



Notice of Study Session
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET
November 16 - 4:00 pm

DUE TO COVID-19 AND SOCIAL DISTANCING WE ARE ENCOURAGING VIEWING ALL MEETINGS VIRTUALLY ON THE LIVE STREAMED CITY OF ABILENE'S YOUTUBE PAGE AT https://www.youtube.com/channel/UCNURrU0ueP6_dRpHYu1wJEg

PURPOSE

The City Commission's study sessions are for the purpose of providing the commission the opportunity to study items in more detail.

OPEN FORUM

This is an opportunity to bring up items to be informally addressed. The Mayor may impose a time limit on open forum.

STUDY ITEMS

1. Consider approval of the 2021 insurance renewal. Julie Yarmer from Freedom Claims Management, Inc will present the information.
2. Consider resolution 112320-1 for the 2021 employee pay plan.
3. Consider resolution 112320-2 for the property condemnation located at 1015 N. Mulberry.
4. Hold public hearing for the issuance of IRB's for Narayan project.
5. Consider ordinance authorizing the issuance of taxable industrial revenue bonds series 2020 for Narayan Inc.
6. Consider water & sewer rate increase.
7. Consider renewal of City Engineer contract.





CITY OF ABILENE
Item for City Commission Agenda

Meeting Date:

Originating Department

Prepared By:

Approved For Agenda By:
(Office Use Only)

Administration

Penny Soukup

AGENDA ITEM HEADING:

Consider Resolution 112320-1 adopting the City of Abilene pay plan for the year 2021

BACKGROUND:

In November of 2019 the Austin Peters Group, Inc. prepared and presented a new classification and compensation study to the City Commission. This was adopted by resolution 111219-1. The new classification and compensation plan for the City of Abilene employees was put in place January 1, 2020.

During the 2021 budget process staff worked diligently to maintain a flat budget. During the process we also wanted to make sure we kept the new classification and compensation plan in mind. In doing so we budgeted a 1.75% increase to the ranges in the plan. The amount of the adjustment to the pay ranges has varied annually. We have had years with no adjustment and we have had years with 3.5% adjustments. In 2020 we adjusted the ranges by 2.5% plus implemented the new pay plan. In determining a budget amount we look at the consumer price index, and we determined that 1.75% was well within the parameters of the CPI. We are doing very well financially this year and feel that this adjustment will help maintain the new plan as we move forward.

We have prepared resolution 112320-1 seeking the commission's approval for the budgeted 2021 pay ranges.

FISCAL NOTE:

Included in the 2021 adopted budget.

COMMISSION ACTION:

Consider approval of resolution number 112320-1

RESOLUTION NO. xxxxx

A RESOLUTION PROVIDING FOR AN ADJUSTMENT TO THE PAY PLAN OF THE CITY OF ABILENE, KANSAS, TO ENSURE APPROPRIATE COMPENSATION FOR CITY EMPLOYEES AS COMPARED WITH THE COMPARABLE LABOR MARKET.

WHEREAS, the City Commission has adopted Resolution Number 111219-1 adopting a classification and compensation plan for the City of Abilene, Kansas to ensure appropriate compensation for City Employees as prepared by the Austin Peters Group, Inc. The new ranges were put in place January 1, 2020;

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, Kansas, as follows:

SECTION 1. Adjustment to Pay Plan. In order to maintain the adopted pay and classification plan a one and three quarters percent (1.75%) adjustment will be applied to all pay ranges in the Pay Plan for 2021 as shown in the table below:

Range	2020 MIN	2020 MAX	2021 Min	2021 Max
1	\$14.45	19.51	14.70	19.85
2	\$16.06	21.69	16.34	22.07
3	\$17.28	\$23.33	\$17.58	\$23.74
4	\$18.51	\$25.00	\$18.83	\$25.44
5	\$19.59	\$26.46	\$19.93	\$26.92
6	\$20.89	\$28.21	\$21.26	\$28.70
7	\$23.44	\$31.65	\$23.85	\$32.20
8	\$24.61	\$32.60	\$25.04	\$33.17
9	\$25.14	\$33.94	\$25.58	\$34.53
10	\$26.40	\$35.64	\$26.86	\$36.26
11	\$34.31	\$46.32	\$34.91	\$47.13

SECTION 2. Step System. The adopted 2021 budget incorporated the amounts necessary to execute the provision of the Pay Plan that provides for the above adjustments to the pay plan.

SECTION 3. Implementation. The City Manager is hereby authorized to implement changes to the Pay Plan as provided in the approved Pay Plan document and this Resolution as provided in the applicable resolutions, ordinances and laws.

SECTION 4. Repeal. Adoption of this Resolution superseded and repeals all previous Pay Plans adopted by the City of Abilene, Kansas.

SECTION 5. Effective Date. That the effects of the Resolution shall be in full force and effective as of January 1, 2021.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 12th day of February, 2018.

(Seal)

Chris Osterman, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

City of Abilene
Item for City Commission Agenda

Meeting Date: **11/23/20**

Originating Department

City Inspector

Prepared By:

Travis Steerman

Approved for Agenda By:
(Office Use Only)

AGENDA ITEM HEADING:

Consider condemnation of church and house structures at 1015 N. Mulberry St.

BACKGROUND:

City staff conducted an inspection of both structures located at 1015 N Mulberry and have found both to be dangerous. Property was not entered due to condition of floor. From the front door most of the following collective conditions were witnessed.

- Various holes in roof
- Vegetation growing in roof due to the presence of dampness and rot
- Front door not secure
- Several broken windows with a number unsecured
- Rotten eaves and fascia
- Evidence of rainwater damage to the ceilings
- Floor damage so significant safe travel was not achievable
- Plaster fallen off the walls and ceiling in various locations
- Large amount of debris on floor
- Evidence of water damage to the joists and rafters
- Cracked or missing siding
- Chimney in need of repair
- Vegetative overgrowth along the exterior walls
- Evidence of mice and cats in the house, although none were observed

After the inspection of the home was concluded entrance to the church structure was granted and entered. All of first floor of church was able to be observed and inspected. These conditions were present.

- Various holes in roof
- Roofing in serious disrepair
- Rotten eaves and fascia
- Heavy vegetation overgrowth around perimeter of church
- Added structure to the back in total disrepair and collapsing
- Ceiling tile missing due to water damage
- Visible daylight through various sections of the roof
- Water damage to ceiling
- Damaged tiles throughout floor on south side of building
- Plant growth in cushions of church pews
- Rainwater damage to floor

FISCAL NOTE:

House and church have been vacant for some time. The actual inspection of this property took place June 27, 2019. At that time, this property was due to be sold at the tax sale in early 2020. Sometime after the inspection taxes were paid on property. Various weed notices have been sent to the owners throughout the years and an actual notice about the condition of the property was sent out 2011 by previous staff. This property has received multiple complaints through 2017 to present.

COMMISSION ACTION:

Public hearing on 11/23/20 to hear all evidence submitted by the owner. After closing public hearing, the City Commission may adopt a resolution stating their findings and affixing a reasonable time for repair or removal.

RESOLUTION NO. 112320-2

A RESOLUTION FINDING THAT THE STRUCTURES LOCATED AT 1015 N. MULBERRY ST., ABILENE, KANSAS ARE UNSAFE AND DANGEROUS AND DIRECTING THE STRUCTURES TO BE REPAIRED OR REMOVED AND THE PREMISES MADE SAFE AND SECURE.

WHEREAS, the building inspector of the City of Abilene, Kansas filed with the Governing Body a statement in writing that the structures, hereinafter described, are unsafe and dangerous.

WHEREAS, the Governing Body did by resolution fix the time and place of a hearing at which any owner, any owner's agent, any lienholders of record and any occupant of such structure could appear and show cause why such structures should not be condemned and ordered repaired or demolished, and did duly publish and serve said resolution in the manner provided by law;

WHEREAS, on November 23, 2020, the Governing Body heard all evidence submitted by the property owners, the owner's agents, lienholders of record and occupants having an interest in such structures, as applicable, as well as evidence submitted by the building inspector.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the City of Abilene, Kansas:

Section 1: The Governing Body finds that the dwelling and church structures at the property commonly known as 1015 N. Mulberry St. Abilene, Kansas are unsafe and dangerous and that such conditions endanger the life, health, property or safety of the public or the occupants. The legal description of the subject property is as follows:

Lot 6, Block 3, in Rice and Austin's Addition to Town now City of Abilene, Dickinson County, Kansas.

Section 2. The Governing Body further finds that the following conditions render the structures unsafe and dangerous:

1. Various holes in roof
2. Vegetation growing in roof due to the presence of dampness and rot
3. Front door not secure
4. Several broken windows with a number unsecured
5. Rotten eaves and fascia
6. Evidence of rainwater damage to the ceilings and floors
7. Floor damage so significant safe travel was not achievable
8. Plaster fallen off the walls and ceiling in various locations

9. Large amounts of debris on floor
10. Evidence of water damage to the joists and rafters
11. Cracked or missing siding
12. Chimney in need of repair
13. Heavy vegetative growth along the exterior walls
14. Evidence of mice and cats in the house, although none were observed
15. Roofing in serious disrepair, visible daylight through various sections
16. Added structure to the back in total disrepair and collapsing
17. Plant growth in cushions of church pews

Section 3: The owner is directed to repair or remove the structures, and to make the premises safe and secure (the “Work”), The Work shall be commenced by December 31, 2020 and shall be diligently prosecuted so as to allow for substantial completion of all Work no later than December 31, 2020. For purposes of this Resolution, the owner shall be deemed to have commenced the Work only if the owner has: (1) caused application to be made to the City of Abilene for, and obtained, the required permit(s) for the Work; or (2) commenced the physical Work on the premises after providing the building inspector with satisfactory evidence that no permits are required for the proposed Work under applicable law.

Section 4: If the owner fails to commence the Work, or to diligently prosecute the Work until the Work is substantially completed, all within the times stated, the Governing Body will cause the structures to be repaired or razed and removed.

Section 5: The City Clerk shall publish this resolution one (1) time in the official city newspaper and shall mail, by certified mail, copies of the resolution to each owner, agent, lienholder of record and any occupant of the structures within three (3) days after its publication.

Adopted by the Board of City Commissioners and signed by the Mayor this 23rd day of November 2020.

CITY OF ABILENE, KANSAS

Chris Ostermann, Mayor

ATTEST:

Penny L. Soukup, CMC, City Clerk

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 11/23/20

Originating Department

Prepared By:

Approved For Agenda By:
(Office Use Only)

Administration

Jane Foltz, City Manager/Aaron
Martin, City Attorney

AGENDA ITEM HEADING:

1. Hold Public Hearing for the issuance of IRB's for Narayan project
2. Consider an Ordinance authorizing the issuance of taxable Industrial Revenue Bonds Series 2020 for Narayan Inc.

BACKGROUND:

On January 13, 2020, the City Commission approved a Development Agreement between the City and Naryan, Inc., in relation to the development of the Holiday Inn Express hotel project at the southeast corner of Buckeye Avenue and Roller Coaster Road. Subject to the terms and conditions of the Development Agreement, the City agreed to permit the hotel project to participate in certain economic development programs, including:

- The issuance of industrial revenue bonds for purposes of a property tax abatement and sales tax exemption;
- The creation of a community improvement district; and
- The rebate of a portion of the transient guest tax generated by the Developer's new hotel to be constructed and operation on a portion of the subject property.

During the January 13, 2020 City Commission meeting, the City Commission also held the required public hearing related to the proposed issuance of industrial revenue bonds in the principal amount of \$7,500,000 and the exemption from ad valorem taxation of the hotel project to be constructed with the proceeds of the industrial revenue bonds. Following the public hearing, the City Commission adopted Resolution No. 011320-2, which, among other things, authorized the City to issue industrial revenue bonds in the approximate principal amount of \$7,500,000.00.

Pursuant to Resolution No. 011320-2, the City's issuance of the industrial revenue bonds was made subject to numerous conditions, including but not limited to: (a) the passage of an ordinance authorizing the issuance of the bonds; (b) the successful negotiation of a Bond Agreement, Lease or other legal documents necessary to accomplish the issuance of the bonds; and (c) the successful negotiation and sale of the bonds to a purchaser yet to be determined.

Naryan, Inc. now wishes to proceed with development and construction of the project, and it is necessary for the City to pass an ordinance authorizing the issuance of the bonds, and approve the bond agreement, leases, and various other legal documents necessary to accomplish the issuance of the bonds and qualify the property for the property tax abatement. Naryan, Inc. will be the purchaser of the bonds.

The estimated project cost to construct the hotel project has increased to \$8,000,000. Because Resolution No. 011320-2 only authorized the issuance of bonds in the approximate principal amount of \$7,500,000, it is necessary to hold another public hearing in order to authorize the issuance of bonds in an amount equal to the full project cost. Increasing the amount of the bonds will ensure that the full project value receives the benefit of the property tax abatement.

During the public hearing, all persons having an interest in the matter will be given an opportunity to be heard. Following the public hearing, the City Commission will consider approving an ordinance authorizing the issuance of the industrial revenue bonds in an amount not to exceed \$8,000,000, for the purpose of providing funds for the acquisition, construction, and equipping of the hotel project. The ordinance will approve various other documents required for, and customarily associated with, the City's issuance of industrial revenue bonds for development projects. These other documents approved by the ordinance include a trust indenture with BOKE, N.A., as trustee of the bonds, project leases between the City and Naryan, Inc., and a bond purchase agreement between the City and Naryan, Inc. If approved, these documents will exempt the hotel property from ad valorem taxes, as anticipated by the development agreement entered into between the City and Naryan, Inc. on January 13, 2020.

We have invited Sarah Steele from Gilmore & Bell, the City's bond counsel, to attend the November 23, 2020 meeting and present additional information and answer additional questions related to the industrial revenue bonds and the Narayan, Inc. economic development project.

FISCAL NOTE:

The City's issuance of industrial revenue bonds does not create any liability for the City, and the bonds do not constitute an obligation of the City. As explained above, industrial revenue bond financing would afford the new hotel property 100% property tax abatement for 10 years. It would also exempt from sales tax all of the costs of the project related to items such as construction materials, building furnishings, and equipment. The City's costs of facilitating the industrial revenue bond financing, including issuing the bonds, will be paid and/or reimbursed by Naryan, Inc.

COMMISSION ACTION:

1. Hold the public hearing for issuance of industrial revenue bonds in the amount of \$8,000,000, to pay the costs of the acquisition, construction, equipping and furnishing of a hotel facility.
2. Consider an ordinance authorizing the City to issue its taxable industrial revenue bonds, series 2020 (Narayan, Inc.) for the purpose of the acquisition, construction and equipping the hotel facility; and authorizing certain other documents and actions in connection therewith.

ORDINANCE NO. ____

**OF THE
CITY OF ABILENE, KANSAS**

**AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$8,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020
(NARAYAN, INC.)**

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS HAS FOUND AND DETERMINED:

A. The City of Abilene, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities.

B. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) dated December 1, 2020 in the aggregate principal amount of not to exceed \$8,000,000 (the "Series 2020 Bonds"), for the purpose of paying the costs of the acquisition, construction and equipping of a certain hotel facility (the "Project"), as more fully described in the Indenture and in the Lease authorized in this Ordinance, for lease to NARAYAN, INC., a Kansas corporation (the "Tenant").

C. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2020 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Trust Indenture dated as of December 1, 2020 (the "Indenture"), with BOKF, N.A., Kansas City, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 2020 Bonds;

(ii) a Site Lease dated as of December 1, 2020 (the "Site Lease"), with the Tenant, under which the Issuer will acquire a leasehold interest in the real property on which the Project will be located;

(iii) a Lease dated as of December 1, 2020 (the "Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments; and

(iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2020 Bonds by the Issuer to NARAYAN, INC., Abilene, Kansas (the "Purchaser").

D. The Issuer's governing body has found that under the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project purchased or constructed with the proceeds of the Series 2020 Bonds is eligible for exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Issuer's governing body has further found that the Project

should be exempt from ad valorem property taxes for a period of ten (10) years. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Indenture and the Lease.

Section 2. **Authority to Cause the Project to Be Purchased and Constructed.** The Issuer is authorized to cause the Project to be acquired, constructed and equipped in the manner described in the Indenture, the Site Lease and the Lease.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series 2020 Bonds, to be designated "City of Abilene Kansas Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.)" in the aggregate principal amount not to exceed \$8,000,000, for the purpose of providing funds to pay the costs of the acquisition, construction and equipping of the Project. The Series 2020 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series 2020 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Lease of the Project. The Series 2020 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2020 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Issuer will acquire, construct and equip the Project and lease it to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 6. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series 2020 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 7. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series 2020 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2020 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 8. **Property Tax Exemption.** The Project will be exempt from ad valorem property taxes for ten (10) years, commencing in the calendar year after the calendar year in which the Series 2020 Bonds are issued, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Board of Tax Appeals.

Section 9. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project and the net rentals generated under the Lease to the payment of the Series 2020 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2020 Bonds are paid or deemed to have been paid under the Indenture.

Section 10. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 11. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2020 Bonds and the Bond Documents.

Section 12. **Effective Date.** This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

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PASSED by the governing body of the Issuer on November 23, 2020 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY.

City Attorney

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CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. ____ of the City of Abilene, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF ABILENE, KANSAS
HELD ON NOVEMBER 23, 2020**

The governing body of the City of Abilene, Kansas met in regular session at the usual meeting place in the City, at 4:00 p.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Among other business, in accordance with notice published on November 13, 2020, in Abilene Reflector-Chronicle, a public hearing was held by the governing body relating to the proposed issuance not to exceed \$8,000,000 principal amount of Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) and the proposed granting of an ad valorem property tax exemption for the property purchased with the proceeds of the Bonds. All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented for passage an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Commissioner _____ moved that said Ordinance be passed. The motion was seconded by Commissioner _____. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No _____ and was signed by the Mayor and the signature attested by the City Clerk.

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Abilene, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

(Published in *The Abilene Reflector-Chronicle* on November 27, 2020)

SUMMARY OF ORDINANCE NO. []

On November 23, 2020, the governing body of the City of Abilene, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (NARAYAN, INC.) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING A HOTEL FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2020 (NARAYAN, INC.) in the aggregate principal amount not to exceed \$8,000,000 (the "Series 2020 Bonds"), for the purpose of paying the costs of the acquisition, construction and equipping of a hotel facility (the "Project"), as more fully described in the Indenture and in the Lease authorized by the Ordinance. The Project will be leased by the Issuer to NARAYAN, INC., a Kansas corporation. In connection with the issuance of the Series 2020 Bonds, the Issuer approves a ten (10) year exemption from ad valorem property taxes for the Project.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 419 N. Broadway Street in Abilene, Kansas. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.abilenecityhall.com.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: November 23, 2020.

City Attorney

Originating Department

Prepared By:

Approved For Agenda By:
(Office Use Only)

Administration

Marcus Rothchild

AGENDA ITEM HEADING:

2021 Water & Sewer Utility Rate Increase

BACKGROUND:

In December of 2017, the City began discussions with Ranson Financial Group to review the City's water and sewer utility rates. After this review, it was evident that the current rates were not keeping up with the rising cost of production and operations for our public utilities. In 2019, the commission approved a rate adjustment plan that would help water and sewer rates breakeven with expenses within a three-year period. 2021 marks year two of this three-year plan and requires another increase to keep the City's water and sewer funds on the path to a healthy budget. These rates were discussed and presented to the City Commission in May while planning for the 2021 budget.

Sewer Rates	Inside City Limits		Outside City Limits	
	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>
Monthly Minimum	\$13.00	\$14.82	\$19.49	\$22.22
Sewer Rate	\$.542	\$.618	\$.812	\$.926 (Sewer rate per 100 gallons of winter water use)

Water rates	Residential Inside City Limits		Residential Outside City Limits		Commercial Inside City Limits		Commercial Outside City Limits	
	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>
Monthly Minimum	\$16.12	\$18.18	\$32.25	\$36.36	\$16.12	\$18.18	\$32.25	\$36.36
Water Rate	\$.381	\$.429	\$.763	\$.860	\$.381	\$.429	\$.763	\$.860
					(Tier 2) \$.322	\$.363	\$.644	\$.726

FISCAL NOTE:

The average residential water bill (5,000 gallons) will see an increase of \$4.46 per month.

The average residential sewer bill (5,000 gallons) will see an increase of \$5.62 per month.

COMMISSION ACTION:

Consider adoption of new rates with ordinance amending City code.

ORDINANCE NO. 20-3394

AN ORDINANCE AMENDING CHAPTER 7, SECTIONS 7-505, 7-901, AND 7-902 OF THE CITY CODE OF THE CITY OF ABILENE PERTAINING TO SEWER AND WATER RATES WITHIN THE CITY OF ABILENE, KANSAS; AND REPEALING EXISTING SECTIONS 7-505, 7-901, AND 7-902.

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

SECTION ONE. Section 7-505 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-505. Sewer rates

The sewer rates for all residential, commercial and industrial users of the municipal wastewater collection and treatment system shall be a minimum monthly charge of fourteen dollars and eighty-two cents (\$14.82), plus an additional monthly charge of sixty-one and eight-tenths cents (\$0.618) for each 100 gallons of winter water use. The sewer rates for all extraterritorial residential, commercial and industrial users of the municipal wastewater collection and treatment system shall be a minimum monthly charge of twenty-two dollars and twenty-two cents (\$22.22), plus an additional monthly charge of ninety-two and six-tenths cents (\$0.926) for each 100 gallons of winter water use.

SECTION TWO. Section 7-901 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-901. Residential rates.

The monthly water rates for residential users shall be as follows:

(a) Monthly Usage Minimum Service Charge.

- (1) Water usage as shown on the January, February and March billing is averaged to determine a water use average for both residential accounts. Usage that falls within this average will be billed at the Base Tier rate as established by ordinance.
- (2) Any usage that exceeds the water use average by 20% (hereinafter "Base Tier Allotment") will be billed at the Conservation Tier rate as established by ordinance for residential accounts. Any customer without an established water use average will be allotted fifty gallons per person per day until a new water use average is established. The water use average shall be recalculated annually after the March billing date.
- (3) All residential usage that exceeds the Base Tier Allotment during times of official "Water Emergency" periods, as defined by Chapter 7, Article 10 will be

billed at the Emergency Tier rate for Water Emergency, as established by ordinance.

(b) Water Rates for Residential Customers. The water rates for residential consumers, and the effective dates of such rates, shall be determined by the governing body and shall be specified in an ordinance authorizing the same, and may be amended by ordinance of the governing body. The following rates are currently in effect at the time of passage of the ordinance from which this section is derived, and shall continue in full force and effect until any new or different rate goes into effect:

- (1) Residential Inside City:
 - Monthly Minimum Charge: \$18.18
 - Base Tier: \$0.429 per 100 gallons
 - Conservation Tier: Suspended
 - Emergency Tier: (declared water emergency only): Suspended
- (2) Residential Outside City:
 - Monthly Minimum Charge: \$36.36
 - Base Tier: \$0.860 per 100 gallons
 - Conservation Tier: Suspended
 - Emergency Tier: (declared water emergency only): Suspended

SECTION THREE. Section 7-902 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

7-902. Commercial rates.

The monthly water rates for commercial users shall be as follows:

(a) Water Rates for Commercial Customers. The water rates for business consumers, and the effective dates of such rates, shall be determined by the governing body and shall be specified in an ordinance authorizing the same, and may be amended by ordinance of the governing body. The following rates are currently in effect at the time of passage of the ordinance from which this section is derived, and shall continue in full force and effect until any new or different rate goes into effect:

- (1) Commercial Inside City:
 - Monthly Minimum Charge: \$18.18
 - 0-225,000 gallons: \$0.429 per 100 gallons
 - 225,001 or higher: \$0.363 per 100 gallons
 - 225,001 or higher (declared water emergency only): Suspended
- (2) Commercial Outside City:
 - Monthly Minimum Charge: \$36.36
 - 0-225,000 gallons: \$0.860 per 100 gallons
 - 225,001 or higher: \$0.726 per 100 gallons
 - 225,001 or higher (declared water emergency only): Suspended

- (3) During times of official “Water Emergency” periods, as defined by Chapter 7, Article 10 commercial usage will be billed at the Emergency Tier rate for Water Emergency, as established by ordinance.

SECTION FOUR. Existing Sections 7-505, 7-901, and 7-902 are hereby repealed.

SECTION FIVE. This ordinance shall be in full force and effect on January 1, 2021, after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. 20-3394 Summary

On November 23, 2020, the City Commission passed Ordinance No. 20-3394. The ordinance amends Chapter 7, Sections 7-505, 7-901, and 7-902 of the City Code of the City of Abilene, Kansas pertaining to sewer and water rates within the City of Abilene, Kansas. The ordinance shall be in full force and effect on January 1, 2020, after the publication of this summary once in the official city newspaper. A complete copy of the ordinance is available online at www.abilenecityhall.com or in the office of the City Clerk, 419 N. Broadway Street in Abilene, Kansas, free of charge. This summary is certified by the City’s legal counsel.

APPROVED AND PASSED by the Governing Body of the City of Abilene, Kansas, this 23rd day of November, 2020.

Chris Ostermann, Mayor

Attest:

Penny L. Soukup, CMC, City Clerk

The publication summary set forth above is certified this 23rd day of November, 2020.

Aaron O. Martin, City Attorney



CITY OF ABILENE
Item for City Commission Agenda

Meeting Date:

11/23/2020

Originating Department

Prepared By:

Approved For Agenda By:
(Office Use Only)

Public Works

Lon

AGENDA ITEM HEADING:

Consider renewal of City Engineer contract with Olsson and Associates

BACKGROUND:

In 2015, a selection committee, made up of City staff, invited Engineering firms to present qualifications to provide on call/as needed services to the City. Three companies were selected out of 12-15 companies for live presentations with Olsson and Associates being chosen. Their contract was for a three year period.

Per the initial contract the same process was repeated in April of 2018. Other than myself, a whole new selection committee was formed and Olsson and Associates was again chosen to provide their services. In April 2021, it will be time to review/renew these engineering services.

It is very probable that the next three years will see major changes in our City senior leadership with retirements looming. Most likely many of our infrastructure projects that planning and design phases have been or soon will be started by Olsson and Associates will take place or be completed with new leadership. A list of these would include NW 14th, Rogers Street, CCLIP Buckeye,(2 year) street projects. The development of Well #23, water and sewer modeling, the SE storm drainage improvements, Airport work, the Northwest Industrial/commercial street and utility development as well as many others that have had initial discussions.

For these reasons, staff is requesting the City Commission consider negotiating and renewing the contract with Olsson and Associates for 2021- 2024 under the same guidelines. We feel that this action will best maintain continuity throughout the completion of these projects.

FISCAL NOTE:

Olsson will provide a scope of services and cost for the projects individually as they have in the past. Occasionally we pay them hourly rates for their services as we request them.

COMMISSION ACTION OPTIONS:

Consider approval of renewal of City Engineering services with Olsson and Associates for 2021-2024.



MASTER AGREEMENT FOR PROFESSIONAL SERVICES

November 12, 2020

City of Abilene
419 N. Broadway
P.O. Box 510
Abilene, Kansas 67410

Re: **MASTER AGREEMENT FOR PROFESSIONAL SERVICES
ON-CALL ENGINEERING SERVICES (2021-2024)**

It is our understanding that the City of Abilene ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Master Agreement for Professional Services, Olsson's General Provisions, Federal Contract Provisions, and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement").

The purpose of the Agreement is to provide the Client and Olsson with an operating agreement covering on-going services provided to Client. Upon request for services from the Client, Olsson will send to the Client a proposed **Work Order** for approval by Client. The Work Order will include the project location, anticipated start and completion dates, project description, compensation, and the Scope of Services. Olsson will commence work on individual projects upon receipt of a signed Work Order.

Olsson has acquainted itself with the information provided by Client relative to the Master Agreement and based upon such information offers to provide the services described in each Work Order. Client warrants that it is either the legal owner of the property to be improved by each Work Order or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached hereto), which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Master Agreement and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide Client the Scope of Services for Projects as specified in each project Work Order. Olsson shall invoice Client for all services as outlined in each project Work Order. Olsson's services may vary for each project. Olsson shall not commence work on any Work Order without Client's prior approval in writing.

Olsson agrees to provide all of its services in a timely, competent, and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR SERVICES

Details of the schedule for each project will be outlined in the Work Order.

COMPENSATION

Compensation for each project will be outlined in the Work Order. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of the invoice date.

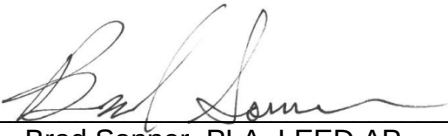
TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Agreement and the Agreement will represent the entire understanding between Client and Olsson with respect to any project subject to a Work Order. The Agreement may only be modified in writing signed by both parties.

Unless otherwise set forth in writing, Client's designated representative shall be the City Manager.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson, 302 S. 4th Street Suite 110, Manhattan, Kansas 66502. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By 
Brad Sonner, PLA, LEED AP
Vice President

By 
Jamie Fain, P.E.
Vice President

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

CITY OF ABILENE

By _____
Signature

Printed Name _____

Title _____

Dated: _____

Attachments
General Provisions

(Example - Do Not Use - See Master Agreement Work Order)

WORK ORDER

This exhibit dated _____ is hereby attached to and made a part of the Master Agreement for Professional Services dated _____ between _____ ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is as indicated below.

GENERAL

Olsson has acquainted itself with the information provided by Client relative to the project and based upon such information offers to provide the services described below for the project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: _____
Project Description: _____

(Scope of Services, Schedule for Services, and Compensation shall be defined on a case by case basis.)

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project representative shall be _____.

If this Work Order satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of _____ days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By _____
Type Name Here (Optional)

By _____
Type Name Here (Optional)

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept this Work Order, please sign:

NAME OF CLIENT

By _____
Signature
Print Name _____

Title _____ Dated: _____

Attachments
(If Applicable)

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated November 12, 2020 between City of Abilene, Kansas ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.