barbecue areas. The walking trail that would ring the site was critical to connectivity between the private and public walkways. He stated he wanted Tallgrass to be a community one drove into and it felt like a neighborhood. He said he had reached out to Mr. Phil Martens with the first concept plan that showed four buildings along the north next to Copper Springs. Without input from anyone, his team compromised and reduced it to three buildings to open up more civic space. The buildings are also set back 50’ from the neighbors to the north for more separation between multi-family and single-family. This 50’ would allow a generous tree buffer and the walking trail in the configuration they wanted. He said he has been doing this for 25 years and has heard every one of the concerns before. He met with the police department and they had no concerns about additional crime in the area because of these apartments. He also met with the school district and was told there was plenty of capacity to accommodate all the schoolchildren that may come from this apartment complex. In his experience, 1 and 2-bedroom apartments did not generate many
school-aged children but there would be capacity for them in the feeder elementary school. He met with Fire District No. 1 and there were no concerns for first responders with regard to access in and around the complex and area neighbors. An independent traffic study was done by Amy McCurdy, a professional engineer, and it was found there would be an acceptable level of service of the neighboring streets. He addressed the concern of neighboring home values and said it was unequivocally untrue. To prove this, they engaged Valbridge Property Advisors to conduct a value impact study report. The report concluded the proposed Tallgrass apartment development would not measurably impact the value of surrounding single-family homes. These were facts. He said they liked Gardner and the future they see here and want to be part of it.

Mr. Blakely then answered a question brought up in the public hearing about his apartment development experience:
He has developed large apartment communities prior and have two in Olathe – one is 700 units and the other 510. Both operated at or above 98% occupancy and have since they were built. One is 25 years old and the other is 20 years old. They do well because they are well managed and he would manage Tallgrass, if approved, in the same way. He had a copy of their lease along with their list of regulations. It was a fair but tight lease and abides by all laws. This protects the property, maintains the value and protects the residents. He concluded by saying he was familiar with Gardner and would love to be a developer in this city.

Mr. Ryan Denk, City Attorney, explained that questions or presentations from the public are presented during the public hearing and once the public hearing is closed, there are no additional questions or comments taken from the public. The public hearing was presently open and the applicant has given their presentation but if the chair elects to receive additional public comment with questions posed, staff can attempt to answer them once the public comment is closed. There would also be time after the public hearing closed for the Planning Commissioners to pose questions to planning staff and the applicant.

The Commissioners had no questions at this time for the applicant.

Ms. Marla Anderson, 28400 W 162nd Terr, asked the Commissioners to drive through the area and look at the plan. The space is not that big.

Mr. Brian Keeney, 28605 W 162nd Place, stated he is in law enforcement and posed a question to the developer about apartment occupancy. If a place is not filled then the two choices are to lower the rent, which brings in those the area homeowners are worried about or the government makes it Section 8. He wanted to know if Section 8 would be an actual opportunity for this project.

Mr. Anthony Haug, 28404 W 162nd Terr, wanted to know the rental prices on these luxury apartments.

Mr. Bill Pelkey, 16250 Blair Ct, stated his concerns of impacts on the roads and their maintenance. Flooding issues on roads across town in his former residence were not fixed so he relocated to this side of Gardner. He asked if different areas were assessed and other options before deciding to locate apartments next to these
homes. He stated he would move out of Gardner for the first time in 25 years.

Ms. Megan Kane, 28318 W 162nd St, posed several questions for the applicant about the average rent, the average income of the New Century workers they want to attract, the availability of the reports by Amy McCarty and by Valbridge Property Advisors for public view. She also asked if the City has done anything like that from a city-based point and reports on current apartment complexes in Gardner and their occupancy rates. She questioned if these new apartments were needed.

Ms. Carmen Gardino, 16415 Blair St, asked for the names and addresses of the two apartment complexes in Olathe developed by Mr. Blakely.

Mr. Michael Kane, 28318 W 162nd St, asked for an explanation of “an acceptable level of traffic” per the traffic studies report. An acceptable level in one city may not be acceptable in Gardner.

Mr. George Rifford, 28604 W 162nd Pl, reiterated his concern for the bonding issue in case the developer did not complete the project. On the revenue assessment study, he asked about the difference between building a $400K+ house and the taxes generated from it in comparison with those generated off of this apartment development.

Mr. Phil Martens, Martens Family Enterprises and developer of Copper Springs Subdivision, said he knew that 220 units had been approved but the 600 now requested is a totally different density that would have an impact on traffic. He said he could get a study report done stating the opposite of that done by Mr. Blakely because one can get a report to say anything. He stated he bought the property in the area for 200 homes with the proposed duplexes nearby. They were nice duplexes but now there were one car garage duplexes that did not match or blend with the rest of the two car duplexes. He compared the 50’ buffer to the distance on a baseball field between the pitcher’s mound and home plate, a 60’ distance. He said the proposed exterior of the apartments had lap siding with little stone and no stucco. These were not luxurious. There were no neighborhood meetings throughout this process to discuss the concerns and calm fears. He suggested a fence along the whole property line and create a real buffer zone as well as streetlights at both Moonlight and 167th St.

Ms. Lydia Kepler, 16255 Blair Ct, spoke for several neighbors. Her concerns were traffic and schools. Her family wants to stay in Gardner and said most people want to do the same. Gardner is the closest they can get to the city yet still be in a small town. She felt the transition of one row of duplexes between larger value houses and 600 apartments was not enough and neither was the 50’ buffer. This is a close knit neighborhood and everyone worked hard to get this area and it is unsettling to have 3-story apartments out their windows. Trail connectivity and the green spaces are going to help the community but she inquired about public parking for those uses. She asked for a storm water runoff report. She stated the developers of Tallgrass and the architects have had problems in the past with the two apartment complexes in Olathe with meeting some codes and doing some of the things that legally they were supposed to do but did not fix until after they were caught. They want to keep this neighborhood they created to remain in between the country and the city.
Mr. Tyler Adams, 16380 S Moonlight Rd, owns one of the three adjoining properties that are in Johnson County but not in Gardner. He built the house three years ago as a future retirement home because he wanted to invest in Gardner. As they planned their house, one of the major concerns was what would be built on the property behind them and were told by numerous sources including zoning that this would be (at most) 1 or 2-story duplexes or single-family homes. These would be low profile. This played into their decisions and why they chose that property so close to Gardner rather than going outside of Gardner completely and into Johnson County. His concern was not the number of units but rather the light pollution that results because the area is presently quite dark. This project would entail plugging in a significant amount of traffic, roads and lighting. He lived in Gardner when Moonlight Rd was a narrow two-lane road and how congested it was as it developed north. Just north of this development Moonlight is still two-lane and narrow. The road has increased in congestion within the past three years and forecasting the increases over the next ten years will be needed. He asked if this would be work for the City or for the County. He requested the addresses of the Olathe properties to get a look at what Gardner could expect Tallgrass to be in 20 years. He has seen well planned apartment complexes in the Kansas City area and wants Gardner to make sure that is what they are getting. Highly concentrated areas such as this will become noisy and that plays a factor in the existing residential areas and those future developments that are expected to come.

Ms. Janice Meade, 16400 S Moonlight Rd, owns one of the three adjoining properties that are in Johnson County but not in Gardner. She has lived in that area since 1976 and has seen the traffic increase immensely. Moonlight Road is very narrow and only getting more difficult and dangerous especially since there is no shoulder. There needs to be coordination among Johnson County, New Century and Gardner in widening the road especially if there is an influx of residents to the area. She has raised her family there and it has been a quiet, wonderful place between country and city. Property values and increased noise levels are also concerns.

Mr. Pete Opperman, Land Planner and Landscape Architect for Tallgrass, explained the project has four buildings that are 3-stories and that 3-story height is located only in the middle of the buildings and not the across the entire length. Additionally, all four of these buildings are placed in the middle of the project to keep the perimeter heights lower. All other buildings have two stories. There is no lap siding but will be stucco, brick and stone on all four sides.

He continued with answers to some of the questions posed by the public. He stated the two Olathe apartment properties are called Homestead and Wyncroft and are located near 119th Street, east of Black Bob Road and both are well maintained. He refuted the statement that one can obtain a report that says anything to benefit a personal agenda. Anyone that is a professional and puts their stamp on their work does not create a report to say what the person paying them wants them to say. The professional reports what the facts say and what past statistics are. According to the police and fire department, the statistics are that apartments do not increase crime. It does create a more diverse community and keeps property values up in general for the whole community when there is diversity in housing. The three buildings backing up to the single-family to the north are two-story and their back sides will be nicer.
looking than the typical Woodsman siding used on the back sides of single-family homes. The 50’ buffer allows for a curving public trail heavily landscaped with evergreens and trees to help screen. If duplexes were being built instead there would be no landscape buffer included and the backyard setback could be as low as 25’. The 50’ was more than required but chosen by the design team to have enough room for the path and landscape amenities. The previous development proposed had none of the public open space for community use that this project proposes.

Mr. Anthony Kohler, 28313 W 162nd Terr, will be moving into a home that abuts one of the proposed buildings. He wanted to know in what part of this city or any city are there apartments butting up against single-family houses where it made sense. They were not against apartments or mixed-family homes but rather a better plan than the one proposed. He asked the developer to work with the community to make sure everyone was happy. He did not ask for a veto of this plan but time to develop it in a way that was smart for everyone and not just the developer.

Ms. Barbara Flannery, 16204 S Canton St, asked if the traffic study takes into consideration the additional phases planned for Copper Springs and the traffic generated from those lots.

Mr. Shawn Lopeman, 460 Skylark Circle, said he is building a home in this area and would not have chosen the same lot if he had known about this project. He has been in Gardner and has considered it the gem of Johnson County because of the lessor expensive housing. No one will talk about Gardner and the number of apartment complexes but instead the number of nice houses one can get for their money. People move to Gardner because of it.

Mr. Blakely approached the podium to answer the questions posed by the public:
- This is not Section 8 housing. It is a market rate community.
- One-bedroom apartments rent for $862-$900/month and two-bedroom apartments rent for around $1100/month. These will probably be more expensive than this by the time the project is constructed.
- The apartment interiors include granite countertops, hardwood cabinets, engineered flooring, and nine foot ceilings with crown molding.
- This will be a 3-year project if all goes as planned. One phase at a time will be completed and absorbed prior to moving into the next phase.
- There are no bonding problems. The company has the financial strength to build this project to fruition but will phase it, if allowed to do so.
- The two-story buildings will not be as tall as a two-story single-family home built on a foundation. These buildings are constructed on slabs and have 4/12 pitch roofs. They will be lower than the neighboring buildings.
- The identification of the two Olathe communities are Wyncroft Hill Apartments at 12235 S Blackbob and The Homestead Apartments at 119th St and Shannan St.
- The architecture is modern farmhouse and BCS Design is the architectural firm on this complex. They are also doing some work on a church in Gardner.
- The level of service and criteria used in the traffic engineering report is determined by the engineers and by no one else. There is not one standard for Gardner or any other individual city. Rather there are engineering standards that need to be met by all. He had never met Amy McCurdy of
McCurdy Engineers but she came recommended having done work in Gardner previously. She was totally professional and she would defend her findings.

- The property tax advisory group estimated that if the project was built today to its completion, the tax benefits to the city would be approximately $830,000/yr. The benefit to the City of Gardner above and beyond what single-family or any other kind of housing type where numbers of children reside would be the fewer number of children living in the apartments. This would not be a burden on the schools which are extremely expensive and a huge drain on the community. That is $830,000 for very few children.

- He would have been happy to meet with the neighbors and he spoke with staff multiple times about a meeting and he was advised that unless the City had a lot of feedback and negative comments from the neighbors then there was no need to meet. Obviously, that has changed. He said he reached out to Phil Martens to meet to discuss the plan but he did not want to meet. Mr. Blakely said he has the emails from Mr. Martens that said he had no reason to meet unless duplexes were going to be built.

- The trouble at his other apartment communities that was cited tonight by Ms. Lydia Kepler was with HUD. The communities were approved by HUD but the DOJ came in and declared there were some missed accessibilities with sidewalks. Those walks were added and the issue resolved.

- There is a tremendous amount of green space in this plan to be enjoyed by the community than could be found in any other plan for single-family or lower density multi-family. The buildings are built up to provide more green space. The previous plan is a sea of roof tops, driveways and patios and the buffer between the single-family and this could have been only 25’, much less than the 50’ proposed. In this plan, lease agreements prohibit swing sets, playgrounds, wading pools, trampolines and pergolas. This complex will be a quieter neighbor than single-family homes.

- There will be two trash collection points with compactors to save economically with the pick-up, helps the environment and saves on wear and tear on public and private streets.

- There will be two mail kiosks for delivery points with the same benefits to the community.

He stated this project was a community within a community.

Mr. Phil Martens, Martens Family Enterprises, stated that he did not meet with Mr. Blakely because Mr. Blakely did not budge one inch on this project and said this was the way it was going to be with the luxurious, $800/month apartments. He continued to say there was a picture showing lap siding and because he has been in business for 40 years, he knows what lap siding looks like. He then said it did not look luxurious to him but that was why he didn’t want to meet. Some buildings on the plan may have been changed around but there still were 220 versus almost 600 units. With all the green space, Mr. Blakely can take the extra 750 people who will live there and put them out on the green space and there might be enough space for them. He asked the Commission not to just say yes or no but to go out there and asked them to raise their hands if they actually went out to the site and looked at it before a vote.

Mr. Brian Keeney, 28605 W 162nd Place, said he was not referring to whether the
developer was going with Section 8 housing to begin with but his concern was in law enforcement. His question was if the apartments do not fill right away would the developer accept Section 8. He asked the Commission to put themselves in the shoes of these homeowners, building their dream house. They chose to live in Copper Springs, moving from one side of town to this one to escape traffic by the intermodal. This is where they put their bang for their buck but this project was not what they moved to this area for and asked the Commission to imagine living in this area and taking this on.

Motion to close the Public Hearing made by Commissioner Meder and seconded by Commissioner Gardenhire.

Motion passed 7-0.

Commission Discussion

Several of the Commissioners thanked the public for attending the meeting showing their passion and bringing comments and concerns on this project.

Commissioner Boden stated that within the past year and a half, the Commission has had three large meetings and all have centered on multi-family housing. Waverly Point was allowed and another area up for rezoning in Gardner was turned down. Some concerns he had with the area that was turned down are also concerns he has with this project. He has a concern with multi-story next to single-family but appreciates the plan having two story closest to the single-family. He agrees traffic will increase on 167th and Moonlight Rd but he also understands that the city has adjusted throughout the years to growth with widening and paving of roads. This project will cause them to look at 167th going from a county type road to a city type road and could include signals. The growth of Copper Springs has already made it more difficult getting out on these streets. The City gets the studies and recommends what is appropriate on such things as traffic and utilities. They have advised that everything is fine. The public has access online to the same packet the Commissioners receive prior to the meetings. He said he has looked up the other two apartment complexes for ratings and the pricing on the proposed apartments are in line with what the developer said. Urban development is a thing and there are plenty of studies showing urban as the way things are going with increased multi-housing. Younger generations are not looking for suburbia. He agreed with Mr. Keeney on public safety issues but that it is also dependent on the management of the property. Good management will have good complexes but poor management will have safety issues.
Commissioner Simmons-Lee asked if the traffic study was done by the developer. She also inquired at what point the Commission would have their own study from the City.

Ms. Leininger replied that the traffic study was done by the developer and they are always required to submit a traffic study from a licensed engineer and are based on industry standards. They have what is called a “green book” that has the standard traffic impacts, depending on the use. The licensed engineer has a stamp like that of a civil engineer or architect where their license is on the line. The City has on-call traffic engineers who review the report and make comments back and forth. The City also has on-call consultants for stormwater study reviews. The City does not do their own studies except for their future traffic plans but does require traffic studies for each type of development to build off of them.

Commissioner Simmons-Lee asked for clarification on the staff comments on the relative gain to economic development that said the current restrictions could not pull the hardship to that applicant as they would be required to meet the current development plan that was not their plan or interest to build.

Ms. Leininger answered the previous zoning had the previous plan attached to it. The way the planned development works is that the preliminary plan becomes the zoning standards for that district. Either what was approved has to be built (with minor tweaks) or the applicant must go through the public hearing process again to get a new plan approved.

Commissioner Simmons-Lee asked if the rezoning was not approved then could multi-family still be built but perhaps done so at a lower density.

Ms. Leininger said if the Council did not approve this rezoning then the 2018 plan remains for that site.

Commissioner Gardenhire wanted to know if the duplex plan that was approved previously was single or two-story.

Ms. Leininger replied she thought it was a mix dependent upon their locations but typically they would be 2-story.

Commissioner Gardenhire asked for clarification where the 3-story buildings were located on the proposed plan and Mr. Opperman pointed them out.

Commissioner Gardenhire asked staff if Gardner has had any issues filling existing apartment complexes in the city.

Mr. Larry Powell, Director of Business & Economic Development, replied that currently all of the apartment units in town are full or if they have vacancies,
are filled quickly. Horizon Trails, Nottingham Apartments and Residences at Moonlight are full with waiting lists. Those are the three large existing apartment complexes in Gardner.

Commissioner Gardenhire asked how many doors there were in total.

Mr. Powell answered Horizon Trails has 168, Nottingham has 76 and Residences at Moonlight has over 400 units.

Commissioner Gardenhire discussed the issue of traffic and the study and said he supposed one could shop around to professionals to get the report findings desired but he personally had not had that experience. He said he was concerned with butting apartment complexes up against single-family homes. He was torn because the staff report indicated the code was met but he did not know if he was willing to set the precedent that allows an apartment complex next to a single-family home development.

Commissioner Meder asked the applicant if the public space within the Tallgrass complex could be used by the public.

Mr. Blakely clarified that the walking trail and the civic rec space would be available to the community but the sports court and the other amenities that are paid for with the rent are limited to resident use.

Commissioner Meder said she drove through the area several times and also through the areas of the currently owned apartment complexes. She felt something like this was needed in Gardner with all existing complexes at capacity or with waiting lists. Apartments are not a bad thing and this was a good price point for them. She suggested the Commission may want to continue this request to have those conversations for Q & A between the homeowners and the project developer. She said that might be a good option to think about to keep things moving forward.

Commissioner McNeer commented he did not see a landscaping plan in the packet like he did with the Waverly Point project. He wanted an idea of what was being planned for the buffer between this development and Copper Springs.

Ms. Leininger explained the landscape plan comes at the final development plan phase but between the different zoning districts, there would be a minimum of 8’ wide buffer yard and then there would be a certain number of trees, evergreens and shrubs required within that buffer yard.

Commissioner McNeer commented that Waverly Pointe applicants had done a tremendous job of addressing concerns of buffering with the landscape plan and he would like to encourage that level of buffering and establishing
that as a jump off point between the locations. He was not on the Commission when the current zoning of this site was approved and asked staff when that occurred. He also asked for confirmation that most of the residents of the area knew there was the potential for 200-300 units before they built their homes.

Ms. Leininger stated it was in early 2018 when the current zoning was approved but there had been a plan for development for this area since 2003.

Commissioner McNeer said that with Waverly and Tallgrass the total of new apartments would be around 700-800. He asked if the City is confident that the community can absorb that amount of building development.

Mr. Powell replied not all of the apartments would be built at the same time and this applicant was looking at a 3-year build span. Waverly Pointe would build their 144 units concurrently. The question about the amount of building is a market question. The Johnson County multi-listing takes into account that county-wide they are building approximately 2,000 apartment units a year and the absorption rate for that right now is still over 3,000 units so the demand for apartments is about a third higher than that being built each year. Those figures fluctuate monthly but that was in the last annual report he read.

Commissioner McNeer commented he understood the market was driving multi-family and higher density because there are more people and he hopes the renters become potential residents who eventually buy into our community with single-family.

Commissioner Ford asked why the 2018 project planned for this site was not coming to fruition and instead there was a new development proposed.

Ms. Leininger answered she was told the previous property owner was given an offer by the developer that he liked and accepted.

Commissioner Roberts said someone in the audience had asked about storm water and another mentioned light pollution so she wanted to make sure these were addressed.

Ms. Leininger replied there is a storm water detention area along the west side of the property with storm water collection streams that empty into it. There are additional storm water areas along the east side of the property as well. The City’s on-call storm water consultant has accepted the plan provided by the applicant as satisfactory maintenance of the storm water on the site. The lighting will come in with the final development plan and our Code has standards for downward directional lighting, no light is to flow onto
adjacent properties and the photometric plans that will be submitted must show shielding based on the wattage. There are also requirements by the City regarding street lights.

Commissioner Roberts inquired if the City has been involved in any future needs on Moonlight Road or if anything was known about the area not located within Gardner limits.

Mr. Powell stated the future growth of Gardner is along Moonlight to the north. The long-term CIP plan is to look at widening Moonlight to 159th St, including that intersection because there is a small hill there in need of major grade improvements. That is within the next 10-15 years, on a variable sliding scale.

Mr. Denk had comments on two points prior to the vote. First, the bonding required on this project was responded to by the developer in terms of their personal vertical construction in which he previously said he had financial backing and it is not required by City code that they bond. In terms of public infrastructure they are required to build, they are required to post bonds to ensure appropriate construction of all streets, sewers, drainage, grading plans and more. They must post both performance and maintenance bonds to ensure 100% of the cost of construction of all of those items and for a period (of usually up to two years) that the constructed improvements are maintained to the standards.

Secondly, he said there were many comments about several issues and he wanted the Planning Commission to be focused on their job and function pursuant to Kansas law and city code. He reminded them that their action was supposed to be based off the ten factors that staff laid out in the staff report. Those ten factors were taken from Kansas case law were the ones appropriate for consideration on a rezoning decision. If there were issues brought up in the public hearing portion that did not directly reflect on one of those ten factors then it was not appropriate for the Commission's consideration in terms of the actions tonight.

Motion made after review of Application Z-19-03 and PDP-19-03, a rezoning and preliminary development plan for (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary development plan dated July 1, 2019, and staff report dated July 23, 2019, the Planning Commission approves the application as proposed, provided the following conditions are met:

1. Revise the plans to show 5' sidewalk connections from the buildings that front and are adjacent to streets, to the public sidewalk, where feasible due to topography.
2. Revise the plans to show 8' wide sidewalks along any building facade abutting a parking area.
3. Revise the plans to show 8’ wide sidewalks on primary routes between the street or parking area and the building entrance.
4. Revise the plans to show 8’ wide sidewalks along any parking with vehicle overhangs.
5. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary.
6. Revise the Duplex unit footprint/floorplans to provide for no more than 25% of the front facade as garage.

and recommends the Planning Commission forward the recommendation for approval to the Governing Body.

Motion made by Meder and seconded by McNeer.

Commissioner Gardenhire explained to the public about the ten standards that the Commission must follow for this rezoning. Staff has recommended an approval of this motion so he was approving but with a heavy heart. Commissioner McNeer added that it appeared the ten items have been met and he had to concur with Commissioner Gardenhire.

Motion passed 5-1 with 1 abstention, (Simmons-Lee nay, Ford abstained)

Ms. Leininger continued her presentation on PP-19-05, the preliminary plat for Tallgrass. Staff found this plat consistent with the comprehensive plan regarding a variety of housing types for the area, connectivity, both street and trail, and open space described in the “New Residential Growth Areas”. It was also consistent with the Land Development Code with meeting the exception for the larger block sizes used for different types of larger scaled developments. The phasing met a logical and coordinated approach from southeast to west and then to east again, mostly based on sewer availability. Utilities and facilities were provided with the exception of the final design of the sewer. The project was within the Gardner service area and the City’s utility department asked for a plan with the entire property to sewer to Gardner facilities whether that means providing a lift station or topography changes. The project did not impede future infrastructure improvements for the area and was dedicating the necessary right-of-way for the future expansion of Moonlight Road and was providing the funding for the expansion of Gretna and Evergreen Streets.

Commission Discussion

No questions were asked.

Motion made after review of application PP-19-05, a preliminary plat for Tallgrass located at the northwest corner of Moonlight Road and University Drive (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary plat dated July 1, 2019, and staff report dated July 23, 2019, the Planning Commission approves the application as proposed, provided the following conditions are met:
1. Rezoning Z-19-03 and Preliminary Development Plan PDP-19-03 for Tallgrass are approved by the Governing Body.
2. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary.

Motion made by Meder and seconded by Boden.

Motion passed 6-1 (Simmons-Lee, nay)
PROCESS INFORMATION

Type of Request: Rezoning and Preliminary Development Plan
Date Received: June 7, 2019

APPLICATION INFORMATION

Applicant: Todd Allenbrand, Payne & Brockway, P.A.
Owner: Cottage Park, LLC, Blue Valley Investment/Wyncroft Hill Apartments, LLC contract purchaser
Parcel ID: CP94500000 0T0C, CP94500000 0T0D
Location: Northwest corner of University Drive and Moonlight Road

REQUESTED ACTION

The applicant requests approval of a rezoning from RP-3, RP-4 and R-3 to RP-3 and associated preliminary development plan for Tallgrass, a two duplex and 592 unit apartment complex with a clubhouse on 43.05 acres.

EXISTING ZONING AND LAND USE

The subject properties are currently a mix of the larger western parcel being RP-3 (Planned Garden Apartment) and RP-4 (Planned Mixed-Density Neighborhood) Districts with an approved preliminary development plan for the Cottages at University Park and the eastern parcel being zoned R-3 (Garden Apartment) District. Both parcels are used for crop agriculture.

SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Use(s)</th>
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<tr>
<td>North of subject property</td>
<td></td>
</tr>
<tr>
<td>R-1 (Single-Family Residential) District</td>
<td>Single-family residences and undeveloped single-family property</td>
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<tr>
<td>East of subject property</td>
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<tr>
<td>County RUR (Rural) District</td>
<td>Single-family residences</td>
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<tr>
<td>County PEC3 (Planned Light Industrial Park District)</td>
<td>Crop agriculture of undeveloped property and manufacturing uses</td>
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<tr>
<td>South of subject property</td>
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<td>C-O (Office) District</td>
<td>Crop agriculture of undeveloped property</td>
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<tr>
<td>CP-2 (Planned General Business) District</td>
<td>Crop agriculture of undeveloped property and City’s Justice Center</td>
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<td>West of subject property</td>
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EXISTING CONDITIONS

These two parcels are currently vacant and surrounded by mainly residential. The residential to the north and west are single-family and duplex, both existing and under construction. The three residential parcels to the east are existing single-family residences that are not within the city limits. Additionally there are industrial and public service uses to the east and south.

BACKGROUND / HISTORY

Annexation of this property was approved by the Governing Body on March 3, 2003 (Ordinance No. 2054). That same year, a rezoning (Z-03-16) from the A (Agriculture) district to a mix of RP-2 (Planned Two-Family Residential) district, RP-3 (Planned Garden Apartment) district, RP-5 (Planned Apartment House) district, CP-2 (Planned General Business) district, and C-O (Commercial Office) district was approved for approximately 157.5 acres for University Park. Additionally, a preliminary development plan (PDP-03-04) for University Park was approved for a mix of multi-family and commercial uses. To date, only a portion of the multi-family in the RP-2 zoning district has been constructed. The remaining portion of the development remains vacant.
The portion of the previously approved development, under consideration with this application, is included in the RP-2 zoning district included 100 duplex homes, or 200 dwelling units.

In 2018, a rezoning (Z-18-01) from RP-2 (Planned Two-Family Residential) District to RP-3 (Planned Garden Apartment) District and RP-4 (Planned Mixed-Density Neighborhood) District and preliminary development plan PDP-18-01 for Cottages at University Park and preliminary plat PP-18-01 were approved. This development included the larger parcel containing 33.639 acres and proposed 160 dwelling units in a mix of compact single-family residential, duplex and a 4-plex pinwheel residential building types.

The eastern parcel was rezoned (Z-18-03) in 2018 from CP-2 (Planned General Business) District to R-3 (Garden Apartment) District with a tentative plan to construct approximately 60 units of apartments in the future.

**CONSISTENCY WITH COMPREHENSIVE PLAN**

The *City of Gardner 2014 Comprehensive Plan* identifies these parcels for low-density residential, which typically includes both single-family residential and duplex housing. In this case, two duplex lots and 31 garden apartment buildings with a clubhouse are proposed. The duplex building types are consistent with low-density residential, however, the garden apartment building types are typically more consistent with higher-density residential. The overall project density is 13.84 units per acre. The Market Analysis of the Gardner Main Street Corridor Plan represents townhomes as generally ranging between 10 to 15 dwelling units per acre, and apartments generally ranging between 25 to 30 dwelling units per acre. Therefore, this proposed development represents an overall comparable density to typical townhome communities rather than apartment communities. The proposed apartments are two- and three-story designs. The buildings that abut the existing single-family and duplex homes to the west and north include 24-unit buildings that are entirely 2-story, and 16-unit buildings that are a mix of 2-story on the ends and 3-story in the middle.

Additionally, the Comprehensive Plan has identified this area for “New Residential Growth” in the Residential Area Plan under the Housing section, which is undeveloped land that provides a clean slate for future residential development to contribute to and enforce the City’s existing character and identity. One goal of New Residential Growth is to ensure a new development meets the requirements of the *Gardner Land Development Code* and provides flexibility where necessary to accommodate a variety of housing types and intensities. While the project itself does not provide a variety of housing types, the proposed addition of apartments would provide for a variety of housing in the area. Copper Springs to the north is developed and being developed with single-family residential and the property to the west is developed with duplex development. The nearest apartment development is just over a mile to the south at Lincoln Lane and Moonlight Road. With the growth of businesses in New Century AirCenter to the east and Moonlight being an alternative route into Olathe from the south and west, multi-family housing on the northeast side of Gardner will be important.

The New Residential Growth Areas plan values connectivity and open space preservation and conservation design. The proposed street layout connects the existing street stub of Gretna Street to the north into future phases of Copper Springs. Additionally a second connection from University Drive to Gretna Street with a new street to be called Evergreen Street is proposed. The Connection section not only talks about street connections but trail connections. The proposed project will extend the existing trail along Moonlight Road to the north to the extent of the property and also into the property.

The open space preservation and conservation design is supported with this project by way of 3 stormwater detention areas throughout the project which will include native vegetation.
Additionally as mentioned before, trails are incorporated into the plan. Staff finds that this project is consistent with housing diversity goals of the Comprehensive Plan.

STAFF ANALYSIS - ZONING MAP AMENDMENT

17.03.030 (B) Review Criteria:

1. The character of the neighborhood, including the design of streets, civic spaces and other open spaces; the scale, pattern and design of buildings; and the operation and uses of land and buildings;

Staff Comment: The area is mostly vacant with single-family to the north, duplex to the west and the Gardner Justice Center to the south. To the west is unincorporated Johnson County where three rural residences are developed and New Century AirCenter industrial is across Moonlight Road. The surrounding structures are generally one-two stories and residential in nature.

2. The zoning and use of properties nearby, and the compatibility with potential uses in the proposed district with these zoning districts;

Staff Comment: Properties to the north are zoned for single-family residential, properties to the west are zoned for duplex structures, property to the east are zoned for rural residential and planned industrial and the property to the south is zoned for commercial uses. The proposed RP-4 District is a medium-density residential zoning district and is compatible with the existing zoning and uses with meeting the Code that requires an eight foot landscaped buffer yard between the RP-4 and lower intensity residential districts. The medium-density residential is an appropriate transition to the commercial to the south from the low-density to the north. With the setbacks, trail, stormwater detention areas and required landscape buffer between the duplex and single-family uses, staff finds that the proposed use is compatible to the properties nearby.

3. The suitability of the subject property for the uses to which it has been restricted;

Staff Comment: Currently the properties are zoned for duplex and multi-family, part of which has a preliminary development plan for the Cottages at University Park approved with it. The eastern parcel has no development plan approved with it. These properties are suitable to the uses it has been currently restricted to as it provides for transitioning through zoning and structure type from the existing single-family and duplex structures, out to the collector and arterial roads.

4. The extent to which removal of the restrictions will detrimentally affect nearby property;

Staff Comment: The removal of the restrictions (approved development plan) could affect the nearby properties as the intensity and building types have increased and changed, but it is unclear that would be the case within this context. There have been few studies that show that apartment homes negatively affect nearby lower-density properties. Often, there is a positive effect. The mixing of densities can provide an opportunity for people to remain living in an area or neighborhood as their life changes by moving to housing types that better meet their needs. Additionally people have different needs and wants in their life and may rent or own based on choice and not solely for monetary reasons. An increase in housing density in an area often jump-starts the development of new service providers and businesses.

5. The length of time the subject property has remained vacant as zoned;

Staff Comment: The subject property has never been developed. The properties have been a part of various plans since annexed into the city in 2003 but have remained undeveloped.
6. The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property as compared to the hardship imposed by such restrictions upon the property;

Staff Comment: The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property if the restrictions were to remain, are based on the possibility that the property could continue to be undeveloped causing no economic gain to the community. The current restrictions could impose a hardship to the applicant as they would be required to meet the current development plan that was not their plan or interest to build. In addition, the proposal impacts a second parcel that was not originally part of the plan and this could cause a disjointed development look and feel.

7. The recommendations of professional staff;

Staff Comment: Staff recommends approval of the rezoning to RP-4 District.

8. The conformance of the requested change to the Comprehensive Plan, and in particular the relationship of the intent statement for the proposed district and how the specific application furthers that intent statement in relation to the Comprehensive Plan;

Staff Comment: While the proposed zoning is not consistent with the future land use, the plan provides for many of the details of the New Residential Growth Areas identified in Chapter 5 Land Use & Development. These items include connectivity through streets and trails, integrated stormwater detention areas, mixing of densities and housing options through the bigger neighborhood area and streetscapes that promote trees in the parkway. Additionally the impact on the utility system is less with a more dense development because less lines are extended to provide for more people.

9. The extent to which the proposed use would adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity; and

Staff Comment: The proposal would not adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity. Existing utilities are nearby and planned to be extended into the development, streets will be extended into the development and public safety is either across the street for police or in the nearby New Century AirCenter for fire protection.

10. Other factors relevant to a particular proposed amendment or other factors which support other adopted policies of the City.

Staff Comment: Other factors relevant for this amendment is that this project is an overall density that is considered to be medium density which is appropriate transition to the commercial to the south.

STAFF ANALYSIS - PRELIMINARY DEVELOPMENT PLAN

The intent of the planned zoning districts is to encourage innovation in development, unique and distinctive places, and efficient use of land, buildings and infrastructure. Specifically, planned zoning and development plans to support the flexibility offered through planned zoning should accomplish one or more of the following:

1. Preservation of distinct natural features on the land and integration of them into amenities for the project.

2. Reduction in potential environmental impacts from the development, whether through disturbance of land, location of streets and infrastructure or operation of sites and buildings.
3. Create broader community benefits through the better integration of multiple projects, resulting in designs that could not have otherwise been accomplished through the base zoning districts and standards.

4. Improved public realm designs, including streetscapes, open space, civic spaces and the relationship of buildings and sites to those spaces.

5. Creation of unique projects and places that are particularly suited for the planned location based on the characteristics of the land or the context and relationship to surrounding areas.

Departures from the standards associated with all zoning districts may be considered through planned zoning, and approved provided they are based upon a comprehensive and well-integrated development plan for the area. These departures shall not be justified for simply wanting flexibility or deviations from standards based upon a site plan.

A preliminary development plan represents an overall plan for a development to include the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. This plan shall have a particular emphasis on how these elements relate to the public realm plan and where transitions between these elements occur at a parcel or block scale, both within the development and in coordination with abutting property. The development plan shall specifically identify where development standards may differ from those otherwise applicable through the base zoning districts and general development requirements of this Code.

A final development plan provides specific details of the portion or entirety of the approved preliminary development plan. This includes elevations, building materials, landscaping and other specific details. The final development plan has the same review criteria as a site plan.

**17.03.040 (C) Review Criteria:**

1. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the goals of the Comprehensive Plan, and based upon generally accepted planning and design practice.

**Staff Comment:** This plan could not have been accomplished through the strict application of the base zoning district. The accessory structure standards are very strict and targeted more towards single-family residential property. With the planned district, deviations for the proposed garage structures is possible. This is part of the higher end amenities for the apartment complex. The plan offers apartment homes to the area to create a variety of housing types and another housing option on the northeast side of town which is a goal throughout the comprehensive plan. The plan is also based on generally accepted planning and design practice with pedestrian connectivity and amenities.

2. The benefits from any flexibility in the standards proposed in the plan promote the general public health, safety and welfare of the community, and in particular of the areas immediately near or within the proposed project, and are not strictly to benefit the applicant.

**Staff Comment:** The benefits from any flexibility in the standards proposed in the plan promote the general public health, safety and welfare of the community, and in particular of the areas immediately near or within the proposed project as discussed in the next section regarding departures.

One standard has not been met and a deviation not requested is for the duplex structures. The Duplex Building Type has a garage limit of 25% across the front facade. The applicant has proposed approximately 64.5% garage across the front facade. This will need to be revised and will be a condition of approval.
3. The benefits from any flexibility in the standards proposed in the plan allow the project to better meet or exceed the intent statements of the base zoning district(s) and the standards proposed to be modified when applied to the specific project or site.

**Staff Comment:** The benefits from any flexibility in the standards allows the project higher end amenities for the residential including garage structures.

4. The plan reflects generally accepted and sound planning and urban design principles with respect to applying the Comprehensive Plan and any specific plans to the area;

**Staff Comment:** The plan reflects generally accepted and sound planning and urban design principles by providing a variety of housing types in the area and community. Multi-family housing has less impact on utilities because of shorter utility extensions which uses the facilities more efficiently due to the compact development. This type of development supports the City’s goal for the community to be more fiscally responsible. Additionally, with the property being located on an arterial road, there will be a future ability for a transit stop to be located nearby to support commuting to employment corridors such as the nearby New Century AirCenter and the Logistics Park Intermodal Facilities.

5. The plan meets all of the review criteria for a zoning map amendment.

**Staff Comment:** The plan generally meets all of the review criteria for a zoning map amendment as outlined in the section above, with the exception of deviations discussed below that require Planning Commission approval.

**DEVIATIONS**

The standards outlined below are standards from the Land Development Code that are not met. The planned district allows for departures from the standards associated with all zoning districts provided they are based upon a comprehensive and well-integrated development plan for the area. Below are the standards not met and the applicant’s justification for such deviation.

**Specific Use Standards**

1. **Section 17.05.020.C Design Standards, Terrace**

   **Standard:** All buildings shall have a direct sidewalk connection at least 5’ wide between each front entrance and the sidewalk.

   **Proposed:** Connectivity along driveways

   **Applicant Response:** Connectivity along driveways is provided. The front of the buildings face internally towards the parking areas. They would like to discourage people from walking to the buildings from the street or back.

   **Staff Comment:** The Frontage Design standards are intended to establish the relationship of the building to the public realm, based upon the context, streetscape design, and the specific buildings and uses permitted on a block. The Code attempts to make the streetscape or public realm as an inviting place to promote human-scale design in order to create meaningful and useable outdoor spaces. The proposed building elevations show that the structures are dual sided with breezeways through the buildings. By connecting the buildings along the street frontages with sidewalks, this will allow for residence to access the street and public sidewalks from the buildings as opposed to walking along the parking lots. Staff feels that this is an important part of the Frontage Design standards of the LCD in creating an inviting streetscape. Adding the sidewalk connections from the adjacent buildings to the street, where feasible regarding topography, will be a recommended condition of approval.
2. Section 17.05.020.C.3.a General Zoning Standards, Accessory Buildings

Standard: No more than one per lot.

Proposed: 18 garage structures and one maintenance structure.

**Applicant Response:** We believe this applies to single-family developments.

**Staff Comment:** The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building over 120 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex, reducing visual impact of vehicles. Staff supports this deviation.


Standard: Shall not exceed 250 square feet for each 3,000 square feet of lot area up to a maximum of 1,200 square feet.

Proposed: 18-1,400 sf garage structures and 1-2,500 sf maintenance structure.

**Applicant Response:** We believe this applies to single-family developments.

**Staff Comment:** The standard appears to be intended to address single-family residential uses. It is not realistic to limit an apartment complex to one accessory building over with a maximum of 1,200 square feet. Deviating from this standard would not impact surrounding property and would be an amenity for storage of vehicles and other items for tenants of the complex. Staff supports this deviation.

4. Section 17.09.020.C.2 Block and Lot Access, Sidewalks

Standard: Along any building facade abutting a parking area, a minimum of 8’ wide

Proposed: 6’ wide

**Applicant Response:** We believe 6ft widths are appropriate and functional, which matches the typical 6ft width found any many of the surrounding Municipalities. The 6ft width also decreases the environmental impact of the hard surface area by increasing the open space.

**Staff Comment:** Parking directly adjacent to sidewalks allows for a vehicle overhang of approximately 2.5’. With the reduction in the sidewalk from 8’ to 6’ wide, the usable portion of the sidewalks are narrowed down 3.5'-4’ wide. This is the intent of the Code at requiring 8’ sidewalks abutting parking stalls is to provide for the vehicle overhang and provide for 6’ for pedestrians. The proposed 6’ with the vehicle overhang is a further reduction from the Code required minimum, generally for sidewalks to be 5’ wide. Staff does not support this deviation to reduce sidewalks along parking with vehicle overhangs to 6’ wide. This will be a recommended condition of approval.

5. Section 17.09.020.C.2 Block and Lot Access, Sidewalks

Standard: A primary route between the street or parking area and the building entrance, a minimum of 8’ wide

Proposed: 5’-6’ wide

**Applicant Response:** We believe 5ft widths are appropriate and functional, which matches the typical standard widths for sidewalks along public streets in Gardner and surrounding Municipalities. The 5ft width also decreases the environmental impact of the hard surface area by increasing the open space.
Staff Comment: Connections from the street are shown at a range from 5’ to 6’ wide. Five feet is the minimum general width provided for in the Code. However, the Code requires for the primary route from the public streetscape to the building entrance to be 8’ wide and from a parking area to the building entrance to be 8’ wide. Sidewalks to the building entrances are intended to be wider to allow for people to pass and the door to be opened while people are passing in order to not have to step off the sidewalk. In order to maintain that additional space, staff recommends a minimum of 8’ wide to allow for space to either side of the door. This will be a recommended condition of approval.

6. Section 17.09.020.C.2 Block and Lot Access, Sidewalks
Standard: Along any parking with vehicle overhangs, a minimum of 8’ wide
Proposed: 6’ wide

Applicant Response: We believe 5ft widths are appropriate and functional, which matches the typical standard widths for sidewalks along public streets in Gardner and surrounding Municipalities. The 5ft width also decreases the environmental impact of the hard surface area by increasing the open space. We believe 6ft widths are appropriate and functional, which matches the typical 6ft width found any many of the surrounding Municipalities. The 6ft width also decreases the environmental impact of the hard surface area by increasing the open space.

Staff Comment: Parking directly adjacent to sidewalks allows for a vehicle overhang of approximately 2.5’. With the reduction in the sidewalk from 8’ to 6’, the usable portion of the sidewalks are narrowed down 3.5’-4’ wide. This is the intent of the Code at requiring 8’ sidewalks abutting parking stalls is to provide for the vehicle overhang and provide for 6’ for pedestrians. The proposed 6’ with the vehicle overhang is a further reduction from the Code required minimum, generally for sidewalks to be 5’ wide. Staff does not support this deviation to reduce sidewalks along parking with vehicle overhangs to 6’ wide. This will be a recommended condition of approval.

7. Section 17.09.030.E Required Parking, Bicycle Parking
Standard: Residential: 1 per dwelling unit and 5% of the required vehicle spaces for the entertainment (clubhouse) uses (593 bicycle parking)
Proposed: 102 spaces

Applicant Response: 102 will be sufficient for the site.

Staff Comment: Staff has found that this standard of 1 bicycle parking space per dwelling unit may be excessive. This development proposing to have 102 garage spaces throughout the site. Additionally, bicycle owners may store the bicycle in a garage space which is not included in the onsite parking count. This is providing for 17% of the required spaces. Staff supports this deviation.

STAFF ANALYSIS – INFRASTRUCTURE / OTHER

ELECTRIC – Electric is currently installed both to the north and west of the subject properties and is to be extended into the project from there.

NATURAL GAS – Natural gas is provided for off Gretna Street where is can be extended into the development.
SANITARY SEWER – The subject properties are within the Gardner sanitary sewer service area though the applicant has stated that the topography of the property will not allow for the entire site to gravity flow to the City facilities. The line between the Gardner and Johnson County Wastewater (JCW) sewer districts is the north property line of the subject property. The applicant is proposing that the northeast and eastern portion of the project’s sewer flow to the north into the JCW facilities. This is also anticipated in future plans by JCW even though it is not within their service area. The applicant has provided information to the Utilities Department demonstrating that the entire project cannot be sewered by gravity lines to the City of Gardner facilities. The Utilities Department has reviewed the provided information and has determined that the developer should design the sewer system with a lift station in order to send all sanitary sewer to Gardner facilities. This will maintain the potential revenue loss if sewered to JCW for areas within the Gardner sewer service area boundaries. Redesigning the system to meet this requirement will be a condition of approval.

WATER – City water will be provided from extensions of existing lines from University Drive and Gretna Street. Water lines will be provided along both new roads and connect into the property.

STORM WATER – Three stormwater detention ponds have been integrated into the project. The applicant has provided a stormwater study and it has been accepted by the City.

ROADWAY NETWORK AND VEHICULAR ACCESS – Gretna Street will be extended to the north property line of the development and Evergreen Street will be provided from University Drive to Gretna Street.

SIDEWALKS – Five foot sidewalks are provided for on both sides of Gretna Street and Evergreen Street. Additionally a ten foot trail will be provided on the west side of Moonlight Road. Private sidewalks are provided along all parking lots and a trail is provided throughout the development.

ATTACHMENTS
I. Plan document
II. Property owner notice letter
III. Application

ACTIONS
Per Section 17.03.010 (G) of the Gardner Land Development Code, a review body may take the following actions (or recommend the following actions):
1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.
3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.
EFFECT OF DECISION

Zoning Map Amendment (Rezoning) – Amendments to the official zoning map (rezoning) shall be approved by the Governing Body in the form of an ordinance. Approved changes shall be indicated on the official zoning map by the Director within 30 days following such action.

Preliminary Development Plan – Approval of a preliminary development plan shall constitute acceptance of the overall planning concepts and development parameters. In reviewing and approving a preliminary development plan, the Planning Commission may recommend or the Governing Body may require conditions that must be met before an applicant submits a final development plan. An approved preliminary development plan shall lapse and be of no further force and effect if a final development plan (or a final development plan for a designated phase of the preliminary development plan) has not been approved within two years of the date of approval of the preliminary development plan.

RECOMMENDATION

Staff recommends approval of the rezoning from RP-3, RP-4 and R-3 to RP-3 and the associated preliminary development plan for Tallgrass with the conditions outlined in the Recommended Motion section.

Recommended Motion:

After review of Application Z-19-03 and PDP-19-03, a rezoning and preliminary development plan for (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary development plan dated July 1, 2019, and staff report dated July 23, 2019, the Planning Commission approves the application as proposed, provided the following conditions are met:

1. Revise the plans to show 5’ sidewalk connections from the buildings that front and are adjacent to streets, to the public sidewalk, where feasible due to topography.
2. Revise the plans to show 8’ wide sidewalks along any building facade abutting a parking area.
3. Revise the plans to show 8’ wide sidewalks on primary routes between the street or parking area and the building entrance.
4. Revise the plans to show 8’ wide sidewalks long any parking with vehicle overhangs.
5. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary.
6. Revise the Duplex unit footprint/floorplans to provide for no more than 25% of the front facade as garage.

and recommends the Planning Commission forward the recommendation for approval to the Governing Body.
Good afternoon,

I'm writing this email to express my concerns about the plan to rezone the land at the northwest corner of Moonlight Rd and University Dr for the purposes of building the 596 unit Tallgrass Apartment complex. My first worry is that we just bought our home about two years ago. We live on W 162nd Place just off of University Dr. These apartments will become part of our daily life. Our property value is sure to go down once they are built. I've already discussed with my husband the possibility of moving before that happens if the decision to build is approved. Many of our neighbors feel the same way. There is a kind of a 'get out before our homes lose value mentality' right now. We will have more people walking through our neighborhood, a neighborhood where we all pretty much know and trust each other. Small places with lots of people are also bound to create an increase in crime. I'm wondering how the schools plan to handle the extreme influx of students that comes with 596 new families moving in. Traffic will be an issue as well. I am unable to attend the public hearing so I'm hoping this email is read and closely considered when making a decision.

Thank you for your time,

Ashley Bailey
Please help and consider reconsidering not allowing tall grass to come to moonlight/university.

1. For apartments the city doesn’t get the tax money like the city does for houses and duplexes. It’s a loss
2. With all these apartments, where will these kids go to school? That is Gardner Elementary and Wheatridge which are very full. Will the city have to build another elementary school? And what will this do for the high school which is already overflowing? We have to physically drive PAST Sunflower elementary, in order to get to Gardner Elementary, because Sunflower is also packed to the brim.
Tallgrass is not a good addition to our city/neighborhood/community
I am writing you with my concerns for an upcoming zoning change proposal that will be on the agenda for city council meeting tomorrow. The property is on Moonlight and University Dr across from the new police station. I am in objection to this changing to apartments. 400 + apartments the amount of traffic alone will be horrendous, possibly 800 added cars in this area everyday coming and going not to mention the added students to our school district would be overwhelming. I did not move and build my home in Gardner to have a large apartment complex in my back yard. I moved to Gardner so I wouldn't have to fight traffic. Please do not change this current zoning. Our neighbors do not want this complex in this area. I look forward to seeing you tomorrow night at the meeting.

Thank you,
Marla Anderson
28400 W 162 Ter
Gardner Ks 66030
Good afternoon Michelle,

I am writing you today to express my concerns regarding the proposed rezoning and building of 500+ apartment units near our housing community Copper Springs. We are concerned that the newly proposed units will have a negative affect on our property values, quality of living and safety. The added traffic, taxes due to infrastructure changes and potential new schools are just a few of the concerns we as homeowners have. Due to these issues and more, we ask that you consider the current residents and do not rezone these areas for apartments. Cottage style, duplex and or town homes would be a better option, however single family homes would be more suitable for the area and neighborhood. Copper Springs is one of the upper end developments in town and this kind of project could have current and future consequences to motivating new residents to move into those higher end homes.

I see in the letter that residents can submit a protest petition. Can you give me more info on how I go about doing that?

Thank you for your time and hearing my concerns.

Have a great afternoon!

Chris
Message submitted from the <Gardner, KS> website.

Site Visitor Name: Tara King  
Site Visitor Email: taram88@yahoo.com

To Whom it may concern,

We have great concerns about traffic, value of our home, and crowding of the school district if the city allows the development of the Tallgrass Apartments. We have already moved due to the Intermodal backing up to our prior address. This is frustrating!!!!!

Tara King
July 2, 2019

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on Tuesday, July 23, 2019, beginning at 7:00 p.m., in the Gardner City Hall, 120 E Main Street. The following items may be of interest to you:

**Z-19-03(PDP-19-03):** Rezoning for approximately 43 acres from R-3 (Garden Apartment), RP-3 (Planned Garden Apartment) & RP-4 (Planned Mixed-Density Neighborhood) District to RP-3 (Planned Garden Apartment) District with an associated preliminary development plan for Tallgrass Apartments, a 596 unit apartment complex located at the northwest corner of the intersection of Moonlight Road and University Drive. (Tax Id’s CP945000000 T0C & CP945000000 T0D)

Rezoning requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcome and encouraged.

A complete legal description for this property is available at the City of Gardner Business & Economic Development Department at Gardner City Hall, 120 E. Main Street, Monday - Friday from 8:00 a.m. - 5:00 p.m.

If you have questions relating to this matter, please contact me at 913-856-0909.

After the Planning Commission makes a recommendation, property owners within 200’ of the subject area, 1000’ in the county, may submit a protest petition against such recommendation. The protest petition must be filed with the City Clerk, within 14 days of the conclusion of the public hearing. For more information, contact the Business & Economic Development Department.

**PLEASE NOTE:** If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Michelle Leininger, AICP
Principal Planner

Enclosure
Gardner Planning Commission
Meeting Date: July 23, 2019

Map Date: 7/1/19
THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
RIGHT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
LEFT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas

BCS
CLOSE UP FRONT-LEFT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 2 Story
Gardner, Kansas
AERIAL VIEW

THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
RIGHT ELEVATION

THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
LEFT ELEVATION

THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
CLOSE UP FRONT-LEFT ELEVATION

THE GARDNER APARTMENTS
20 Unit - 2-3 Story
Gardner, Kansas
FRONT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
BACK ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas

RIGHT ELEVATION
LEFT ELEVATION
THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
CLOSE UP FRONT-RIGHT ELEVATION

THE GARDNER APARTMENTS
24 Unit - 3 Story Building
Gardner, Kansas
FRONT ELEVATION

THE GARDNER APARTMENTS
Clubhouse
Gardner, Kansas
BACK ELEVATION

THE GARDNER APARTMENTS
Clubhouse
Gardner, Kansas
RIGHT ELEVATION

THE GARDNER APARTMENTS
Clubhouse
Gardner, Kansas
New Townhouse for:
Homestead Townhomes - Duplex
11800 South Shannon Street
Olathe, Kansas 66062
ZONING MAP AMENDMENT (REZONING) APPLICATION

OWNER INFORMATION

Name(s) Wyncroft Hill Apartments, LLC
Contact Todd Bleakley
Address 1074 W Santa Fe Street
City Olathe State KS Zip 66061
Phone 913-393-1555 Email bleakley@sbcglobal.net

APPLICANT/AGENT INFORMATION

Name(s) Payne & Brockway, P.A.
Contact Todd Allenbrand
Address 426 S Kansas Avenue
City Olathe State KS Zip 66061
Phone 913-782-4800 Email todda@payne-brockway.com

SITE INFORMATION

Property Address/Location: University Drive and Moonlight Road
Legal Description (Attach If Necessary): Tracts C and D, University Park Addition No. 1
Total Site Area: 43.05 Acres
Present Land Use: Planned Mixed Family Proposed Land Use: Apartments
Proposed Building Type(s): Garden Apartment

Please indicate a reason for the request:
We believe there is a demand in Gardner for high quality apartment development with an extensive amount of open space, variety of amenities and walking trails that create a warm and inviting environment for the residents, but also for the surrounding neighbors.

SIGNATURE
I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for rezoning as indicated above.

Signature(s): ___________________________ Date 1/10/19

Revised 10/24/16
Rezoning Application Page 1 of 4
ZONING MAP AMENDMENT (REZONING) APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

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1. Complete application packet
2. Application fee
3. Digital copies (PDF) of the completed application and legal description (Word)
4. Sign posting affidavit
5. Preliminary Development Plan application and plans (if rezoning to a planned development)

Please respond to the following statements:

Anticipated relationship of proposed zoning to economic development or public health, safety and welfare:
We believe the character of the development will attract quality residents in this unique development, which should have a direct economic benefit for the City. The development creates an active environment for the residents in safe and inviting manors. The development establishes a transition or buffer between the commercial property to the east and south the single-family homes to north and duplex-homes to the southwest of the development. The development benefits the public further by detaining and treating stormwater runoff, which was not accounted for in the 2004 RP-2 or completely in the 2018 RP-3/RP-4 approvals.

Anticipated impact of proposed zoning/use on existing public infrastructure:
We believe there will be no detrimental impact to the public infrastructure. This belief is supported by the fact that the proposed public street network will be less than the plans that were approved in the 2004 RP-2 and the 2018 RP-3/RP-4.

I hereby submit all information required for rezoning application review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

Signature of Applicant

Date

19-0010
Revised 10/24/16
Rezoning Application Page 2 of 4
OWNER AFFIDAVIT

I/WE Todd Bleakley, Member of Wyncroft Hill Apartments, LLC (Contract Purchaser), hereby referred to as the "Undersigned", being of lawful age, do hereby on this ___ day of June, 2019, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize

   Payne & Brockway, P.A. (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Tracts C & D, University Drive and Moonlight Road (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

   IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

   [Signature]
   Todd Bleakley, Member
   Wyncroft Hill Apartments, LLC

   STATE OF KANSAS
   COUNTY OF JOHNSON

   The foregoing instrument was acknowledged before me on this ___ day of June, 2019, by

   [Signature]
   Todd Bleakley, Member of Wyncroft Hill Apartments, LLC

   My Commission Expires: ____________

   [Signature]
   KRISTI S. BOYER
   Notary Public - State of Kansas
   My Appt. Expires: ____________

   [Stamp]

   19-0010
LEGAL DESCRIPTION
FOR
TALLGRASS
ZONING/PRELIMINARY DEVELOPMENT PLAN/PRELIMINARY PLAT

Tracts C and D, UNIVERSITY PARK ADDITION NO. 1, a subdivision in the City of Gardner, Johnson County, Kansas.

...EXCEPT....

That part platted UNIVERSITY PARK ADDITION NO. 2, a subdivision in the City of Gardner, Johnson County, Kansas.

The above legal description contains 43.05 acres, more or less.
LEGAL DESCRIPTION
FOR
TALLGRASS
ZONING/PRELIMINARY DEVELOPMENT PLAN/PRELIMINARY PLAT

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The above legal description contains 43.05 acres, more or less.
PRELIMINARY DEVELOPMENT PLAN APPLICATION

OWNER INFORMATION

Name(s) Wyncroft Hill Apartments, LLC
Contact Todd Bleakley
Address 1074 W Santa Fe Street
City Olathe State KS Zip 66061
Phone 913-393-1555 Email bleakley@sbcglobal.com

APPLICANT/AGENT INFORMATION

Name(s) Payne & Brockway, P.A.
Contact Todd Allenbrand
Address 426 S Kansas Avenue
City Olathe State KS Zip 66061
Phone 913-782-4800 Email todda@payne-brockway.com

SITE INFORMATION

Property Address/Location University Drive and Moonlight Road
Legal Description (Attach If Necessary) Tracts C and D, University Park Addition No. 1
Number of Existing Lots 2 Number of Proposed Lots 5 Lots/ 596 Units
Total Site Area 43.05 Acres Present Zoning RP-3
Present Land Use Planned Mixed Family Proposed Use(s) Garden Apartments
Proposed Street Design Type(s) & Class Local-Neighborhood
Proposed Type(s) Open & Civic Space Walking Trails and Recreational Areas
Proposed Frontage Type(s) Terrace
Proposed Building Types(s) Garden Apartments

SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for a preliminary development plan as indicated above.

Signature(s): ___________________________ Date 6/6/19

Revised 8/1/16 Preliminary Development Plan Application Page 1 of 6
PRELIMINARY DEVELOPMENT PLAN APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

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1. Complete application packet
2. Application fee
3. 10 complete sets of plans printed
4. Digital copies (PDF) of the completed application, plans, and legal description
5. Sign posting affidavit
6. Preliminary Stormwater Management Plan (2 printed and 1 digital copy)
7. Preliminary Traffic Assessment See Access Management Code. (2 printed and 1 digital copy)

PRELIMINARY DEVELOPMENT PLAN REQUIREMENTS

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1. Public Realm Plan
   A plan outlining the general location, design characteristics, and functions of all proposed streets, storm water management, open spaces, civic spaces, and circulation networks – whether public, common or private – that will create the public realm for the plan.

2. Development Plan
   A plan indicating the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. This plan shall have a particular emphasis on how these elements relate to the public realm plan and where transitions between these elements occur at a parcel or block scale, both within the development and in coordination with abutting property. The development plan shall specifically identify where development standards may differ from those otherwise applicable through the base zoning districts and general development requirements of this Code.

3. Existing Conditions
   Analysis identifying the general layout of any existing structures, streets or infrastructure and the location of natural features such as watercourses, steep grades, significant stands of trees, specimen trees or other features.

4. Phasing or Implementation
   A strategy indicating the estimated timing of development, and any other administrative details of implementing the plan through future final site plans.

5. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).
Yes  No

6. **Date of preparation** and/or revisions.

7. **Vicinity map** (drawn at a scale of 1”=2,000’, locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)

8. **A legal boundary description** with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.

9. **Location of monuments**, shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.

10. **Boundary lines** of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).

11. **Lots and tracts identified clearly**, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.

12. **Building setback lines** along public and private streets with dimensions in feet.

13. **Existing streets and driveways** which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts.

14. **Location of existing open space, alleys, parks, streams, ponds**, or other similar features within plat, and whether they are to be retained or removed.

15. **Location of existing buildings and structures within 200 feet of the plat.**

16. **Existing utilities**, including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.

17. **Topography** of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.

18. **Proposed street network**, including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.

19. **Proposed sidewalks** and/or trail locations including proposed widths.

20. **Proposed utilities**, including approximate location of sanitary sewer, water main, street lights, and storm sewer.

21. **Existing and proposed easements** with dimensions. Existing easements shall be labeled with book and page number. A 10-foot utility easement shall be shown adjacent to arterial streets.

22. **Any area within a federally designated floodplain.** Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).

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Revised 8/1/16  Preliminary Development Plan Application  Page 3 of 6
23. **Stream corridor boundary** and dimensions.

24. **Intersection site distance analysis.**

25. **Vehicle maneuvering/turning templates** reflecting the site can accommodate a minimum SU-30 class vehicles (for emergency access to all areas of the site), and the appropriate site-design vehicle for any other special areas of the site (such as delivery or dock areas, etc.), as necessary.

26. **All public streets** within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.

I hereby submit all information required for preliminary development plan review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

[Signature of Applicant]

Date: [01/07/20]
PROJECT NUMBER / TITLE: PP-19-05 Preliminary Plat for Tallgrass

PROCESS INFORMATION
Type of Request: Preliminary Plat
Date Received: June 7, 2019

APPLICATION INFORMATION
Applicant: Todd Allenbrand, Payne & Brockway, P.A.
Owner: Cottage Park, LLC, Blue Valley Investment/Wyncroft Hill Apartments, LLC contract purchaser
Parcel ID: CP945000000T0C, CP945000000T0D
Location: Northwest corner of University Drive and Moonlight Road

REQUESTED ACTION
The applicant requests approval of a preliminary plat for a seven lot multi-family residential project containing 43.05 acres.

EXISTING ZONING AND LAND USE
The subject properties are currently a mix of the larger western parcel being RP-3 (Planned Garden Apartment) and RP-4 (Planned Mixed-Density Neighborhood) Districts with an approved preliminary development plan for the Cottages at University Park and the eastern parcel being zoned R-3 (Garden Apartment) District. Both parcels are used for crop agriculture.

SURROUNDING ZONING AND LAND USE

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<tr>
<td>R-1 (Single-Family Residential) District</td>
<td>Single-family residences and undeveloped single-family property</td>
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<tr>
<td><strong>East of subject property</strong></td>
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<tr>
<td>County RUR (Rural) District</td>
<td>Single-family residences</td>
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<tr>
<td>County PEC3 (Planned Light Industrial Park District) District</td>
<td>Crop agriculture of undeveloped property and manufacturing uses</td>
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<tr>
<td><strong>South of subject property</strong></td>
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<tr>
<td>C-O (Office) District</td>
<td>Crop agriculture of undeveloped property</td>
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<tr>
<td>CP-2 (Planned General Business) District</td>
<td>Crop agriculture of undeveloped property and City’s Justice Center</td>
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<tr>
<td><strong>West of subject property</strong></td>
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<tr>
<td>RP-2 (Planned Two-Family Residential) District</td>
<td>Duplex residences</td>
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EXISTING CONDITIONS

These two parcels are currently vacant and surrounded by mainly residential. The residential to the north and west are single-family and duplex, both existing and under construction. The three residential parcels to the east are existing single-family residences that are not within the city limits. Additionally there are industrial and public service uses to the east and south.

BACKGROUND / HISTORY

Annexation of this property was approved by the Governing Body on March 3, 2003 (Ordinance No. 2054). That same year, a rezoning (Z-03-16) from the A (Agriculture) district to a mix of RP-2 (Planned Two-Family Residential) district, RP-3 (Planned Garden Apartment) district, RP-5 (Planned Apartment House) district, CP-2 (Planned General Business) district, and C-O (Commercial Office) district was approved for approximately 157.5 acres for University Park. Additionally, a preliminary development plan (PDP-03-04) for University Park was approved for a mix of multi-family and commercial uses. To date, only a portion of the multi-family in the RP-2 zoning district has been constructed. The remaining portion of the development remains vacant. The portion of the previously approved development, under consideration with this application, is included in the RP-2 zoning district included 100 duplex homes, or 200 dwelling units.

In 2018, a rezoning (Z-18-01) from RP-2 (Planned Two-Family Residential) District to RP-3 (Planned Garden Apartment) District and RP-4 (Planned Mixed-Density Neighborhood) District
and preliminary development plan PDP-18-01 for Cottages at University Park and preliminary plat PP-18-01 were approved. This development included the larger parcel containing 33.639 acres and proposed 160 dwelling units in a mix of compact single-family residential, duplex and a 4-plex pinwheel residential building types.

The eastern parcel was rezoned (Z-18-03) in 2018 from CP-2 (Planned General Business) District to R-3 (Garden Apartment) District with a tentative plan to construct approximately 60 units of apartments in the future.

**CONSISTENCY WITH COMPREHENSIVE PLAN**

The *City of Gardner 2014 Comprehensive Plan* identifies these parcels for low-density residential, which typically includes both single-family residential and duplex housing. In this case, two duplex lots and 31 garden apartment buildings with a clubhouse are proposed. The duplex building types are consistent with low-density residential, however, the garden apartment building types are typically more consistent with higher-density residential. The overall project density is 13.84 units per acre. The Market Analysis of the Gardner Main Street Corridor Plan represents townhomes as generally ranging between 10 to 15 dwelling units per acre, and apartments generally ranging between 25 to 30 dwelling units per acre. Therefore, this proposed development represents an overall comparable density to typical townhome communities rather than apartment communities. The proposed apartments are two- and three-story designs. The buildings that abut the existing single-family and duplex homes to the west and north include 24-unit buildings that are entirely 2-story, and 16-unit buildings that are a mix of 2-story on the ends and 3-story in the middle.

Additionally, the Comprehensive Plan has identified this area for “New Residential Growth” in the Residential Area Plan under the Housing section, which is undeveloped land that provides a clean slate for future residential development to contribute to and enforce the City’s existing character and identity. One goal of New Residential Growth is to ensure a new development meets the requirements of the *Gardner Land Development Code* and provides flexibility where necessary to accommodate a variety of housing types and intensities. While the project itself does not provide a variety of housing types, the proposed addition of apartments would provide for a variety of housing in the area. Copper Springs to the north is developed and being developed with single-family residential and the property to the west is developed with duplex development. The nearest apartment development is just over a mile to the south at Lincoln Lane and Moonlight Road. With the growth of businesses in New Century AirCenter to the east and Moonlight being an alternative route into Olathe from the south and west, multi-family housing on the northeast side of Gardner will be important.

The New Residential Growth Areas plan values connectivity and open space preservation and conservation design. The proposed street layout connects the existing street stub of Gretna Street to the north into future phases of Copper Springs. Additionally a second connection from University Drive to Gretna Street with a new street to be called Evergreen Street is proposed. The Connection section not only talks about street connections but trail connections. The proposed project will extend the existing trail along Moonlight Road to the north to the extent of the property and also into the property.

The open space preservation and conservation design is supported with this project by way of 3 stormwater detention areas throughout the project which will include native vegetation. Additionally as mentioned before, trails are incorporated into the plan. Staff finds that this project is consistent with housing diversity goals of the Comprehensive Plan.
STAFF ANALYSIS - PRELIMINARY PLAT

17.03.020 (D1) Review Criteria:

a. The application is in accordance with the Comprehensive Plan and in particular the physical patterns, arrangement of streets, blocks, lots and open spaces, and public realm investments that reflect the principles and concepts of the plan.

Staff Comment: The subject properties are located within the New Residential Growth Areas of the Comprehensive Plan which is an undeveloped land that provides a “clean slate” for future residential development. This section states new residential growth areas should provide logical connections to the surrounding street grid, streetscapes that provide for trees to be planted in the parkway, and pedestrian connections. The proposed plan provides for these things. Gretna Street is to be extended to the north property line to continue to the subdivision to the north in the future and a connection from University Drive to Gretna Street is also provided. The extension of the trail on the west side of Moonlight and additional trails through the development are proposed. This application is in accordance with the Comprehensive Plan.

b. Compliance with the requirements of this Land Development Code, and in particular the blocks and lots proposed are capable of meeting all development and site design standards under the existing or proposed zoning.

Staff Comment: The proposed plat is generally in compliance with the requirements of the Land Development Code (LDC) regarding lots and blocks. In the suburban context, the LDC provides for a 500'-1,000' block length maximum and a block area range of 5-8 acres. The block length from Evergreen to the north property line measures 1,051.5 linear feet, 51.5 linear feet over the maximum. Because the proposed development is a large-scale apartment complex on large lots and includes drives that mimic streets, staff is comfortable with the minor overage in block length. The block areas for this development range from 7.85 acres to 17.5 acres. Section 17.04.010.B.4 Exceptions, allows for oversized parcels and larger blocks for development projects that involve large-scale buildings and patterns, provided that internal access streets mimic the block structure and urban design amenity of the standards and create logical extension and connectivity to the public streetscapes. This development has internal access drives that mimic block structures. Sidewalks are provided for along the drives that also connect to trails through the blocks. Staff feels that this project meets the exception for the large block sizes.

c. Any phasing proposed in the application is clearly indicated and demonstrates a logical and coordinated approach to development, including coordination with existing and potential development on adjacent property.

Staff Comment: The development is proposed to be developed in four phases, starting from the south and going clockwise around the development. Phase three would include the construction of Gretna Street from Evergreen Street to the north property line. The phasing mainly follows the utility availability with most of phase four being served by Johnson County Wastewater from the north because of topography, and following the development of Copper Springs subdivision north of the project.

d. Any impacts identified by specific studies or technical reports, including a preliminary review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.

Staff Comment: The provided studies and technical reports provided generally accepted and sound planning and engineering that reflect long-term solutions and fiscal investment. The storm water plan identifies three detention areas with native vegetation.
e. The application does not deter any existing or future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.

Staff Comment: This project does not deter any existing or future development on adjacent property as connectivity is proposed from the north, south and west.

f. The design does not impede the construction of anticipated or planned future public infrastructure within the area.

Staff Comment: The design does not impede the construction of anticipated or future public infrastructure in the area. The necessary right-of-way for Moonlight Road to be widened is being provided and appropriate utility extensions are provided.

g. The recommendations of professional staff, or any other public entity asked to officially review the plat.

Staff Comment: Staff recommends approval of the preliminary plat.

STAFF ANALYSIS – INFRASTRUCTURE / OTHER

ELECTRIC – Electric is currently installed both to the north and west of the subject properties and is to be extended into the project from there.

NATURAL GAS – Natural gas is provided for off Gretna Street where is can be extended into the development.

SANITARY SEWER – The subject properties are within the Gardner sanitary sewer service area though the applicant has stated that the topography of the property will not allow for the entire site to gravity flow to the City facilities. The line between the Gardner and Johnson County Wastewater (JCW) sewer districts is the north property line of the subject property. The applicant is proposing that the northeast and eastern portion of the project’s sewer flow to the north into the JCW facilities. This is also anticipated in future plans by JCW even though it is not within their service area. The applicant has provided information to the Utilities Department demonstrating that the entire project cannot be sewered by gravity lines to the City of Gardner facilities. The Utilities Department has reviewed the provided information and has determined that the developer should design the sewer system with a lift station in order to send all sanitary sewer to Gardner facilities. This will maintain the potential revenue loss if sewered to JCW for areas within the Gardner sewer service area boundaries. Redesigning the system to meet this requirement will be a condition of approval.

WATER – City water will be provided from extensions of existing lines from University Drive and Gretna Street. Water lines will be provided along both new roads and connect into the property.

STORM WATER – Three stormwater detention ponds have been integrated into the project. The applicant has provided a stormwater study and it has been accepted by the City.

ROADWAY NETWORK AND VEHICULAR ACCESS – Gretna Street will be extended to the north property line of the development and Evergreen Street will be provided from University Drive to Gretna Street.
SIDEWALKS – Five foot sidewalks are provided for on both sides of Gretna Street and Evergreen Street. Additionally, a ten foot wide trail will be provided on the west side of Moonlight Road. Private sidewalks are provided along all parking lots and a trail is provided throughout the development.

ATTACHMENTS
   I. Plat document
   II. Application

ACTIONS
Per Section 17.03.010 (G) of the Gardner Land Development Code, a review body may take the following actions (or recommend the following actions):

1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.
3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

EFFECT OF DECISION
Preliminary Plat – The approval of the preliminary plat does not constitute an acceptance of the subdivision, but authorizes preparation of the final plat. If the Planning Commission tables a plat, the applicant shall have 60 days to submit information sufficient for approval or the application shall be deemed denied. The applicant may request that a denied preliminary plat be submitted to the Governing Body and the Planning Commission shall submit all information to the Governing Body, which can make a determination consistent with these regulations. The approval of the preliminary plat shall be effective for 18 months, except that any approval of a final plat for any phase specifically indicated on a preliminary plat shall renew the 18-month period. The Planning Commission may grant an extension of this period for up to one year, if the applicant demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

RECOMMENDATION
Staff recommends approval of the preliminary plat for Tallgrass with the conditions outlined below in the recommended motion section.

Recommended Motion:
After review of application PP-19-05, a preliminary plat for Tallgrass located at the northwest corner of Moonlight Road and University Drive (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary plat dated July 1, 2019, and staff report dated July 23, 2019, the Planning Commission approves the application as proposed, provided the following conditions are met:

1. Rezoning Z-19-03 and Preliminary Development Plan PDP-19-03 for Tallgrass are approved by the Governing Body.
2. Revise the plan, to the satisfaction of the Utilities Department, to show all sanitary sewer lines flow to Gardner facilities including a lift station if necessary.
PRELIMINARY PLAT APPLICATION

OWNER INFORMATION

Name(s) Wyncroft Hill Apartments, LLC
Contact Todd Bleakley
Address 1074 W Santa Fe Street
City Olathe State KS Zip 66061
Phone 913-393-1555 Email bleakley@sbcglobal.com

APPLICANT/AGENT INFORMATION

Name(s) Payne & Brockway, P.A.
Contact Todd Allenbrand
Address 426 S Kansas Avenue
City Olathe State KS Zip 66061
Phone 913-782-4800 Email todda@payne-brockway.com

SITE INFORMATION

Property Address/Location University Drive and Moonlight Road
Legal Description (Attach If Necessary) Tracts C and D, University Park Addition No. 1
Number of Existing Lots 2 Number of Proposed Lots 5 Lots/ 596 Units
Total Site Area 43.05 Acres Present Zoning RP-3
Number of Existing Structures 0 Present Land Use Garden Apartments
Proposed Street Design Type(s) & Class Local-Neighborhood
Proposed Type(s) Open & Civic Space Walking Trails and Recreational Areas
Proposed Frontage Type(s) Terrace
Proposed Building Types(s) Garden Apartments

SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for preliminary plat as indicated above.

Signature(s): ___________________________ Date 4/6/19

Revised 8/1/16 Preliminary Plat Application Page 1 of 7
# PRELIMINARY PLAT APPLICATION CHECKLIST

## APPLICATION SUBMITTAL REQUIREMENTS

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1. **Complete application packet**
2. **Application fee**
3. **10 complete sets of plans printed**
4. **Digital copies (PDF) of the completed application, plans, and legal description**
5. **1 copy of existing covenants and restrictions** applicable to the development, if any (reference book and page).  
6. **Letter of intent** as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider.
7. **Preliminary Floodplain modeling** using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements).
8. **Preliminary Stormwater Management Plan** (2 printed and 1 digital copy)
9. **Preliminary Traffic Assessment** See Access Management Code. (2 printed and 1 digital copy)

## PRELIMINARY PLAT REQUIREMENTS

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1. **Name of subdivision** (unique and numerically consistent and the words “PRELIMINARY PLAT,” prominently displayed as the title.)
2. **Names, addresses, and phone numbers** of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).
3. **Date of preparation** of preliminary plat and/or revisions.
4. **Vicinity map** (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)
5. **A legal boundary description** with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.
6. **Location of monuments**, shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.
7. **Boundary lines** of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).
8. **All public streets** within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.
9. **Building setback lines** along public and private streets with dimensions in feet.
10. **Platted and unplatted land** adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted.

11. **Lots and tracts** identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.

12. **Note on plat** indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.

13. **Existing streets, driveways, trails, and sidewalks** which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts, access points and signals.

14. **Location of existing open space, alleys, parks, streams, ponds, vegetation**, or other similar features within plat, and whether they are to be retained or removed.

15. **Location of existing buildings** and structures within 200 feet of the plat.

16. **Existing utilities**, including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.

17. **Topography** of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.

18. **Proposed street network**, including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.

19. **Proposed sidewalks** and/or trail locations including proposed widths.

20. **Proposed utilities**, including approximate location of sanitary sewer, water main, street lights, storm sewer, detention and treatment facilities.

21. **Existing and proposed easements** with dimensions. Existing easements shall be labeled with book and page number.

22. **Any area within a federally designated floodplain**. Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).

23. **Stream corridor boundary** and dimensions.

24. **Intersection site distance analysis**.

25. **Copies of all pertinent exception documents**, or a copy of a current American Land Title Association (ALTA) survey, or both.
Written explanations for any items not checked or checked "No" (attach additional sheets, if necessary):

5. Not applicable, 6. Not applicable
7. No floodplain within the development
12. No tracts within the development
22. No floodplain within the development, 23. No stream within the development
24. Site distance analysis will be provided at final development plan submittal
25. Will be supply at a later date

I hereby submit all information required for preliminary plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

[signature]
Signature of Applicant

[date]
Date
OWNER AFFIDAVIT

I/WE Todd Bleakley, Member of Wyncroft Hill Apartments, LLC (Contract Purchaser), hereby referred to as the "Undersigned", being of lawful age, do hereby on this __ day of June, 2019, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize
   Payne & Brockway, P.A. (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Tracts C & D, University Drive and Moonlight Road _______ (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

[Signature]

Todd Bleakley, Member
Wyncroft Hill Apartments, LLC

STATE OF KANSAS
COUNTY OF JOHNSON

The foregoing instrument was acknowledged before me on this __ day of June, 2019, by

[Signature]

Todd Bleakley, Member of Wyncroft Hill Apartments, LLC

My Commission Expires: [Signature]

KRISTI S. BOYER
Notary Public - State of Kansas
My Appt. Expires 1-24-26

19-0010
LEGAL DESCRIPTION
FOR
TALLGRASS
ZONING/PRELIMINARY DEVELOPMENT PLAN/PRELIMINARY PLAT

Tracts C and D, UNIVERSITY PARK ADDITION NO. 1, a subdivision in the City of Gardner, Johnson County, Kansas.

...EXCEPT....

That part platted UNIVERSITY PARK ADDITION NO. 2, a subdivision in the City of Gardner, Johnson County, Kansas.

The above legal description contains 43.05 acres, more or less.
Agenda Item: Consider authorizing the execution of a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project.

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Staff Recommendation:
Staff recommends that the City Council authorize the City Administrator to execute a construction contract for Phase I of a Progressive Design Build Contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., in the amount of $24,795,542.00.

Background/Description of Item:
On April 1, 2019, City Council authorized the City Administrator to execute an Engineering Services contract for Phase I of a Progressive Design Build Contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC in an amount not to exceed $312,582.00.

On August 1, 2019, Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC presented staff with a scope of work and estimated cost for a 3.0 MGD expansion at Hillsdale WTP to include:

1. Modification to the existing Hillsdale Reservoir Intake which will include three new submersible pumps (2 duty and one stand-by) capable of pumping at least 2300 gallons per minute with two of the three pumps operating.
2. Installation of approximately 2.15 miles of 24-inch Raw Water Transmission Main.
3. Installation of new sodium permanganate equipment at the intake structure to provide pre-oxidation of raw water.
4. Installation of powdered activated carbon contact system with a capacity of 6 MGD.
5. Installation of Splitter structure sized to distribute flow to the Solids Contact Clarifier (SCC) and piped to the location of the three future SCC to reach 12 MGD water capacity in the future. Each SCC is designed for 3 MGD and hydraulic capacity of 4 MGD.
6. Installation of a water filtration bed system consisting of 4 individual dual media filters each with the capacity of 1 MGD, (3 duty and one stand-by).
7. Installation of new Transfer and Back Wash Pump Station sized to backwash the new filters one at a time and to transfer up to 4 MGD to the chlorine contact basin and on-site clear wells.
8. Installation of finished water disinfection systems designed to meet the requirements of The Surface Water Treatment Rule and the Long Term 2 Enhanced Surface Water Treatment Rule.
9. Construction of one new million gallon clear well designed to operate in parallel with the existing clear well for a total volume of a 2 million gallon clear well storage on site.
10. Modification of the existing high service pump station by replacing one vertical turbine pump with a larger pump on a variable frequency drive to better match pressure and flow conditions in the distribution system.

11. Construction of a new residuals handling lagoon to replace the existing lagoons and make room for the treatment plant expansion. This will allow for a gravity system to be installed versus the existing system that pumps the residuals to the lagoons.

12. Construction and installation of new chemical feed systems will be provided to support the new 3 MGD expansion on the Hillsdale site including: powdered activated carbon (PAC), aluminum chlorohydrate (ACH), polymer, sodium hydroxide (caustic), hydrofluosilicic acid (fluoride), chlorine gas, and granular ammonia sulfate. Chlorine, PAC, ACH, and polymer will be relocated to new chemical facilities. Caustic, fluoride, and ammonia will remain in the existing chemical feed spaces with rerouted feed points.

13. The Design Builder will install secondary power, motor control centers, instruments and controls as indicated in the contract documents. Electrical improvements include upgrade of the service and primary transformer by others.

14. A Stand-by power generator will be furnished to provide emergency power to facility. The system includes an automatic transfer switch to switch from utility power to stand-by power in the event of a utility failure and is sized to operate the existing plant and the 3 MGD expansion.

15. All construction and site discharge will be in accordance with the City’s NPDES permit.

16. In addition, the Scope of Work will consist of but not be limited to all detailed design, construction, construction management, materials testing, equipment testing, facilities and equipment start-up, and all permitting required for the new plant.

On August 12, 2019, city staff and Burns & McDonnell and CAS Constructors, LLC met to review in detail the estimated cost of the project.

**Financial Impact:**
The City anticipates issuing general obligation bonds to finance the Hillsdale Water Treatment Plant Expansion Project. Future debt service payments will come from the Water Fund. The first general obligation bond series for this project will not be issued until 2020.

**Attachments:**
- April 1, 2019, City Council CAF
- Estimated cost details
- Design Build Contract

**Suggested Motion:**
Authorize the City Administrator to execute a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC, for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project, in the amount of $24,795,542.00.
COUNCIL ACTION FORM COMMITTEE RECOMMENDATION ITEM NO. 1
MEETING DATE: APRIL 1, 2019
STAFF CONTACT: Gonz Garcia, Utilities Director

Agenda Item: Consider awarding an Engineering Services contract to the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for Preliminary Design of the Hillsdale Water Treatment Plant Expansion Project, CIP Project #WA2002.

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Board/Commission Recommendation:
On March 7, 2019, the Utilities Advisory Commission approved a recommendation to the City Council to award a contract to the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the preliminary design of the Hillsdale Water Treatment Plant Expansion Project, CIP Project No WA2002.

Staff Recommendation:
Staff recommends that the City Council authorize the City Administrator to execute an Engineering Services contract for Phase I of a Progressive Design Build Contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., in an amount not to exceed $312,582.00.

Background/Description of Item:
On January 4, 2019, the Utilities Department advertised a Request For Qualifications for Progressive Design-Build Services for the Hillsdale Water Treatment Plant Expansion Project. On February 8, 2019, Statements of Qualifications from three (3) design build teams were received and reviewed. The three (3) design build teams were: Crossland Heavy Contractors-Midwest Engineering Group; Goodwin Brothers-CMT; and Burns & McDonnell–CAS Construction.

In accordance with the purchasing policy, a selection committee was formed to review the Statements of Qualifications and make a recommendation to the UAC. The committee members were:
- Gonzalo Garcia, Utilities Department Director, Committee Chair
- Jeff LeMire, Utilities Sr. Staff Engineer
- Matt Wolff, Finance Director
- Michael Kramer, Public Works Director
- Lisa Elmore, Hillsdale Water Treatment Plant Superintendent

The Selection Committee evaluated the qualifications and determined that all three applicants would be interviewed on February 20, 2019. Upon completion of those interviews, the Selection
Committee unanimously chose the Joint Venture Group of Burns & McDonnell-CAS Construction to move forward with contract discussions for design and construction of the proposed 2 MGD expansion of the Hillsdale Water Treatment Plant based on the following key factors:

- Local company and vast experience in design-build projects
- In-depth knowledge of local suppliers and labor market
- Proposed an accelerated schedule to deliver 1.0 MGD by the summer of 2020

The Hillsdale Water Treatment Plant Expansion Progressive Design Construction Project will consist of but not be limited to design, construction, permitting, electrical, controls, integration of existing and new plant, and installation of a new raw water transmission main from the Hillsdale Lake Intake to the treatment plant. These improvements will allow for an additional 2 MGD of water to be treated at the Hillsdale Water Treatment Plant per the City Council’s direction on October 1, 2018.

The project will be divided into two phases by the Joint Venture Group not to exceed the budgeted $21.5 million dollar budget.

- Phase I: Preliminary Engineering & Pre-Construction Services
- Phase II: DBIA Progressive Design Build Services

Johnson County Water District 7 (W7) has retained the consulting firm of Lamp Rynearson to conduct an analysis of Gardner’s expansion and its financial impact. The findings will be presented to W7 Board to review and consider its options.

**Financial Impact:**
The $312,582 for engineering services will be paid from the Water Fund. This cost will be reimbursed with bond proceeds when G.O. Bonds are issued for the construction phase of the project. Future principal and interest payments for this project will come from the Water Fund.

**Attachments:**
- March 7, 2019, UAC Staff Report
- March 7, 2019, UAC Draft Meeting Minutes Excerpt
- Burns & McDonnell Statement of Qualifications
- Professional Services Agreement

**Suggested Motion:**
Authorize the City Administrator to execute an Engineering Services contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the preliminary design of the Hillsdale Water Treatment Plant Expansion Project, CIP Project #WA2002, in the amount of $312,582.00.
ESTIMATE

010000 - GENERAL REQUIREMENTS
011100 - CONSTRUCTION RENTAL EQUIPMENT
900000 - ALLOWANCES
(incls Insurance & Bond)
910000 - SPECIAL PROJECT CONDITIONS
920000 - SEQUENCE OF WORK
012400 - JOB SITE SECURITY
024000 - DEMOLITION - GENERAL CONSTRUCTION
024500 - DEMOLITION - MECHANICAL CONSTRUCTION
028000 - DEMOLITION - REMEDIATION
311100 - CLEARING & GRUBBING
312300 - DEWATERING
312400 - SITE EXCAVATION & FILL
312430 - STRUCTURAL EXCAVATION & FILL
312454 - AGGREGATE
316000 - DEEP FOUNDATIONS
320100 - PAVING IMPROVEMENTS
321600 - SIDEWALKS / CURB & GUTTERS
323100 - FENCE & GATES
329200 - SEEDING & GRASS
330100 - TRENCH EXCAVATION & FILL
031000 - CONCRETE FORMWORK & ACCESS
032000 - CONCRETE REINFORCING
033100 - CONCRETE
033500 - CONCRETE FINISHING
034000 - PRECAST CONCRETE
035000 - STRUCTURAL PRECAST
040000 - MASONRY
051200 - STRUCTURAL STEEL
055000 - METAL FABRICATIONS
061000 - ROUGH CARPENTRY
062000 - FINISH CARPENTRY
068000 - FRP / COMPOSITE FABRICATION
0712000 - WATERPROOFING
072100 - INSULATION
075000 - ROOFING
076000 - FLASHING & SHEET METAL
079200 - SEALANT / CAULKING
081000 - DOORS & FRAMES
083500 - DOOR HARDWARE
083300 - OH COILING DOOR
085100 - WINDOWS
099000 - PAINTING
099700 - SPECIAL COATINGS
101400 - SIGNAGE
220000 - PLUMBING
230000 - HVAC
250000 - INSTRUMENTATION & CONTROLS
260000 - ELECTRICAL
331000 - UTILITY / UG PIPING
332000 - STORAGE TANKS
332100 - RAW WATERLINE
400000 - PROCESS / AG PIPING
401110 - PIPE SUPPORTS
401130 - PROCESS VALVES
412200 - CRANES & HOISTS

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61,200
10,000
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14,406
384,776
-

Non-Tax
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1,500
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1,440
-

Taxable
Material

1 of 2

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3,865.00
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290.00
160.00
252.00
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525.68
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64.00

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6,690
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Total Labor
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9,454
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2,360
3,585
3,392
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8,258
1,310

Labor Tax/Ins
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142
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136
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Sales Tax

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3,388
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195
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550

-

447
-

Sub Bond

OH, Design,
Const Admin,
Insur & Bond
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39,627
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4,203
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2,130,588
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45,070

Total Section


| Category                        | Units | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  | Hours | Rate  | Total  |
|--------------------------------|-------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|--------|-------|-------|
| 431100 - BLOWERS               |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 432100 - PUMPS                 |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 434100 - GAS & LIQUID STORAGE  |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 462000 - FLOW CONTROL & GATES  |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 463000 - CHEMICAL FEED EQUIPMENT |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 464100 - MIXING EQUIPMENT      |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 464300 - CLARIFIER EQUIPMENT   |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 466100 - FILTRATION EQUIPMENT  |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |
| 468000 - MISC EQUIP ACTIVITY   |       |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |        |       |       |

**ESTIMATE 2 of 2 8/14/2019 1:38 PM**

<table>
<thead>
<tr>
<th>OT Credit / Contingency</th>
<th>$ 186,684</th>
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<tbody>
<tr>
<td>Total Contract</td>
<td>$ 2,479,542</td>
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</table>
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER - LUMP SUM
Standard Form of Agreement Between Owner and Design-Builder - Lump Sum
(as Modified by the Parties)

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

This AGREEMENT is made as of the __________________ day of
________________ in the year of 20________, by and between the following parties, for services in connection
with the Project identified below.

OWNER:

City of Gardner, Kansas
120 East Main Street
Gardner, KS 66030

DESIGN-BUILDER:

Burns & McDonnell / CAS Constructors Gardner Joint Venture.
9400 Ward Parkway
Kansas City, Missouri 64114

A Joint Venture Comprised of:
Burns & McDonnell Engineering Co., Inc.
9400 Ward Parkway
Kansas City, Missouri 64114

and

CAS Constructors, LLC
3500 SW Fairlawn
Topeka, Kansas 66614
PROJECT:
City of Gardner, KS Hillsdale Water Treatment Plant Expansion Project, Project WA-2002

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

**Article 1**

**Scope of Work**

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

**Article 2**

**Contract Documents**

2.1 The Contract Documents are comprised of the following:


.2 This Agreement and Attachments thereto.

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

.4 Standard General Conditions of the Contract between Owner and Design Builder (DBIA 535 2010 Edition as modified by the Parties).

.5 Payment Bond.

.6 Performance Bond.

.7 Insurance Requirements.

.8 Basis of Design Documents consisting of the following:

B. Work Description.
Article 3
Interpretation and Intent

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

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

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

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

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

3.6 In the event of some ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

Article 4
Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.
4.2 **Owner’s Limited License Upon Project Completion and Payment in Full to Design Builder.** Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 herein.

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

.1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 herein.

4.4 **Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

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

4.6 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design-Builder's rights.

4.7 This Article 4 shall survive any termination of this Agreement by either Party.

**Article 5**

**Contract Time**

5.1 **Date of Commencement.** The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”).

5.2 **Substantial Completion and Final Completion**
.1 Substantial Completion as defined in the General Conditions, Article 1.2.18 of the entire Work shall be achieved no later than April 15, 2021.

.2 Substantial completion date is conditioned on the following:

.1 Owner’s annexation of the Site not later than October 15, 2019.

.2 Owner providing the necessary easements for the raw water transmission pipeline not later than January 24, 2020.

.3 Design-Builder’s ability to clean the existing residuals holding lagoons not later than October 15, 2019.

.4 City’s issuance of a Notice to Proceed by September 1, 2019.

.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable in accordance with the date of completion requirements set forth herein. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

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

.5 If the Design-Builder is delayed in the progress of this Project by acts or neglect by the Owner, its employees, separate contractors employed by Owner, governmental action or inaction, or by change orders in the Work not caused in any part by the fault of the Design-Builder; then the Contract Time for completion shall be extended, and the Contract Amount shall be equitably adjusted by a written Change Order.

.6 Where the Design-Builder reasonably establishes that delays as set forth above or that are caused by shortage of labor, strikes, lockout, tornado, flood, wind damage, fire, unusual delay in transportation, adverse weather, explosion, sabotage, accidents, incidents, civil commotion, acts of war, casualty, condemnation, or other Force Majeure beyond the Design-Builder’s reasonable control that impact the cost and/or Contract Time, the Design-Builder shall be entitled to recover additional costs and an appropriate extension of the Contract Time. Design-Builder shall provide written notice of the existence of such cause of delay, together with back-up documentation that verifies the impact in accordance with the Contract Documents.

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained within Ten (10) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner Two Thousand Dollars ($2,000.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved within 90 days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not
achieved within **10 days** of Final Completion, Design-Builder shall pay to Owner **One Thousand Dollars ($1,000.00)**, as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates or Final Completion.

**Article 6**

**Contract Price**

6.1 **Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of **Twenty-four million, seven hundred and ninety five thousand, five hundred and forty two Dollars ($24,795,542.00)** ("Contract Price"). subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

- **.1** The Contract Price includes an Allowance of $25,000.00 for materials testing during construction.
- **.2** The contract Price includes an Owner’s contingency amount of $186,648.00 intended to be used to for cleaning of the existing solids handling lagoons

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

- **.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a Fee of **Fifteen percent (15%)** of the additional costs incurred for that Change Order.
- **.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items.

  - An amount equal to the sum of: (a) **Fifteen percent (15%)** applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder’s Fee.

6.3 **Allowance Items and Allowance Values**

- **.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Attachment E-2 Work Description.

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

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

.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder’s overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

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

Article 7

Procedure for Payment

7.1 Progress Payments

.1 Design-Builder shall submit to Owner no later than the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract.

.2 Owner shall make payment within thirty (30) days after Owner’s receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.2 and 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments

.1 Owner will retain five percent (5%) of each Application for Payment.

.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract and to the maximum extent allowed by law.
7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder’s properly submitted and accurate Final Application for Payment within thirty (30) days after Owner’s receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder and which are undisputed amongst the parties, whether progress payments or final payment, shall bear interest commencing **fifteen (15) days** after payment is due at the maximum rate allowed by law at the place of the project. Interest on payments in dispute or of disputed amounts shall not be paid or become due and owing unless and until a Court of competent jurisdiction determines Owner wrongfully withheld said disputed payments.

7.5 **Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Audit of stipulated lump sums multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such lump sum, multiplier or markup has been charged in accordance with this Agreement, but the composition of such lump sum, multiplier or markup is not subject to audit.

**Article 8**

**Termination for Convenience**

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

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

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

☑ Overhead and profit in the amount of **fifteen percent (15%)** on the sum of items .1 and .2 above.

8.2 **Not Used.**

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product
shall be as set forth in Section 4.3 and 4.5 hereof. Such rights may not be transferred or assigned to others without Design-Builders express written consent which shall not be unreasonably withheld and such third parties’ agreement to the terms of Article 4.

**Article 9**

**Representative of the Parties**

9.1 **Owner’s Representatives**

.1 Owner designates the individual listed below as its Senior Representative (“Owner’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Name: Gonzalo Garcia  
Title: Utilities Director  
Address: 1150 E Santa Fe Street; Gardner, KS 66030  
Telephone No.: 913-856-0990  
E-mail: ggarcia@gardnerkansas.gov

.2 Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Name: Jeffery LeMire  
Title: Utilities Engineer  
Address: 1150 E Santa Fe Street; Gardner, KS 66030  
Telephone No.: 913-856-0980  
E-mail: jlemire@gardnerkansas.gov

9.2 **Design-Builder’s Representatives**

.1 Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Name: Ron Coker, P.E.  
Title: Senior Vice President Burns & McDonnell Engineering, Inc.  
Address: 9400 Ward Parkway Kansas City, MO. 64114  
Telephone No.: 816-822-3082  
E-mail: rcoker@burnsmcd.com

.2 Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Name: Mike Hafling, P.E.  
Title: President CAS Constructors, LLC.
Address: 3500 SW Fairlawn Street Topeka, KS 66608  
Telephone No: 913-785-354-9953  
E-mail: mike.hafling@alberici.com

**Article 10**

**Bonds and Insurance**

10.1 **Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in Attachment D Insurance Requirements and in accordance with Article 5 of the General Conditions of Contract.

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

- **Performance Bond.**
  - ☑ Required  ☐ Not Required

- **Payment Bond.**
  - ☑ Required  ☐ Not Required

**Article 11**

**Other Provisions**

11.1 **Other provisions, if any, are as follows:**

11.2 **Listing of Attachments:**

- .1 Attachment A - Standard General Conditions of the Contract between Owner and Design Builder (DBIA 535 2010 Edition as modified by the Parties)
- .2 Attachment B – Permit Responsibility List
- .3 Attachment C - Bonds
  - (a) Performance Bond
  - (b) Payment Bond
- .4 Attachment D - Insurance Requirements
11.3 Claims and Disputes. Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract, except as required by state law, shall be resolved through legal proceedings in the District Court of Johnson County, Kansas which shall be the sole and exclusive venue for resolution of any such claims, disputes or controversies.

11.4 Licensing Requirements

.1 The Design-Build or its members must be authorized to do business in the State of Kansas. If the Design-Build is a corporation organized outside the State of Kansas it shall review it’s authorization with the State of Kansas and if necessary file the required documentation with the State of Kansas in order to receive authorization to do business in the State of Kansas. The Design-Build, if organized outside the State of Kansas, must furnish evidence to the Owner of their authority to do business in the State of Kansas. Such evidence must be furnished to the Owner prior to any Contract award.

.2 The Design-Build and all sub-contractors performing design and construction work on this project shall meet all licensing requirements of the City of Gardner for the work which they intend to perform.

11.5 Appointment of Process Agent. The Design-Build, if not a resident of the State of Kansas, shall appoint a Process Agent being a resident of the State of Kansas. The Design-Build shall submit the Appointment of Process Agent form as provided in Attachment F to this Agreement. The Process Agent form will be filed with the Clerk of the District Court of the County in which the work is to be performed, as provided by law.

11.6 Non-Collusive Affidavit. The Design-Build shall submit the Non-Collusive Affidavit as provide in Attachment G to this Agreement.

11.7 Tax Exemption

.1 Pursuant to KSA 79-3606, both services and materials for this project are exempt from the Kansas Retailers’ Sales Tax and the Kansas Compensating Tax. Within fifteen (15) days after the date of Contract approval, Owner will provide a Kansas Sales tax exemption certificate to the Design-Build. The Design-Build and each Subcontractor or repairman must furnish the exemption certificate to each supplier on Kansas Sales Tax Division Form as required. All invoices shall be held by Design-Build for 5 years, and shall be subject to audit by the Director of Taxation. Upon completion of the work, Design-Build shall file with the Owner on a form provided by the Director of Taxation, a sworn statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailers’ Sales Tax and the Kansas Compensating Tax. Design-Build shall assume full
11.8 No Third Party Beneficiaries. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

11.9 Independent Contractor. The Design-Builder is an independent contractor and as such is not an agent or employee of the City.

11.10 Covenant Against Contingent Fees. Design-Builder warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

11.11 Compliance with Laws. Design-Builder shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Work or the Project at the time Services are rendered, including but not limited to The Kansas Fairness in Public Construction Contract Act, K.S.A. 16-1901 et seq. Design-Builder shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

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

11.13 Severability Clause. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**Article 12**  
**Limitation of Liability**

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Professionals Consultants and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed the total compensation to be paid to Design-Builder under this Agreement: provided however, the limitation of liability shall not exceed the compensation paid to Design-Builder at the date of termination, including all costs of termination to be paid under Article 8 of the Agreement if Owner terminates the Agreement for convenience. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.
In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

City of Gardner, Kansas

By: __________________________

______________________________

Date: _________________________

Attest: _________________________

______________________________ City Clerk

Form: __________________________

Legal Counsel

DESIGN-BUILDER:

Burns & McDonnell / CAS Constructors, Gardner Joint Venture. A Joint Venture Comprised of:

Burns & McDonnell Engineering Co., Inc

By: __________________________

Ron Coker, P.E. Senior Vice President

Date: _________________

CAS Constructors, LLC

By: __________________________

Michael Hafling P.E. President

Date: _________________

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.
Attachment A - Standard General Conditions of the Contract between Owner and Design Builder (DBIA 535 2010 Edition as modified by the Parties)
# Standard Form of General Conditions of Contract Between Owner and Design-Builder

(As Modified by the Parties)

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

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Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

.1 Agreement refers to the executed contract between Owner and Design-Builder under DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder Lump Sum (2010 Edition), as modified by the parties.

.2 Basis of Design Documents are as follows: For DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder Lump Sum, the Basis of Design Documents are those documents specifically listed in the Agreement.

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

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

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

.6 Design Consultant is a qualified, licensed design professional who may be an employee of Design-Builder or who is retained by Design-Builder or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents. Owner recognizes that Design-Builder is an integrated company with in-house design capabilities and that the function of Design Consultant may, in some instances, be self-performed by Design-Builder.

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

.8 Force Majeure Events are those events that are beyond the control of both Design-Builder and Owner, including but not limited to acts of nature (fire, flooding, storm, tornado, or other natural disasters) the events of war, terrorism, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

.9 General Conditions of Contract refer to this DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified by the parties.

.10 Not used.
.11 Not used.

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

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

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

.15 Site is the land or premises on which the Project is located.

.16 Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers and shall not include the Design Consultants retained by the Design-Builder.

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

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

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

.20 Contract Documents are those documents listed in the Agreement.

.21 Defective Work is Work that does not conform to the Contract Documents.

.22 Engineer means the Utilities Director or his/her designee for City of Gardner.

.23 Owner means City of Gardner, Kansas. All references to “City” shall have the same definition as “Owner”.

.24 Project means the total design and construction of which the Work to be provided under the Contract Documents. may be the whole, or a part as indicated elsewhere in the Contract Documents.
Article 2
Design-Builder's Services and Responsibilities

2.1 General Services

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

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

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

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

.5 Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to Design-Builder by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give Design-Builder the same power to terminate any Subcontractor as Owner has to terminate Design-Builder under the provisions of the Contract Documents.

2.2 Design Professional Services

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

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

2.4 **Design Development Services**

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

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

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

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

2.5 **Legal Requirements**

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

.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the Work.

2.6 **Government Approvals and Permits**
.1 Design Builder shall obtain and pay for permits identified in Attachment B Permit Responsibility List. Owner agrees to waive applicable permit and inspection fees issued by the Owner. Except as identified in Attachment B Permit Responsibility List, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

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

2.7 Design-Builder’s Construction Phase Services

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

.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

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

.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work by Subcontractors and Design Consultants as if the Design Builder performed the Work itself. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner’s control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. However, unless otherwise stated, Design-Builder is not responsible to schedule or coordinate Owner’s separate contractors.

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

.7 The Design-Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during construction. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. The superintendent must provide his or her email address and cell phone number to Owner and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

.8 Whenever the Owner shall notify Design-Builder that any person on the Project is, in his
opinion, incompetent, unfaithful, or disorderly or who uses threatening or abusive language to any person representing the Owner when on the Project site or to any citizen, such person shall be immediately discharged from the Work and shall not be re-employed on the Project except with consent of the Owner.

.9 The Design-Builder shall provide the Owner with copies of all submittals made to regulatory agencies

2.8 Design-Builder’s Responsibility for Project Safety

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

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

.3 Design-Builder’s responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work. Design-Builder is not responsible for any safety violations, acts or omissions of the Owner or its separate contractors, consultants and their subcontractors.

2.9 Design-Builder’s Warranty

.1 For a period of one year following the date of Substantial Completion, the Design-Builder warrants to the Owner that materials and equipment furnished under the Agreement will be of good quality and new unless the Contract Documents require or permit otherwise. The Design-Builder further warrants that materials and equipment will conform to the requirements of the Contract Documents and will be free from defects in material and workmanship, except for those inherent in the quality of the construction that the Contract Documents require or permit. Materials or equipment not conforming to these requirements may be considered defective. Defective Work, found to exist within the one (1) year warranty period, shall be removed immediately and replaced in accordance with the Contract Documents or as otherwise agreed by the Parties. No inspection by Owner of the Work nor Final Acceptance of the Project by Owner shall relieve Design-Builder of its responsibility to perform the Work in accordance with Contract Documents. Design-Builder’s warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer’s warranty which provides Owner with greater warranty rights than set
forth in this Section 2.9 or the Contract Documents.

.2 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work. Owner agrees to look solely to such manufacturer(s) for remedies for defects in equipment and material, and not to Design-Builder to the extent covered by an express or implied warranty. Design-Builder's sole obligation is to provide reasonable assistance to Owner in obtaining relief under such manufacturer's warranties.

2.10 Correction of Defective Work

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

.2 Design-Builder shall, within fifteen (15) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such fifteen (15) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the fifteen (15) day period identified herein shall be deemed inapplicable.

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

.4 If, instead of requiring correction or removal and replacement of Defective Work, Owner prefers to accept the Defective Work, Owner may do so. Design-Builder shall bear all costs attributed to Owner's evaluation of and determination to accept such Defective Work (such costs to include but not be limited to fees and charges of engineers, architects, and other professionals). If any such review occurs prior to Owner's approval of Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and Owner shall be entitled to an appropriate decrease the Contract Price; and, if the parties are unable to agree as to the amount thereof, the dispute resolution process set forth in Article 10 shall govern.

2.11 Tests and Observations

2.11.1 Design-Builder shall give Owner at least 48 hours prior notice of readiness of the Work for all required observations, tests or reviews called for in the Construction Documents requiring Owner's involvement.

2.11.2 If Laws or Regulations of any public body having jurisdiction required any Work (or part thereof) to specifically be tested, or if the Specifications require any testing or if such testing is necessary to verify compliance with the Contract Documents, the Design-Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish Owner with the required certificates of inspection, testing or approval. Design-Builder shall also be responsible for
and shall pay all costs in connection with any inspection or testing required in connection with Owner’s review of fabrication material, or equipment proposed to be incorporated in the Work.

2.11.3 Neither observations by Owner or inspections, tests or approvals by others shall relieve Design-Builder from his obligations to perform the Work in accordance with the Contract Documents.

2.11.4 If any Work that is included in the Contract Documents that is to be observed or tested is covered without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation. Such uncovering shall be at Design-Builder’s expense unless Design-Builder has given Owner timely notice of Design-Builder’s intention to cover such work and Owner has not acted with reasonable promptness in response to such notice.

2.11.5 If Owner considers it necessary or advisable that covered Work that was previously inspected by Owner be observed by Owner or inspected or tested by others, Design-Builder, at Owner’s request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that Work is defective, Design-Builder shall bear all direct costs of such uncovering, exposure, observation, inspection and testing and of reconstruction in accordance with the Contract Documents, (including but not be limited to fees and charges of engineers, architects, and all other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the dispute resolution process set forth in Article 10 shall govern. If, however, such Work is not found to be defective, Design-Builder shall be allowed an increase in Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and, if the parties are unable to agree as to the amount or extent thereof, the dispute resolution process set forth in Article 10 shall govern. Owner and Design-Builder shall mutually determine the amount thereof. Nothing in this section shall impair either party’s ability to make a claim for compensation as provided in the Contract Documents regarding the increase or decrease in Contract Price caused by uncovering the Work.

2.12 Documents and Samples at the Site.

2.12.1 The Design-Builder shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Current Construction Schedule, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The Design-Builder shall display a Current Construction Schedule at the site for reference by the Owner. These shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed.

2.13 Shop Drawings, Product Data, and Samples.

2.13.1 Shop Drawings are drawings, diagrams, schedules and other data, required by the Construction Documents and specially prepared for the Work by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

2.13.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
2.13.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

2.13.5 The Design-Builder shall review for compliance with the Contract Documents, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Design-Builder must provide the Owner with copies of all submittals made to regulatory agencies.

2.13.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents to the Owner that the Design-Builder and the Design-Builder's subconsultants including architects and engineers have (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

2.13.7 Within 14 days of the Effective Date, the Design-Builder shall provide a schedule of submittals specifying Shop Drawings or Project Data that require review and approval by the Owner. The same schedule of submittals shall also specify Shop Drawings or Product data to be provided for information only but do not require the Owners review and approval. Design-Builder shall perform no portion of the Work for which the schedule of submittals requires review and approval until the respective submittal has been reviewed by the Owner. Such Owners review and approval shall be completed within seven (7) days of Design-Builders submission to Owner or as indicated on Design-Builders then current schedule of submittals, whichever occurs first. The Design-Builders must correct at its cost, any Work the correction of which is required due to the Design-Builder's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

2.13.8 The Work shall be in accordance with approved submittals except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builders shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's review thereof.

2.13.9 The Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals.

Article 3
Owner's Services and Responsibilities

3.1 Duty to Cooperate

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

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

.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

.4 Owner shall provide the site and access thereto including easements and rights-of-way necessary for construction of the Project.

3.2 Furnishing of Services and Information

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

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

.2 A legal description of the Site;

.3 To the extent available, record drawings of any existing structures at the Site;

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

.5 Raw water quality data and characterization.

.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys’ fees, incurred in securing these necessary agreements. Contract times are based on Easements for the Raw Water Pipeline being provided no later than Jan 24, 2020.

.3 Owner is responsible to annex the project site into the City of Gardner’s City limits. Such annexation shall be complete no later than October 15, 2019 to allow Design-Builder to meet its obligations under the Agreement.

.4 Owner shall pay utility costs for temporary power and water during construction and shall provide water treatment chemicals for start-up and testing.

3.3 Financial Information

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

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

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

3.5 Government Approvals and Permits

.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Attachment B Permit Responsibility List.

.2 Following annexation of the site, Owner shall issue the requisite building permit(s) and waives Owner's permit and inspection fees related to the Project.

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

3.6 Owner's Separate Contractors

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

.2 If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Owner shall require its separate contractors to name Design-Builder as an additional insured on their general liability insurance and to waive rights of subrogation against Owner, Design-Builder and its Design Consultant, consistent with Section 5.3.5, below.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

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

.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts and contractors to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless, and (iii) remove, abate and remediate such Hazardous Conditions. Design-Builder may reasonably rely on the information and work of Owner's separate experts and contractors as being complete and accurate.
.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner’s expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

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

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

.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner’s officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys’ fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

.1 The Design-Builder shall plan the design and construction of the Work with an understanding of the below ground conditions indicated in the information obtained by Design Builder. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Condition.

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

Article 5

Insurance and Bonds

5.1 Design-Builder’s Insurance Requirements

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

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

.4 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, to replace or repair the insured property. The Builder’s Risk property insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier while on site and where their interest appears. Such insurance shall include but not be limited to (if commercially available) the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss for the Work. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at a temporary storage location. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.1.4.

.5 Design-Builder shall procure and maintain equipment breakdown insurance included with the builder’s risk property insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier as their interest appears. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.1.5.

.6 Nothing in this Agreement shall require the Design-Builder or its Design Consultants to name the Owner or others as additional insureds on any Professional Liability or Workers’ Compensation policies.

5.2 Owner’s Liability Insurance

.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such appropriate liability insurance to protect Owner from claims which may arise from the performance of Owner’s obligations under the Contract Documents or Owner’s conduct during the course of the Project.

5.3 Owner’s Property Insurance

.1 The City represents and warrants that it is or will become the sole owner of the site or the necessary easements to serve the site and the property located thereon. The City’s property insurance shall not lapse or be cancelled if City occupies any portion of the Work.

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

.1 Design-Builder shall, in accordance with these General Conditions, furnish to Owner, Performance Bond and Payment Bond on forms approved by Owner and secured by a surety company acceptable to Owner. With each bond there shall be filed with Owner one copy of a “Power of Attorney” certified to include the date of the bonds. Surety companies executing bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in Kansas.

.2 Design-Builder shall notify and obtain the consent and approval of Design-Builder’s surety for all Change Orders and written amendments, if such notice is required by Design-Builder’s surety or by law.

Article 6
Payment

6.1 Schedule of Values

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

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

6.2 Monthly Progress Payments

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

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

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

.5 Design Builder shall certify that all subcontractors, subconsultants, Design Consultants and vendors who have done Work or labor on, or who have furnished materials for this Project, have been fully paid by Design-Builder for such Work, or labor done, or materials furnished by them. Further, it is agreed that Design-Builder shall promptly pay each subcontractor...
subconsultant, Design Consultant and vendor out of the amount paid to Design-Builder on account of such Work or materials in accordance with the respective agreements between Design-Builder and Subcontractors.

6.3 Withholding of Payments

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

6.3.1.1 Defective Work not remedied by Design-Builder.

6.3.1.3 Failure by Design-Builder to pay Subcontractors or others in a prompt and proper fashion in accordance with the respective agreements between Design-Builder and Subcontractors;

6.3.1.4 Evidence that the balance of the Work cannot be completed in accordance with the Agreement for the unpaid balance of the Contract Price;

6.3.1.5 Persistent failure to carry out the Work in accordance with this Agreement;

.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All undisputed payments due and unpaid shall bear interest at the rate set forth in the Agreement. Interest on disputed and unpaid contract amounts shall only be due and owing upon a court of competent jurisdiction determination that such unpaid amounts were wrongfully withheld by Owner.

6.5 Design-Builder’s Payment Obligations

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

6.6 Substantial Completion

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

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

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

6.7 Final Payment

.1 Upon written notice from Design-Builder that Work or an agreed portion thereof is complete, at a time mutually agreed to, Engineer will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to remedy such deficiencies. If a repeat final inspection(s) is required, Design-Builder shall bear the cost of such repeat inspection, if any, including engineering and other professional fees. After Design-Builder has completed all such corrections and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents, and provide all required training, all as required by the Contract Documents, and after Owner has indicated that the Work is complete, Design-Builder may make application for Final Payment following the procedure for progress payment requests.

.2 The Final Payment request shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective conditional releases or waivers reasonably satisfactory to Owner, of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by Owner, Design-Builder may furnish conditional receipts or releases; an affidavit of Design-Builder that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to Final Payment. If any Subcontractor or supplier fails to furnish a conditional release or receipt in full, Design-Builder may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any lien. Upon final completion of the Work, Final Payment certificates together with acceptance certificates will be submitted for payment.

.3 Upon making final payment, Owner waives claims against Design-Builder, other than expressly identified, and except claims relating to (i) Design-Builder’s failure to satisfy its payment obligations, if such failure affects Owner’s interests, (ii) Design-Builder’s failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.
The making and acceptance of the final payment shall constitute a waiver of all claims by Design-Builder against Owner other than obligations that continue after Final Payment and those claims previously made in writing against Owner by Design-Builder, pending at the time of final payment and identified in writing by Design-Builder as unsettled as of the time of request for final payment.

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

**Article 7**

**Indemnification**

7.1 Patent and Copyright Infringement

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

.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder’s option and at Design-Builder’s expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright, provided however, that all modifications and/or replacement work performed by the Design-Builder meet the requirements of the Contract Documents.

.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall to the extent permitted by law defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

7.2 Tax Claim Indemnification

.1 If, in accordance with Owner’s direction, an exemption for all or part of the Work is claimed for taxes, Owner shall to the extent permitted by law indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment,
attorneys’ fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner’s directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely. However, nothing herein shall be construed to waive any right, immunity, or defense available to the City by law.

7.3 Payment Claim Indemnification

.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic’s liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic’s lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic’s lien bond or similar bond. If Design-Builder fails to do so within ten (10) days after receipt of written notice from Owner to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys’ fees. However, in the event that a lien is a result of disputed sums, the Owner shall give the Design-Builder reasonable time and opportunity to negotiate settlement with its Subcontractor prior to the Owner taking steps to discharge the lien directly.

7.4 Design-Builder’s General Indemnification

.1 Subject to Section 10.5 and any limitations in the Agreement, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including reasonable attorneys’ fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

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

7.5 Owner’s General Indemnification

.1 In addition to other specific indemnities elsewhere in this Agreement, Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder’s officers, directors, and employees, from and against claims, losses, damages, liabilities, including reasonable attorneys’ fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner’s separate contractors or anyone for whose acts any of them may be liable. However, nothing herein shall be construed to waive any right, immunity, or defense available to the City by law.
Article 8

Time

8.1 Obligation to Achieve the Contract Times

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

8.2 Delays to the Work

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

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

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

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

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price; and

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

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

.3 Except for Work done as a result of an emergency endangering life or property, no Work resulting in an addition to the Contract Price shall be done by Design-Builder nor shall a claim for an addition to the Contract Price be made by Design-Builder unless pursuant to the provisions of a Change Order.
9.2 Work Change Directives

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

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

9.3 Minor Changes in the Work

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

9.4 Contract Price Adjustments

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

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

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

   .3 Costs, fees and any other markups set forth in the Agreement; and

   .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

.2 In the event that Unit Prices are provided for in the Contract Documents or are subsequently agreed to by the parties as to all or a part of the Work, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the original agreed upon Unit Price to the quantities of Work proposed in the Change Order is substantially inequitable to either Owner or Design-Builder, the Unit Prices shall be reevaluated and may be equitably adjusted.

.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner’s interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its
reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

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

10.2 Dispute Avoidance and Resolution

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

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

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

.4 If after meeting the Senior Representatives determine that the dispute or disagreement
cannot be resolved on terms satisfactory to both parties, the parties shall submit within sixty (60) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Except as required by state law, any dispute under the Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas.

.5 In the event that a dispute arises between the parties is submitted to mediation under this Section, the parties agree to split the mediator’s and any filing fees equally. The mediation shall be held in Kansas City, Kansas. In the event that it is necessary to file a lawsuit in order to meet the requirements of a statute of limitations which is about to expire, the parties agree, nonetheless, to submit the dispute to mediation within thirty (30) days after the filing of such lawsuit or demand.

10.3 Not Used

10.4 Duty to Continue Performance

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

10.5 CONSEQUENTIAL DAMAGES

.1 Notwithstanding anything herein to the contrary, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any), and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims or damages for consequential loss or damage, whether arising in contract, warranty, tort (including negligence) strict liability, or otherwise, including but not limited to loss of use, revenue, profits, business reputation, or financing, shall not exceed the sum of Five Million Dollars ($5,000,000.00).

Article 11

Stop Work and Termination for Cause

11.1 Owner’s Right to Stop Work

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

.2 If such suspension or stoppage persists for 10 days or less, Design-Builder is entitled to seek adjustment in Contract Time(s). If such suspension or stoppage persists for greater than 10 days, Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

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

.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within fourteen (14) days of Design-Builder’s receipt of such notice. If Design-Builder, within such fourteen (14) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, or items which have been purchased or provided and installed or intended to be installed as part of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. Design Builder’s rented or owned construction equipment not intended to be incorporated into the completed Work shall remain the property of the Design-Builder and shall not be used or possessed by Owner. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. If Owner’s cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys’ fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder’s default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

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

.5 Design-Builder shall not be liable for either design services or construction Work (including, but not limited to, equipment installation) that is incomplete, meaning Work that has not been deemed Substantially Complete as set forth in Section 1.2.18, due to a termination by Owner for cause or for convenience under this Agreement, including any errors, omissions or defects in such designs or Work which Design-Builder is prevented from correcting and completing due to any termination.

.6 Owner shall pay Design-Builder’s costs, as a Cost of the Work, to make reasonably safe any incomplete Work or Site conditions left open due to any termination under this Agreement, if such services are requested by Owner. Thereafter, Owner assumes full risk and control of the Site.

11.3 Design-Builder’s Right to Stop Work

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

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

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

11.4 Design-Builder’s Right to Terminate for Cause

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

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

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

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

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

11.5 Bankruptcy of Owner or Design-Builder

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

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

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

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

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

Article 12

Electronic Data

12.1 Electronic Data. The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”). However, Design-Builder will provide paper hard copies of any such documents when requested by Owner.

12.2 Transmission of Electronic Data

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

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

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

12.3 Electronic Data Protocol

.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.
Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

### Article 13

#### Miscellaneous

13.1 **Confidential Information**

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

13.2 **Assignment**

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

In case Design-Builder assigns all, or any part, of the monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially as follows: "It is agreed that the right of the assignee in and to any monies due or to become due to Design-Builder shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and that no money shall be paid to assignee on behalf of Design-Builder by Owner until such time as Design-Builder has discharged its obligations to Owner under this Agreement. It is expressly understood and agreed that no assignment shall be effective as against Owner unless the assignment complies with the foregoing."

13.3 **Successorship**

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

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

13.5 Severability

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

13.6 No Waiver

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

13.7 Headings

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

13.8 Notice

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

13.9 Amendments

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

13.10 Nondiscrimination & EEOC

Design-Builder agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A 44-1111 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex or gender, disability, national origin or ancestry, genetic information, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase “equal opportunity employer”; (c) to comply with the reporting requirements as set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include the provisions of (a) through (c) above in every subcontract and purchase order so that they are binding upon such subcontractors and vendors; (e) that a failure to comply with any of the requirements set forth above constitutes a breach of this Agreement and Owner shall have the ability to terminate this Agreement for such a breach.
.2 Design-Builder must execute a Certificate of Nondiscrimination as provided in K.S.A. 44-1030.

.3 Design-Builder may be required under Section 60-1.40 Title 41, of the C.F.R. to develop a written Affirmative Action Compliance Program if Design-Builder has two or more employees. If Design-Builder is so required, it agrees to do so no later than 120 days after the Effective Date of the Contract and to maintain such program until such time as it is no longer required by law or regulations.

.4 Design-Builder shall be bound by and agrees to the provisions of the Vietnam Era Veteran’s Readjustment Act of 1974 and all regulations, rules and orders promulgated thereunder.

.5 Design-Builder shall be bound by and agrees to the provisions of Section 503 of the Rehabilitation Act of 1973 and all regulations, rules and orders promulgated thereunder.

13.11 Sexual Harassment.

.1 Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the federal Civil Rights Act of 1964. Any such proven harassment of employees or of other persons shall be deemed a breach of the present Contract and it may be canceled, terminated or suspended, in whole or in part, by City. Applying general Title VII principles, Design-Builder is responsible for the acts of its employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or were forbidden by Design-Builder and regardless of whether Design-Builder knew of should have known of their occurrence. Design-Builder agrees to abide by all other federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection with same.

13.12 Entire Agreement.

.1 This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter.

13.13 Survival of Obligations.

.1 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.
Attachment B - Permit Responsibility List
## Permit Responsibility List

<table>
<thead>
<tr>
<th>Permit</th>
<th>Permitting Agency</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stormwater Permit (SWPPP)</td>
<td>KDHE</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Construction Permit (1)</td>
<td>KDHE</td>
<td>Owner</td>
</tr>
<tr>
<td>Building Permit (1)</td>
<td>City of Gardner</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Army Corps of Engineers 404 Permit</td>
<td>USACE</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Change in Point of Diversion</td>
<td>Division of Water Resources (DWR)</td>
<td>Owner</td>
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<tr>
<td>(application)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NPDES Permit for lagoon overflow (2)</td>
<td>KDHE USEPA</td>
<td>Owner</td>
</tr>
<tr>
<td>Miami County Road Closure Permit</td>
<td>Miami County</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Asbestos Demolition Notification Form</td>
<td>KDHE</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Protected Species Coordination</td>
<td>KDWPT</td>
<td>Design-Building</td>
</tr>
<tr>
<td>Miami County Road Crossing Permit</td>
<td>Miami County</td>
<td>Design-Building</td>
</tr>
</tbody>
</table>

(1) Assumes the City of Gardner completes annexation of the Project site no later than October 15th, 2019 and that permit fees and charges are waived by the City of Gardner.

(2) Design Builder to assist with NPDES permit application. Owner will retain primary responsibility as the NPDES permit holder.
Attachment C – Bonds (to be inserted after execution of Agreement)

Bond Performance Bond
Kansas Statutory Bond
STATE OF KANSAS  
COUNTY OF SHAWNEE  

Michael Hafling P.E., being first duly sworn deposes and says that:

(1) He is Representative of Burns & McDonnell CAS Constructors, Gardner Joint Venture, the Bidder that has submitted the attached Bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees of parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Gardner, KS or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: ________________________________

Name: Michael Hafling P.E

Title: Representative

Bidder: Burns & McDonnell CAS Constructors, Gardener Joint Venture

Subscribed and sworn to before me this _____ day of ____________, 20__ by ________________.

____________________________   (signature of notary public)

(seal, if any)

My commission expires: _______________
Attachment D – Insurance Requirements
Attachment D
Insurance Requirements

1.0 Insurance.

1.1 The Design-Builder shall procure and maintain, at its sole expense, throughout the
duration of this Agreement, insurance of such types (on an occurrence basis unless
otherwise agreed to) and in amounts as required herein from an insurance
company licensed or authorized to do business in the State of Kansas, the
following insurance coverages as may be necessary to protect the Design-Builder
against the hazards or risks of loss as hereinafter specified:

☐ Workers’ Compensation and Employer’s Liability - Demonstrate
compliance with K.S.A. 44-532(b) including maintenance of insurance
providing the statutory limits under the Kansas Workers Compensation Act;
the Design-Builder shall also be protected against claims for injury,
disease, or death of employees, which, for any reason, may not fall within
the provisions of a worker’s compensation law. This policy shall include an
“all states” endorsement. Coverage shall be evidenced by each respective
party, Burns & McDonnell and CAS on behalf of the Design-Builder.
Design-Builder shall require its contractors, sub-contractors or agents
performing services pursuant to this agreement maintain compliance with
K.S.A. 44-532(b) including maintenance of insurance providing the
statutory limits under the Kansas Workers Compensation Act.

☐ Commercial General Liability for bodily injury and property damage liability
claims arising from the injuries to members of the public or damage to
property of others arising out of any act or omission of the Design-Builder
or its agents, employees or Subcontractors with limits of $1,000,000 per
occurrence and $2,000,000 in the aggregate. The property damage liability
coverage shall contain no exclusion relative to explosion collapse of
building or damage to underground (XCU) property and/or facilities.
Coverage on behalf of Design-Builder shall be evidenced by CAS.

☐ Commercial Automobile Liability for bodily injury and property damage with
limits of $1,000,000 each accident for all owned, non-owned and hired
automobiles. Coverage shall be evidenced by each respective party, Burns
& McDonnell and CAS on behalf of the Design-Builder.

☐ Professional Liability - The Design-Builder shall maintain Professional
Liability insurance in an amount of $1,000,000 per claim and in the
aggregate and shall provide the City with evidence thereof on a certificate
of insurance. Coverage on behalf of the Design-Builder shall be provided
and evidenced by Burns & McDonnell. Design-Builder shall use
commercially reasonable efforts require that its contractors, sub-
contractors or agents performing professional services pursuant to this
agreement maintain Professional Liability insurance which satisfies the
provisions of this Agreement.

☐ Excess/Umbrella liability $2,000,000 per occurrence and in the aggregate.

☐ Contractors Pollution Liability $1,000,000 per claim and in the aggregate.

☐ Builder’s Risk as required in Article 5.1.4 and 5.1.5 of the General
Conditions.

1.2 Except for Workers Compensation/Employer’s Liability and Professional Liability
policies required above, the City shall be included as additional insured on such
required policies. Satisfactory certificates of insurance shall be filed with the City
prior to starting any work on this Contract. The certificates shall state that thirty
(30) days written notice will be given to the City before any policy coverage thereby
is canceled.

1.3 Industry Ratings - The City will only accept coverage from an insurance carrier who
offers proof that it:
   1) Is licensed or authorized to do business in the State of Kansas;
   2) Carries a Best’s policyholder rating of A- or better;
       AND
   3) Carries at least a Class VIII financial rating.
       OR
Is a company mutually agreed upon by the City and Design-Builder.

1.4 City and Design-Builder release each other and waive all rights of subrogation
against each other and their officers, directors, agents, or employees for damage
covered by property insurance during and after the completion of Design-Builder’s
services.
Attachment E – Basis of Design and Conceptual Design Documents
Attachment F Appointment of Process Agent Form
CITY OF GARDNER, KANSAS

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS
FOR OUT OF STATE CONTRACTORS

Burns & McDonnell CAS Constructors, Gardner Joint Venture, as Contractor, having entered into a written agreement with the City of Gardner, Kansas for the public improvement described as: Hillsdale WTP Expansion Project, hereby appoints Josh Cindrell as its agent in the State of Kansas, upon whom process may be served. The address of the agent is 3500 SW Fairlawn Street Topeka Kansas, 66608, Shawnee County, Kansas.

This appointment was executed this ___ day of ____________, 2019.

By: Michael Hafing, P.E.
Title: Representative

CONSENT TO ACT AS AGENT

I, Josh Cindrell, a resident of the State of Kansas residing at 252 Earhart Circle, Lawrence Kansas, 66049, having been duly appointed and designated to act as resident agent for Burns & McDonnell CAS Constructors, Gardner Joint Venture, do hereby acknowledge this appointment and declare that I will act as such agent and will accept all service of process that may be brought against Contractor within the State of Kansas.

In testimony whereof, I have hereunto set my hand on this, the ___ day of ____________, 2019.

Agent
ACKNOWLEDGMENT

STATE OF KANSAS }  
COUNTY OF Shawnee }  ss:

BE IT REMEMBERED that on this 8th day of August, 2019, before me a notary public in and for said county and state, appeared [Name] who acknowledged that he signed the foregoing instrument and further acknowledged the same as his/her voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

[Signature]
Notary Public

My appointment expires: 3/3/21

[The Appointment of Agent shall be filed with the Kansas Secretary of State pursuant to K.S.A. 16-113.]

(Contractors who are non-residents of the State of Kansas and are not a foreign corporation, foreign limited partnership, or foreign limited liability company qualified to do business and in good standing in Kansas, are required to appoint an agent for service of process who is a resident of Kansas, accompanied by a filing fee of $20.00, with a check for this sum payable to the Kansas Secretary of State.)
Attachment G Non-Collusive Affidavit
STATE OF KANSAS
COUNTY OF SHAWNEE

Michael Hafling P.E., being first duly sworn deposes and says that:

(1) He is Representative of Burns & McDonnell CAS Constructors, Gardner Joint Venture, the Bidder that has submitted the attached Bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees of parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Gardner, KS or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: ___________________________
Name: Michael Hafling P.E.
Title: Representative
Bidder: Burns & McDonnell CAS Constructors, Gardner Joint Venture

Subscribed and sworn to before me this 6th day of August, 2019 by

[Signature]
(Signature of Notary Public)

My commission expires: 9-19-22

[Seal]
Agenda Item: Consider authorizing the execution of Amendment 1 to Hillsdale WTP Expansion Phase I agreement with Burns & McDonnell-CAS Constructors for easement acquisition support

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Staff Recommendation: Staff recommends authorizing an amendment to the Hillsdale plant expansion agreement for easement acquisition support from Burns & McDonnell in the amount of $28,076, related to the raw water line construction as part of the plant expansion.

Background/Description of Item:
On April 1, 2019, City Council authorized the execution of an Engineering Services contract for Phase I of a Progressive Design Build to the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC for the Hillsdale Water Treatment Plant Expansion.

As part of the Hillsdale Water Treatment Plant expansion project, a new 24” raw water transmission main must be constructed to provide the water treatment plant with enough effluent water to treat with the proposed improvements. While reviewing the existing raw water transmission main and designing the improvements during the Phase I portion of the contract, it was determined that additional permanent and temporary easements would be required to construct the new 24” raw waterline. These additional easements are required because of the close proximity to the Miami County road right-of-way and Rural Water District 7 transmission main, which parallels the city’s existing 16” raw water main and even crosses the existing line within the 15 properties easement acquisition being requested. In addition to needing additional easements for construction purposes, it was determined that easements were never filed for the existing raw water transmission main on approximately 2,000 feet of US Army Corp of Engineers property when the plant was originally constructed.

Through various discussions, meetings, and information currently in hand, City staff and the Joint Venture Group of Burns & McDonnell and CAS Constructors determined it would be the most efficient if land acquisition was performed by part of the existing team that already understands the time constraints with producing a successful project.

Financial Impact:
Funding for the project is available from Wastewater Fund 2019-2020 Adopted Budget, CIP Project WA2002.

Attachments:
- Amendment 1
**Suggested Motion:**
Authorize the City Administrator to execute Amendment 1 to Hillsdale WTP Expansion Phase I agreement with Burns & McDonnell-CAS Constructors for easement acquisition support, in the amount of $28,076.
AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE
CITY OF GARDNER, KANSAS AND BURNS & MCDONNELL / CAS CONSTRUCTORS,
GARDNER JOINT VENTURE

AMENDMENT No. 1 Date: August 19, 2019

THIS AMENDMENT modifies the Agreement dated April 1, 2019 made by and between Burns &
McDonnell / CAS Constructors, Gardner Joint Venture (hereinafter called Consultant), and The City of
Gardner Kansas (hereinafter called OWNER) for the following Project: Hillsdale Water Treatment Plant
Expansion Project, Project # WA-2002. For good and valuable consideration, the sufficiency of which is
acknowledged, the parties agree to make the following changes to their Agreement.

1. The parties agree that the Consultant’s Scope of Services is amended to add the following:

Consultant will provide assistance to the Owner in acquiring the necessary easements for installation of
the raw water transmission line from the existing intake to the Hillsdale Treatment Plant site as described
in more detail in Attachment A.

2. The following adjustments are made to the Consultant’s compensation:

For the Scope of services described in Attachment A, the Consultant’s compensation shall be a lump sum
of $38,705.00.

3. The time for completion for the services described in Attachment A is also described therein. The
time and milestones described are based on the Owner’s approval not later than August 20, 2020.

4. Other changes to the Agreement, if any, are stated below:

None

5. The terms of this AMENDMENT supersede any contrary terms of the Agreement. This
AMENDMENT will be deemed a part of, and be subject to, all other terms and conditions of the
Agreement. Except as modified above, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT the day and year first written
above.

OWNER: City of Gardner, Kansas

By: 
Name: 
Title: 

Consultant: Burns & McDonnell / CAS
Constructors, Gardner Joint Venture

By: 
Name: John P Mitchell P.E.
Title: Project Manager

Attest:
City Clerk:

Approved as to Form:
City Attorney:
Attachment A

Scope of Services Easement Acquisition Support

The City of Gardner, Kansas ("the City") is proposing a new water pipeline ("Project") within the same corridor, and/or parallel to, other existing water pipelines. An additional 20-foot right of way (ROW) will be required to accommodate the new water pipeline. According to completed surveys and ownership and encumbrance reports, up to 15 parcels/13 landowners will be impacted and require new permanent and/or temporary easement area.

For the purposes of this proposal, we are assuming that notice to proceed will be on August 20, 2019 and that we will be providing negotiation and related activities for the Project through January 24, 2020 (22 weeks total). This breaks down as such (assuming no condemnation):

- Determine easement values and initial offers: August 20, 2019 – September 6, 2019.
- Prepare and mail easement packages: September 9, 2019 – September 13, 2019.
- City to file condemnation petitions as necessary by October 24, 2019.
- Continue negotiations with property owners on a parallel path with condemnation proceedings.
- Our goal is to have all easements acquired by the start of the raw water pipeline construction on January 24, 2020; our cost estimate is based on this completion date. If the City requests us to continue negotiations past this date, the total cost will increase.
- Total number of weeks of acquisition support: 22

Acquisition Approach: Because this is a small project, we do not believe a full-time ROW agent is necessary, and that most negotiations can be successfully completed via letters (certified, FedEx, USPS) emails and phone calls by in-house Burns & McDonnell staff on a part-time basis. Staff will be located in the Kansas City, Missouri office, which is only a 35-minute drive from the Project area.

ROW Project Management: The Burns & McDonnell Land Acquisition Manager will provide oversight of negotiation activities, provide status updates, manage the real estate budget and schedule, and attend scheduled meetings as necessary. The Land Acquisition Manager will coordinate with the client’s Lead Real Estate Representative to determine the appropriate reporting mechanisms, metrics and schedule. The Burns & McDonnell Assistant PM will be the primary contact for landowners and will prepare and mail the easement packages. We are assuming that the Burns & McDonnell Land Acquisition Manager or Assistant PM will attend an average of one, one-hour project team meeting per week.

Records Management/Administration: Burns & McDonnell will furnish an electronic file for each impacted parcel and keep it up to date with landowner contacts and attempted contacts, documents, title work, photos, and copies of letters and emails. Electronic and/or hard copies of completed files will be turned over to the client upon request. Parcel negotiation status and other parcel/landowner information (to be determined by the City’s real estate lead) will be tracked in an Excel spreadsheet.

Landowner Identification: Although ownership and encumbrance reports have already been provided identifying the current landowners, our team may use various real estate software to verify ownership or identify adjacent parcels if needed.
**Landowner Notifications/Negotiations:** Using the City’s templates, Burns & McDonnell will prepare a landowner package that notifies landowners that easement negotiations are commencing. The packet will include information about the Project and acquisition process, starting offer amount, W-9, easement exhibit, two copies of the easement agreement to execute and notarize, and a pre-paid return FedEx envelope. In the letter, we will offer to meet with the landowner in person if requested, and will include a contact person, email and phone number. This package will be followed up with phone calls to the landowners to initiate discussion.

If a landowner is not responsive to our phone calls, if necessary and practical, we will send emails and/or certified letters attempting to schedule a final in-person meeting to discuss the offer. We will encourage property owners to accept the offer within 30 days of the first formal offer. Executed documents will be recorded within two business days at the Miami County courthouse.

**Landowner Payments:** Burns & McDonnell will request payment for easements and damages via an email request to the City, submitting a pre-approved form, along with copies of supporting documentation. Burns & McDonnell will not maintain electronic copies of W-9s, and any hard copies will be FedEx’d to the City or destroyed, as requested. Electronic W-9’s will be delivered to the City via an encrypted file sharing site and not attached to emails. We anticipate that checks will be mailed via FedEx or hand delivered as appropriate. Burns & McDonnell will not pay landowners directly or maintain an escrow account.

**Valuation Study:** Because of the short time frame for negotiations to occur before construction starts, we propose that offers are based on a desktop valuation study, which may include online real estate sites and Miami County appraisal data. Although condemnation is not anticipated, full appraisals will be needed if any parcels require condemnation. Appraisals can be provided on an additional per unit cost if required.

We have conducted an initial limited desktop evaluation (Table 1) of the land in the area for budgetary purposes. These values were derived from the 2019 appraisal/market values of the impacted properties available on the Miami County website: [http://www.miamicountyks.org/144/Real-Property](http://www.miamicountyks.org/144/Real-Property). The Miami County Appraisal site states: “Real property is appraised for tax purposes at 100% of its fair market value utilizing the cost, income, and comparable sales approaches to value with the exception of agricultural land. Agricultural land is appraised for taxes at its use value based on its income producing capability. It is also appraised at its fair market value.”

The budgetary land cost estimate assumes 100% of market value will be offered for permanent and temporary easement area. This estimate is merely a starting point for discussions of valuing the easements and may increase or decrease based on specific property characteristics and individual landowner negotiations. Costs for damages, culverts, laydown yards and/or temporary access roads are not included in this estimate.
Table 1.

<table>
<thead>
<tr>
<th>Land Type*</th>
<th>Average Appraised Value/Acre</th>
<th>Total Acres – Permanent Esmt</th>
<th>Total Acres – Temp. Esmt</th>
<th>Budgetary Estimate of Land Cost (at 100% market value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farm Homesite</td>
<td>$2,042.00</td>
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<td>Residential</td>
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<td>.15</td>
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<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td>$28,076</td>
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</table>

*There are two government/exempt parcels and a water treatment plant that are not included in this estimate.

Impasse: If an impasse is reached and a property owner refuses to execute the easement agreement after an approved number of days of negotiating, then the file will be turned over to the City’s legal team for condemnation. Our real estate specialists will be available to continue negotiating with landowners that enter the eminent domain process. It is our experience that sustained negotiations with consistent land agents during condemnation often result in settlements with landowners.

Construction Support: Not included.

Cost Estimate (Table 2): Over the 22 weeks between kickoff and construction start, we are assuming an approximately 1.5 hours per week for the Project Manager to provide high-level oversight, and approximately 7 hours per week for the Assistant PM/Negotiator. The cost estimate does not include the cost of land/easements or damage payments. Estimate is not a not-to-exceed cost. Successful negotiations are highly dependent upon landowners’ availability and willingness to participate in negotiations.

**Table 2.**

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<thead>
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<th>Labor</th>
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<th>Cost</th>
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<td>Real Estate APM/Negotiator</td>
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<td>140</td>
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<table>
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<td>Miscellaneous</td>
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<td>$500</td>
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<td>Contingency (10%)</td>
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<tr>
<td>Grand Total</td>
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