



*Small, Serene, Simply Garnett.*

## City Commission Meeting AGENDA February 28, 2023, 6:00 P.M.

- I. **Call to Order of the Regularly Scheduled City Commission Meeting (6:00 p.m.)**
  - A. Pledge of Allegiance
  - B. Invocation, Scott King, Church of the Nazarene
- II. **Governing Body Comments**
  - A. Commissioner Locke
  - B. Commissioner Cole
  - C. Mayor Sheahan
- III. **Consent Agenda**
  - A. Approval of Minutes from February 14, 2023 Regular City Commission Meeting
  - B. Approval of Semi-Monthly Bills and Payroll in the amount of \$218,091.21
- IV. **Regular Business**
  - Consideration of the 2023 Cereal Malt Beverage Permit for Leiszler Oil Company.
- V. **Discussion Items**
  - A. Cedar Valley Reservoir Project
  - B. Homeless followup/continuation
  - C. Landbank
  - D. Natural Gas Services Proposal
- VI. **Informational Items**
  - A. "The Pie Ladies", hosted by The Chamber Players Community Theatre, will be held at the Thelma Moore Community Playhouse March 2-3 at 6:30 p.m. and March 4-5 at 12:30 p.m.
  - B. International Women's Day Chocolate Walk, hosted by Morning Mingle, will be held on March 4.
  - C. The Prairie Spirit 100 Ultra Race, 100m/100k, 50m/50k run race, hosted by the Timer Guys will be held on March 25.
  - D. The March Madness Demolition Derby, hosted by the Anderson County Fair Association, will be held at the North Lake Park Rodeo Arena, will be held at a date yet to be determined.
  - E. The Egg Drop Easter Egg Hunt, hosted by the Garnett Church of the Nazarene, with the help of the Garnett Industrial Airport, will be held at the Garnett Industrial Airport on April 1.
  - F. Spring City Wide Garage Sale Day & Sidewalk Sales, hosted by Garnett Publishing, will be held on April 8.
- VII. **Citizens to be Heard (Five-Minute Time Limit Per Person)**
- VIII. **Adjournment**

February 14, 2023

The Governing Body of the City of Garnett met in regular session on February 14, 2023, at 6:00 p.m. with the following individuals present; Mayor, Jason Sheahan; City Commissioner, Mark Locke, City Manager, Travis Wilson; City Attorney, Terry Solander and City Clerk, Trish Brewer. Commissioner Jody Cole was absent.

### **CALL TO ORDER**

Mayor Sheahan called the meeting to order at 6:00 p.m.

The Pledge of Allegiance was recited, followed by David Shrum, with the United Methodist Church giving the invocation.

### **GOVERNING BODY COMMENTS**

- *Commissioner Locke*

No comments

- *Commissioner Cole*

Absent

- *Mayor Sheahan*

Requested updates from the City Attorney regarding PEC.

### **CONSENT AGENDA**

- A. Approval of Minutes from January 24, 2023, Regular City Commission Meeting
- B. Approval of Semi-Monthly Bills and Payroll in the amount of \$359,455.52

Commissioner Locke, motioned to approve the Consent Agenda as presented. Seconded by Mayor Sheahan. Motion passed (2) AYE (0) NAY

### **REGULAR BUSINESS**

- Consideration of the proposed Neighborhood Revitalization Plan (NRP)
- Consideration of the Memorandum of Extension of Interlocal Agreement.
- Consideration of Resolution 2023-6: Extending Existing Interlocal Agreement.  
Commissioner Locke made one motion to approve the Proposed Neighborhood Revitalization Plan, Memorandum of Extension of Interlocal Agreement and Resolution 2023-6: Extending Existing Interlocal Agreement. Seconded by Mayor Sheahan. Motion passed (2) AYE (0) NAY
- Consideration of Ordinance 4244: Establishing new camping fees.  
Commissioner Locke motioned to approve Ordinance 4244: Establishing new camping fees. Seconded by Mayor Sheahan. Motion passed (2) AYE (0) NAY
- Consideration of TGT Applications from the Anderson County Flywheelers.  
Mayor Sheahan motioned to send TGT Application for Anderson County Flywheelers back to the Tourism Board for more discuss and addressing of concerns. Seconded by Commissioner Locke. Motion passed (2) AYE (0) NAY

### **DISCUSSION ITEMS**

#### **A. Neighborhood Revitalization Plan**

Item discussed during regular business.

#### **B. Landbank**

Tabled with absence of Commissioner Cole. Mayor Mayor Sheahan requested the City Manager schedule workshops.

#### **C. Cedar Valley Reservoir Project update**

Division of Water Resources has approved the modification permit through KDHE. This project is moving forward.

#### **D. Water Plant**

City Manager, Wilson stated that the Commission has put the Water Plant Project on hold. How

would they like to move forward from here. The Commission directed City Manager, Wilson to make requests of Engineers and KDHE seeking options available. Costs would be lower if the building was not concrete and possibly metal along with other options.

**E. Homeless follow-up/continuation**

Art Black expressed to the Commission the need for a central information HUB location. Much discussion and potential options were brought to the table. Mr. Black stated he now has more doors to open.

**INFORMATIONAL ITEMS**

- A. Troyer's Prairie Gold Bridal Show/Event Vendor Showcase will be February 19 from 1:00 p.m. to 4:00 p.m.
- B. "The Pie Ladies", hosted by The Chamber Players Community Theatre, will be held at the Thelma Moore Community Playhouse on February 24-25 and March 2-3 at 6:30 p.m. and February 26 and March 4-5 at 12:30 p.m.
- C. International Women's Day Chocolate Walk, hosted by Morning Mingle, will be held on March 4 from 10:00 – 2:00

**CITIZENS TO BE HEARD (FIVE-MINUTE TIME LIMIT PER PERSON)**

Paula Scott, Heart and Soul stated that Sara with the main office of Heart and Soul received a tour of the City of Garnett and meet with people.

Greg Gwin, expressed his opinion of a metal building for the water plant, stating it will corrode quicker. Mr. Gwin inquired of the City Manager to break down some of the larger costs in the bills presented.

**EXECUTIVE SESSION**

7:15 pm

Mayor Sheahan made a motion for a break until 7:20 pm followed by making a motion to recess into Executive Session to discuss individual employee/s pursuant to non-elected personnel matter exception K.S.A. 75-4319 (b) beginning at 7:20 pm with the following present: Mayor Sheahan; Commissioner Locke; City Manager Wilson; City Attorney along with Helen Norman, Courtney Tucker and Jody Beets with the Chamber of Commerce. Regular session to resume at 7:40 pm.

Commissioner Locke seconded the motion. Motion passed (2) AYE (0) NAY

7:40 pm

Mayor Sheahan motioned to extend the Executive Session until 7:45 pm. Seconded by Commissioner Locke. Motion passed (2) AYE (0) NAY

7:45 pm

Mayor Sheahan closed Executive Session and called the open session back to order. No action was taken during Executive Session.

**ADJOURNMENT**

With no further business before The Governing Body, Commissioner Locke, made a motion to adjourn the meeting. Mayor Sheahan seconded the motion. Motion passed (2) AYE (0) NAY

Meeting adjourned at 7:48p.m.

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Mayor

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City Clerk

**KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIMES  
RETAIL**

Fee: 75.00  
DEALER'S

2023

NO. 5  
LICENSE

**TO ALL WHOM IT MAY CONCERN:**

License is hereby granted to LEISZLER OIL/SHORT STOP #29 to sell at retail  
**CEREAL MALT BEVERAGES**

**FOR SALE IN UNOPENED CONTAINERS AT 430 N. MAPLE IN THE CITY OF  
GARNETT, ANDERSON COUNTY, KANSAS.**

Application therefore, on file in the office of the Clerk of said City, having been approved by the  
Governing Body of such City as provided by the Laws of Kansas and the rules, regulations and  
ordinances pertaining hereto.

**THIS LICENSE** will expire on December 31, 2023 unless sooner revoked, is not transferable, nor will  
any refund of the fee be allowed thereon.

Given under our hands on the corporate seal of said City, this 28<sup>th</sup> day of February, 2023.

(Seal)

Mayor \_\_\_\_\_

Clerk \_\_\_\_\_ Treasurer \_\_\_\_\_



## Permitting Progress - Review Meeting *Minutes*

DATE: 2-22-23  
 TIME: 9:00 AM  
 PROJECT: FEMA – DR4449- KS  
 CFDA: #97.036  
 Project number #144302  
 KDA structure number DAN-0047  
 MEC Project Number 211294

PURPOSE: **Garnett, Kansas – Cedar Valley Reservoir Auxiliary Spillway Repair Project Meeting – Permitting Status Review**

ATTENDANCE:

Travis Wilson – City of Garnett, City Administrator  
 James DePriest – City of Garnett, Public Works Director  
 Thane Stauffer – KDEM, Program Delivery Manager (PDMG)  
 Jeff Heinrich, KDEM TFL, Thane's Supervisor  
 Mark Griffin, McClure Engineering, Project Manager  
 James Fisher, McClure Engineering, Project Engineer  
 Claudia Vines – FEMA EHP Specialist  
 Timothy Baker – FEMA Region VII, PA Group Supervisor

Items discussed during the meeting shown in *italics*.

1. Meeting Objectives:

- a. Full Transparency – open discussion on all permitting activities.
- b. Review all Permit status. Identify key items that are not completed that could change or drive schedule and overall goal of bidding the project in March 2023. The big picture goal is to confirm we have all permits required to allow project to be bid and construction to be started in April 2023 for the Cedar valley Reservoir Auxiliary Spillway Repair Project.
- c. Understand FEMA, KDEM, DWR, or other specific requirements.
  - EHP permitting activities.
- d. Project Cost Reimbursements of up to 85% of what FEMA determines is eligible is very important for this project. KDEM pays 10%, FEMA 75%.
- e. Goals/Success Factors.
  - 100% Satisfaction goal of all parties.
  - Time extension obtained. *DONE*
  - Bid Project no later than April 2023
  - Project obtains 85% of available funding from State and Federal government sources.
  - Project withstands all future flooding.

2. Introductions - *Made for those listed in attendance.*

- a. Project Team and Team Member Responsibilities:

- McClure Engineering (MEC)
    1. Mark Griffin PE., MEC, Project Manager and primary contact person for the project design, permitting and construction.
    2. James Fisher PE, McClure Project Engineer. MEC Construction Engineer.
    3. Matt Eblen, P.E., Design Engineering Lead.
    4. Resident Project Representative (RPR) - TBD
  - City of Garnett (City)
    1. Travis Wilson, City Administrator, City contact person.
    2. James DePriest, PW Director, Alternate City contact person.
  - KDEM
    1. Thane Stauffer, KDEM PA Program Delivery Manager (PDMG) and Primary Point of Contact between City and FEMA.
    2. Jeff Heinrich, KDEM TFL, Thane's Supervisor. = called in
    3. Kevin Bullington, KDEM Site Inspector TFL -
    4. Jean Thompson, KDEM Head
  - FEMA
    1. Timothy Baker, FEMA Region VII PA Supervisor
    2. Fernando Ortiz Bonilla - FEMA, Group Supervisor Region VII
      - a. Fernando replaced David Weiglein with FEMA
    3. Alma Hubbard, FEMA EHP Manager.
    4. Claudia Vines, FEMA EHP Specialist, Environmental and Historical Preservation. Reviews compliance needed to ensure project meets EHP for federal funding.
    5. Lois Coulter – fill in for Claudia
  - DWR
    1. Zack Rust, KDA, DWR dam safety team. Regulatory agency, oversee permitting.
    2. Deidre Romine Sr. Administrative Specialist
3. Time Extension Request Status.
- a. Project approval for extension has been approved 19 June 2024
  - b. Any updates or discussion needed?
    - **Comment:** *Thane mentioned for the team to not forget the need to report to the State and FEMA on the project STATUS every 3-months. This information required to come from the applicant, City.*
4. Communication
- a. Minutes of this meeting will be prepared and distributed to all participants. Please read minutes and provide comments so edits can be made to clearly communicate issues.
  - b. Communication Plan
    - Monthly project report.
    - Monthly invoices sent to the City.
    - City will forward communications and invoices to KDEM.
    - Other communication needs?
  - c. Future Meeting(s)
    - Prebid Meeting, TBD 2023.
5. Design Review

- a. Design is completed. Only remaining design concern/issue is the slope of the access road where it terminates at the Flexamat needs to be changed. Current design is too steep.
  - **Action Matt:** *Get with DWR to obtain approval of the changes to the access road slope change at transition at the end of access road to Flexamat. DWR had made the comment. This is a minor no cost change. Status?*
  - We intend to leave the road improvements as permanent.
    1. During DWR review we agreed to change the road design to make it wider 25 foot and not to exceed 998-foot MSL elevation.
  - Soils
    1. Additional Geotechnical was completed in October.
    2. The need for a new borrow pit triggered other issues such as:
      - a. Federal requirements to meet all environmental and historical preservation.
  - Flexamat
    1. *Flexamat and layering design issues resolved. Anchoring system required by manufacturer was significant and inserted in the contract documents. This ate all our contingency in cost estimate.*
  - Wetlands
    1. EHP recommended wetland mitigation due to the scour hole that now has wetland type habitat be mitigated.
      - a. FYI, ACOE has stated they have no jurisdiction on the project. Therefore, EHP stated this review now reverts to them.
    2. Solution is to convert detention basin at the bottom of the slope into wetlands and allow borrow pit 2 to convert into a wetland.
  - Field survey was completed in October 2022. Area of work was staked, borrow areas, access road, high water mark.
    1. *Borrow area 3 was not staked. Only use material from areas trees cut down.*
    2. *Issue Concern, property line towards south is kind of close. Prefer to see this staked to ensure contractor keeps on City property.*
  - *Updated cost estimate will be prepared by McClure at time of bidding.*
  - **DWR approved construction on February 13, 2023, with conditions.**
  - **Comment:** *Item suggested from previous meeting to include a dam inspection after the project, which will be included during the punch list completion phase.*

## 6. Permitting

- a. City- No Permitting requirements
- b. Anderson County **NEW** – Flood Plain Development Permit
  - *Matt has applied for and received approval from Tom Young with Anderson County to allow construction within the Cedar Creek 100-year Flood Plain. Key issues was County redid their 100 year flood plain map which now shows water going over the Cedar Valley Reservoir Auxiliary Spillway. Due to the fact that DWR approved the*

*construction plans, that is sufficient for the County to approve the proposed construction work within the Flood Plain.*

- **Action Mark/Matt:** *Send documentation on permit confirmation to project team received from Anderson County.*
- c. Notice of Intent (NOI) SWPPP - KDHE
- Permit application to be sent tomorrow, 2-23-23
  - Required \$60.00 Application fee was provided by City.
  - Several items in permit reference other permits, i.e., Cultural resources, Environmental, endangered species.
  - **Action Mark:** *Send out copies of the NOI application and attachments to Thane, Claudia, and Travis.*
  - Project needs to start the SWPPP permit application about 2 months before construction starts. Contractor 100% responsible for SWPPP.
- d. DWR – Construction approval and 7 key Permitting agencies.
- The DWR coordinated with the following seven (7) agencies and will receive information from the DWR for review as a part of the application process:
    1. Kansas Department of Wildlife Parks and Tourism (KDWP)
      - a. *KDWP – Primary concern to concern working in the waterway. No issues from our perspective, follow BMPs.*
    2. Kansas Biological Survey
    3. Kansas Corporation Commission (KCC)
      - a. *KCC provide reply was concern to abandoned oil and gas wells. Contact district office (620)902-6450.*
    4. Kansas State Historical Society
    5. Kansas Department of Health and Environment
    6. Division of Conservation
    7. Kansas Forest Service
  - **Comment:** *Claudia mentioned that the responses obtained met FEMA's requirements for those agencies and not additional information was needed.*
  - We are also led to believe the DWR also sends this Notice to the appropriate US Army Corps (USACOE) regulatory office, KDA Water Appropriations, the owner, and the engineer.
 

**Comment:** *Claudia mentioned that no additional response was needed from the USACOE*

**Note** the following permits below are a result of proactive planning in an attempt to resolve permit items that could delay the project.

- e. USACOE
- Communication received in writing with USACOE from the 404 Nationwide Permit application is that they have no jurisdiction.
    1. E-mail response from USACOE was forwarded to Claudia.
    2. Therefore, USACOE permit items such as wetlands diverts to EHP for jurisdiction.
      - a. Water in scour area is considered wetlands by EHP.



- b. **Comment:** *Claudia indicated that EHP position on the wetland mitigation provided in design met all requirements.*

f. Phase 2 Archeological

- Phase 2 Archeological Report distributed to this team. There are two reports, one for Public and one internally. Key item is internal report shows detailed locations of identified that could be considered sensitive cultural areas. Report did address that borrow pit 2 has been disturbed.
- **Comment:** There are 6 Native American tribes with interests in Anderson County. EHP will communicate with them on our efforts to meet their goals related to EHP activities such as Archeological investigations.  
**Comment:** *Claudia said She has been in contact with SHPO and the Archeological report meets the satisfaction and the 6 tribes and they will Not need to be contacted.*

g. SHPO

- Claudia is in contact with and has forward information to SHPO for review.
- The official response from SHPO is likely the final permit needed in hand to allows to move forward with the project.  
**Comment:** *Claudia has reviewed the project and findings with SHPO, based on that we have done a good job no issues. SHPO gave verbal Ok that all conditions have been met, and follow up communication and documentation is forthcoming.*

h. Tree Removal (endangered species)

- All large trees were cut down before December 31, 2022. Trees were cut down to avoid any issues with long eared bats going from threatened to endangered starting in 2023.  
**Comment:** *Documentation of tree clearing and photos were sent to Claudia. Claudia asked for a little more photo information. Documentation is good but need better pictures to show downed trees.*  
  
**Comment:** *FEMA wants to know what the contractor does with the trees, mulch, etc.*  
**Action Mark:** *Review existing tree clearing wording. Can this information be put in the contract documents. Share what is discovered. Brush burn pit is a viable option but would need proper permitting.*  
**Action Travis:** *To provide more pictures and forward to team.*

*FYI, there are now other bats that are a concern regionally.*

i. EHP - FEMA

- Environmental Assessment concerns from Claudia due to acreage of Flexamat?
  1. Claudia agreed in the previous meeting there was no need for this issue be considered for further review as a category exception. *This item is confirmed by Claudia, no issue.*

- Previously Disturbed Areas – only areas for past work.
  1. Phase 2 Archaeological defined previously disturbed areas based on field data collected.
- Wetlands (*Repeat from above*)
  1. EHP has recommended wetland mitigation due to the scour hole that now has wetland type habitat.
  2. Solution is to convert detention basin at the bottom of the slope into wetlands and also allow borrow pit 2 to convert into a wetland.
 

***Comment: Claudia said that our plan met the requirements to provide wetland mitigation.***
- US Fish & Wildlife – Federal.
  1. Tree removal not critical habitat.
- OTHER?
- *Questioned raised about bringing in top soil and rip rap. Claudia reminded us that FEMA needed to know those materials will come from outside sources. Reference the working on outside sources. Mark mentioned that the outside materials must be approved per the contract documents.*
  1. *These will not hold us up to bid.*

***Comment: Claudia and Thane agreed all permitting requirements have been met, so the project can be bid.***

j. Bid & Award Phase

- Upon review and approval by EHP- FEMA that all associated permitting requirements have been met. MEC will meet with City and update contract timelines and finalize project for bidding.
- Contract set up to meet all City bidding standards and requirements.
- Prebid Meeting is Mandatory.
- MEC to review and certify bids for City.
- **Action Mark:** Confirm the most current version of Davis Bacon State of KS Wage determination for Anderson County. From Web Site Davis Bacon Wages will be used when project sent out for bids.
  - a. <https://sam.gov/wage-determination/KS20220044/7>
- Other: The bidding and contract documents are to follow the City's contracting policy, which basically is to use the consultants' contract forms.
  1. 30 days out to bid
  2. MEC during bidding phase to:
    - a. Hold Prebid meeting
    - b. Available to answer questions.
    - c. Issue any addendums
  3. Public bid opening
  4. MEC to review bids and make recommendation to City.
  5. Comment: does KDEM, or FEMA have any requirements to see and or approve bid documents.
- City of Garnett Commissioners to approve to the lowest & best bid at most likely the next Commissioners meeting for City to enter into a contract.

- McClure will prepare Notice of Award, and issue contract documents for execution.
- Upon acceptance of fully executed contract documents a Notice to Proceed (NTP), will be issued. This will signal the beginning of the Construction Phase.

**Action Mark:** *Get with Travis later this week or early next week to determine all the contract dates, such as when to go out to bid, Prebid meeting, bid open, and tentative recommendation to Award contract with City Commissioners at public meeting.*

k. Future - Construction Administration & RPR Phase

- Full time RPR on site.
- Prevailing wage requirements done in field by RPR
- Monthly invoice initiated by off contractor for previous months work.
- Quantities signed off by RPR
- Sign off and approval by construction manager
- Sign off by PM
- Invoice sent to City for processing and Payment
- Invoices submitted quarterly by City to KDEM.

l. The Cities quarterly invoices to KDEM will be reimbursed for up to 85% reimbursement.

- Actual invoices, copies, spreadsheet, etc.
- Anything not reimbursable?

m. City is led to believe reimbursement by KDEM in 3-6 weeks.

7. Preliminary Schedule (*All dates approximate*)

- a. Out to bid March 1, 2023
- b. Open bids April 1, 2023 (*At City Commissioners meeting*)
- c. City Approves Award of bids April 21, 2023
- d. Notice Award April 23, 2023
- e. Notice to Proceed May 3, 2023.

**Comment:** *Project is tracking on schedule or a few weeks slightly ahead of schedule.*

*Proposed Overall Project Schedule*

	Task Completion
Draft Preliminary Engineering Report to City of Garnett	July 15, 2022
Preliminary Engineering Report to All Parties	July 21, 2022
Submit Final Engineering Report to City of Garnett	August 5, 2022
KDEM- FEMA approval of project costs and concept	August 1, 2022
Present Engineering Report to City of Garnett	August 23, 2022
Submit Design, Bid, and Construction Management Proposal to City of Garnett	August 15, 2022
Approval to proceed: Design, Bid, and Construction Management for Auxiliary Spillway Project	September 1, 2022
60% Design Review	October 15, 2022
100% Plans, Contract Documents, Engineering Report	December 1, 2022
Early KDEM PA FEMA Time Extension Request	September 2022
Permitting: DWR, KDEM, USAOCE, FEMA-EHP, FEMA	December – February 2023
Possible Prolonged Permitting (KDEM PA FEMA-EHP)	*(March-July 2023)
Project Out to Bid	April 2023
Obtain Necessary Authorizations from KDEM	April 2023
Obtain Time Extension Authorization FEMA	June 2023
Execute Contract Documents	May 2023
Construction NTP	May 2023
Completion of Construction	November 2023
Construction punch list, project close out	December 2023
Final project close out final cost submittal KDEM	January 2024

\* Possible prolonged permitting is dependent of factors out of our control and can be anywhere from 3-9 additional months, and possibly more.

#### 8. Issues/Concerns?

*Closing comments Coordinates for brush dump and Tom Young for Anderson County was sent to me.*

*Dump Coordinates:*

*38.298N*

*95.278W*

*22487 KS-31, Garnett, KS 66032*

*NOTE: Contact information for Tom Young added to important contact list at the end of these minutes.*

*Project is going to proceed according to City's procurement policy. Recommend full speed ahead. Hauling soil during rainy season.*

#### **Public Notice.**

*FEMA will need to prepare a public notice for the Cedar Valley Reservoir project as part of the 8-Step Floodplain Analysis. It is a requirement to complete FEMA's floodplain review. The public notice must be posted in the city and/or near the project site for a 15-day period so that the public has an opportunity to comment on this project that will be*

*constructed in the floodplain. The public notice can be posted once we receive the SHPO concurrence to FEMA's determination letter and after we receive the approval from the local floodplain manager or development permit.*

*At that time, I will prepare the public notice and send it with instructions for posting. The city will need to date the notice on the day that it is posted and send me pictures to prove that it is posted for public comment. Once it has been posted for 15 days, FEMA EHP will review any comments received and complete the review process.*

*I will send you more information on the public notice process when it is ready.*

9. Next Meeting: Prebid Meeting, time TBD.

### **Project Contact Information:**

#### **McClure Engineering**

Mark Griffin, P.E.\* (CA, MO)  
Senior Project Manager  
[mgriffin@mcclurevison.com](mailto:mgriffin@mcclurevison.com)  
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#### **City Of Garnett**

Travis Wilson

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Public Works Director  
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Garnett, KS 66032  
Phone: (785) 448-5496

**Anderson County**

Tom Young  
785-448-8233  
[Tyong@andersoncountyks.org](mailto:Tyong@andersoncountyks.org)

**KDEM**

Thane Stauffer  
Program Delivery Manager  
KS Division of Emergency Management  
[tkstauffer.kdem@gmail.com](mailto:tkstauffer.kdem@gmail.com)  
Home: 620-637-2315  
Cell: 316-258-6159

**FEMA - EHP**

Alma Hubbard  
Environmental and Historic Preservation Manager | DR 4449P KS  
Environmental Planning and Historic Preservation  
Mobile: (202) 709-1956  
[Alma.hubbard@fema.dhs.gov](mailto:Alma.hubbard@fema.dhs.gov)

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**FEMA**

Timothy A. Baker  
PA Group Supervisor Team 2

Recovery Division Field Ops / FEMA Region VII

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202-702-7147

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Fernando Ortiz Bonilla

PA Hazard Mitigation Lead (HM Disaster Group Supervisor)

Resiliency and Infrastructure Branch

FEMA Region VII

[Fernando.ortizbonilla@fema.dhs.gov](mailto:Fernando.ortizbonilla@fema.dhs.gov)

(256) 343-3713

**KDA – Division of Water Resources (DWR) - Dam Safety**

Zack Rust

Water Resources Engineer

Kansas Department of Agriculture

Water Resources - Dams and Safety

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Manhattan, KS 66502

Phone: 785-564-6678

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**Deidre Romine**

Sr. Administrative Specialist

Kansas Department of Agriculture

Water Structures Program

Division of Water Resources

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785-564-6778 (Fax)

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**KDA**

Tyler Smith

Kansas Department of Agriculture

Topeka Field Office

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Topeka, KS 66615

Ph. 785-296-5733

Cell 785-213-9188

ORDINANCE NO. \_\_\_\_\_

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**AN ORDINANCE ESTABLISHING A CITY LAND BANK, AND PROVIDING FOR THE  
MANAGEMENT THEREOF.**

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

**SECTION 1. PURPOSE**

In establishing a land bank, the City is providing staff with another tool to foster the return of blighted and tax-delinquent properties to usable condition for the benefit of the community. When considering the acceptance of properties into the Land Bank ownership, preference will be given to projects that support home ownership, improve neighborhoods, and otherwise advance the economic and social interests of the City of Garnett, Kansas, and its residents.

**SECTION 2. DEFINITIONS**

- a. "City" means the City of Garnett, Kansas;
- b. "County" means the County of Anderson, Kansas;
- c. "Board" means the board of trustees of the Land Bank established pursuant to this ordinance;
- d. "Bank" means the Land Bank established pursuant to this ordinance;
- e. "Governing Body" means the Governing Body of the City of Garnett, Kansas;
- f. "Municipality" means any city, county, or other political or taxing subdivision which has the power to levy special assessments.

**SECTION 3. LAND BANK ESTABLISHED; GOVERNED BY A BOARD OF TRUSTEES;  
APPOINTMENT, TERMS OF TRUSTEES; DISSOLUTION OF BANK**

a. There is hereby established The Garnett Land Bank, pursuant to K.S.A. 12-5901 et seq.

b. The Bank shall be governed by a Board of Trustees composed of seven members.

1. One Board member will be the designated member of the City governing body who sits on the Anderson County Development Agency.

2. One board member will be the designated member of the County Commission who sits on the Anderson County Development Agency.



3. One board member will be the chairperson of the Garnett Planning Commission, or the chairperson's designated substitute.

4. The remaining four board members shall be appointed by the Governing Body for a term of two years; provided, the initial terms of two such appointees shall be initially for one year each so as to establish a pattern of rotating terms for said four members. Appointed members shall be residents of the City of Garnett and may be selected from residents also serving on the Garnett Planning Commission or the Anderson County Development Agency.

c. Primary staff support to the Board shall be provided by the Zoning Administrator or his/her designee. City Staff shall provide technical and professional support for Land Bank operations; additional support may be contracted as deemed necessary.

d. The Bank may be dissolved by ordinance, by the Governing Body. In such case, all property of the Bank shall be transferred to and held by the City of Garnett, and may be disposed of as otherwise provided by law.

#### **SECTION 4. BOARD OF TRUSTEES; POWERS AND DUTIES**

a. The powers and duties of the Board of Trustees shall be as follows:

1. To sue and be sued;
2. To enter into contracts;
3. To acquire, by purchase, gift, or devise, and to convey any real property, including easements and reversionary interests, and personal property subject to the provisions of the ordinance and State law;
4. To rebate all, or a portion thereof, the taxes on any property sold or conveyed by the Bank;
5. To exercise any other incidental power which is necessary to carry out the purposes of the Land Bank, this ordinance, and State law.

b. Any property acquired by the City, the County, or any other taxing subdivision within the City or County, may be transferred to the Bank. The Board may accept or refuse to accept any property authorized to be transferred pursuant to this ordinance, or State law. The transfer of any property pursuant to this subsection shall not be subject to any

bidding requirement and shall be exempt from any provision of law requiring a public sale.

c. The fee simple title to any real estate which is sold to the county in accordance with the provisions of K.S.A. 79-2803 and 79-2804, and amendments thereto, and upon acceptance by the board of trustees may be transferred to the bank by a good and sufficient deed by the county clerk upon a written order by the board of county commissioners.

The Board shall assume possession and control of any property acquired by it under this ordinance or state law and shall hold and administer such property. In the administration of property, the board shall:

1. Manage, maintain, and protect or temporarily use for a public purpose such property in the manner the Board deems appropriate;
2. Compile and maintain a written inventory of all such property. The inventory shall be available for public inspection and distribution at all times;
3. Study, analyze, and evaluate potential, present, and future uses for such property which would provide for the effective utilization of such property;
4. Plan for and use the Board's best efforts to consummate the sale or other disposition of such property at such times and upon such terms and conditions deemed appropriate;
5. Establish and maintain records and accounts reflecting all transactions, expenditures, and revenues relating to the Bank's activities, including separate itemization of all transactions, expenditures, and revenues concerning each individual parcel of property acquired; and
6. Thirty days prior to the sale of any property owned by the Bank, publish a notice in the official newspaper of the City, announcing such sale.

#### **SECTION 5. LAND BANK; OPERATIONAL REQUIREMENTS**

- a. The Bank shall be subject to the provisions of the cash-basis law, KSA 10-1101 et. seq., and amendments thereto.
- b. The budget of the Bank shall be prepared, adopted, and published as provided by law for other political subdivisions of the State. No budget shall be adopted by the Board until it has been submitted to, reviewed and approved by the Governing Body.

c. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report for the Board.

d. All records and accounts shall be subject to public inspection pursuant to KSA 45-216 et. seq., and amendments thereto.

e. All moneys of the Bank which are not immediately required for the purposes of the Bank shall be invested in the manner provided by KSA 12-1675, and amendments thereto.

f. The Bank shall make an annual report to the Governing Body on or before January 31 of each year, showing receipts and disbursements from all funds under its control and showing all property transactions occurring in each year. Such report shall include an inventory of all property held by the Bank. A copy of such inventory shall also be published in the official newspaper of the City on or before January 31 of each year.

g. The Bank shall be subject to the statutory requirements, for the deposit of public money as provided in KSA 9-1401 et. seq., and amendments thereto.

h. The Board, without competitive bidding, may sell any property acquired by the Board at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants deemed necessary or appropriate to assure the property's effective utilization. The sale of any real property by the Board, under the provisions of this ordinance or state law, on which there are delinquent special assessments to finance public improvements shall be conditioned upon the approval of the Governing Body.

i. The Board, for purposes of land disposition, may consolidate, assemble, or subdivide individual parcels of property acquired by the Bank.

j. Until sold or otherwise disposed by the Bank and except for special assessments levied by the City to finance public improvements, any property acquired by the Bank shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state.

k. Except for special assessments levied by a municipality to finance public improvements, when the Board acquires property pursuant to this ordinance and state law, the county treasurer shall remove from the tax rolls all taxes, assessments, charges, penalties, and interest that are due and payable on the property at the time of acquisition by the Board.

l. Property held by the Bank shall remain liable for special assessments levied by a municipality to finance public improvements, but no payment thereof shall be required until such property is sold or otherwise conveyed by the Bank.

m. The Governing Body of any municipality which has levied special assessments on property acquired by the Bank may abate part or all of the special assessments, and the Bank and the Governing Body may enter into agreements related thereto. Any special assessments that are abated shall be removed from the tax rolls by the County Treasurer as of the effective date of the abatement.

n. Any moneys derived from the sale of property by the Bank shall be retained by the Bank for the purposes and operations thereof; provided, however, that the Board may use all or any part of the proceeds from the sale to reimburse the City for delinquent special assessments due on such property.

#### **SECTION 6. SAME; ORGANIZATION**

a. The Board shall select annually, from its membership, a chairperson, vice-chairperson, and a treasurer. The treasurer shall be bonded in such amounts as the Governing Body may require. The Zoning Administrator or his/her designee shall serve as Secretary.

b. The Board may appoint such officers or agents as it may require for the performance of its duties, and shall determine the qualifications and duties of such officers or agents.

c. The Board shall fix the time and place at which its meetings shall be held. Such meetings shall be subject to the provisions of KSA 75-4317 et. seq., and amendments thereto.

d. A majority of the Board shall constitute a quorum for the transaction of business. No action of the Board shall be binding unless taken at a meeting at which at least a quorum is present.

e. The members of the Board shall be subject to the provisions of the laws of the State of Kansas which relate to conflicts of interest of county officers and employees, including, but not limited to, KSA 75-4301 et. seq., and amendments thereto.

f. Subject to the provisions of KSA 75-6101 et. seq., and amendments thereto, if any action at law or equity, or other legal proceeding, shall be brought against any member of the Board for any act or omission arising out of the performance of their duties as a member of the Board, such member shall be indemnified in whole and held harmless by the Board for any judgment or decree entered against such member and, further, shall be defended at the cost and expense of the Bank in any such proceeding.

**SECTION 7. EFFECTIVE DATE**

This ordinance shall take effect and be in force from and after its passage and publication in the official City newspaper.

PASSED by the Governing Body this \_\_\_\_ day of \_\_\_\_\_, 2022,  
with \_\_\_\_ members voting AYE, and \_\_\_\_ members voting NAY.

\_\_\_\_\_  
Mayor

A T T E S T

\_\_\_\_\_  
City Clerk

## MASTER ADVISORY SERVICES AGREEMENT

THIS MASTER ADVISORY SERVICES AGREEMENT ("MSA") is made, effective as of \_\_\_\_\_, 202\_ ("Effective Date"), by and between Fidelis Energy Group, LLC a Kansas limited liability corporation with its principal place of business located at 25380 Quivira Road, Louisburg, Kansas 66053. ("Advisor"), and the City of Garnett, Kansas, a Kansas municipality with its principal place of business located at 131 West Fifth Avenue, Garnett, KS 66032 ("Client"). Client and Advisor may hereinafter be individually referred to as a "Party" and collectively as the "Parties."

### 1. SCOPE OF AGREEMENT.

- 1.1 The Work. It is contemplated that from time to time Advisor will be requested by Client to perform certain work and services ("Work"). It is expressly understood and agreed that any and all Work requested by Client and accepted by Advisor shall be controlled and governed by provisions of this MSA. The term "Agreement" means this MSA as incorporated in a Statement of Work (defined below).
- 1.2 Statement of Work. A request for Work ("Statement of Work") shall be submitted electronically by Client to Advisor. Such Statements of Work shall describe the Work to be performed. Statements of Work shall be deemed to incorporate and be subject to all the terms and conditions of this MSA. When issued, such Statements of Work are non-binding, negotiable offers, and are subject to their express terms. Such offers become binding Statements of Work only after Client and Advisor have mutually agreed to all material terms and conditions concerning the requested Work. Client will submit a purchase order to Advisor once a Statement of Work becomes binding.
- 1.3 Modification. Any addition to or modification of the Work to be provided by Advisor must be set forth in a written amendment ("Change Order") to the Statement of Work, including but not limited to, additional subcontractor services agreements, special projects, and additional labor or materials. Any such Change Order must be mutually agreed, executed prior to the change occurring, and when executed, shall become part of this Agreement.

### 2. PROVISION OF SERVICES

- 2.1 Independent Contractor. Client and Advisor expressly agree that Advisor is an independent contractor as to all Work performed under this MSA and all Statements of Work incorporated thereunder, and that Advisor, its subcontractors, and anyone employed by either Advisor or its subcontractors shall not be deemed for any purpose to be an employee, agent, servant, or representative of Client. Advisor and its subcontractors shall be solely responsible for any and all salaries, employee benefits plans, taxes, insurance, and any and all other compensations and responsibilities for their respective employees. Advisor, its subcontractors and any of their employees shall not be authorized to act or appear to act as agents or representatives of Client, whether in performing the Work or otherwise. If the performance of the Work shall include use by Advisor or its subcontractors of Advisor's facilities, equipment, or other resources, such use is permitted only to the extent necessary for the performance of the Work and not for any other purpose. This MSA does not create and shall not be construed by the Parties or any third party as creating any agency, partnership, joint venture, or employment relationship between the Parties.
- 2.2 Staffing. Advisor shall supply its own personnel of the type and number necessary to perform the Work. Advisor shall, and shall cause its subcontractors to, provide personnel who are experienced, properly trained, fully qualified, fit for their respective assignments, and, to the extent required, licensed to perform work pursuant to applicable law, regulations, and orders.

- 2.3 Subcontractors. Advisor will not subcontract any Work to any third-party without prior written consent from Client. If Client approves the use of a subcontractor, or if Advisor uses a subcontractor without the prior written permission of Client, Advisor will remain obligated under this Agreement for performing the Work, require each subcontractor to agree in writing to the terms of this Agreement for the work performed by the subcontractor, require subcontractor to agree in writing that Client is an intended third-party beneficiary of its agreement with Client, and pay all amounts due to subcontractor. Advisor will require its subcontractor(s) to carry at a minimum the insurance coverages described in Section 9 below.
- 2.4 Equipment. Unless otherwise agreed in a Statement of Work, Advisor will provide all the facilities and all the supplies, materials, office space, utilities, equipment, software, tools, and other items to perform the Work at its own expense. Advisor will ensure that its equipment is in good working order to perform the Work.
- 2.5 Timing. Time is of the essence in the completion of any Work under this MSA or any Statements of Work.
- 2.6 Acceptance. Unless otherwise agreed, Client will evaluate Work and accept or reject it within fifteen (15) business days after receipt; otherwise the Work will be deemed accepted. Advisor agrees to fix any nonconformity to agreed specifications and will have ten (10) business days to correct any nonconformity of any Work after receiving notice from Client.
- 2.7 Publicity. Advisor will not issue any public announcement, press releases, marketing materials, case studies, research or other form of publicity or other publicity related to the Advisor's relationship with Client or this Agreement, without Client's prior written consent.

### 3. PAYMENT FOR WORK

- 3.1 Compensation for Work. Advisor shall receive the compensation specified in the Statement of Work which is agreed to by Client and Advisor at the time the Statement of Work is accepted by both parties. In the event Client cancels a Statement of Work or terminates this MSA, Client shall pay Advisor for work completed to the termination date specified in the cancellation or termination notice.
- 3.2 Invoicing. Invoices shall be submitted on a monthly basis for completed Work that has been accepted by Client. Furthermore, invoices shall be submitted in such form and accompanied by such certification and documentation as Client may reasonably request.
- 3.3 Reimbursement. Client will reimburse Advisor for pre-approved, reasonable out-of-pocket expenses incurred in the performance of the Work. Advisor agrees to maintain appropriate records and to submit copies of all receipts necessary to support such expenses at the intervals and in the manner prescribed by Client.
- 3.4 Taxes. Except as otherwise provided herein or under a subsequent Statement of Work, the amounts to be paid by Client to Advisor do not include any taxes. Client is not liable for any taxes that Advisor is legally obligated to pay, including but not limited to net income or gross receipt taxes, franchise taxes, and property taxes. Client will pay Advisor any sales, use, or value added taxes it owes due to this MSA and which the law requires Advisor to collect from Client, provided, however, if Client provides Advisor a valid exemption certificate, Advisor will not collect the taxes covered by such certificate. In the event the law requires Client to deduct or withhold taxes from payments to Advisor, Client may deduct or withhold those taxes and pay them to the appropriate taxing authority. Client will deliver to Advisor an official receipt for such taxes. Client will use reasonable efforts to minimize any taxes deducted or withheld to the extent allowed by law. If taxes are collected by Advisor due to this MSA and subsequently levied directly against Client, Advisor will promptly reimburse Client for all such taxes. The provisions of this Section 3.4 shall survive termination of expiration of this MSA.

#### 4. **OWNERSHIP AND USE OF INTELLECTUAL PROPERTY.**

- 4.1 **Ownership of Pre-existing Intellectual Property.** Each Party will own and retain all rights to its pre-existing Intellectual Property and any Intellectual Property developed outside of the Work performed under this MSA.
- 4.2 **License to use Client Materials.** Client grants Advisor a nonexclusive, revocable license to copy, use and distribute any Client Materials provided to it only to the extent necessary to perform the Work. Client retains all other interest in Client Materials and related IP. Advisor has no right to sublicense the right to use Client Materials, except as necessary to any subcontractor. If the Client Materials come with a separate license, the terms of that license will apply and control in the case of conflict with this Agreement. Client Materials for purposes of this Agreement means any tangible or intangible materials, including building methods or designs, know-how, processes, techniques, ideas, concepts, technologies, and data.
- 4.3 **Protection of Client Materials.** Advisor and Client will take all reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of the other's Materials.
- 4.4 **Termination of License.** Client may revoke the license to Client Materials at any time for any reasonable business reason. The license will terminate automatically on the earlier of the expiration or termination of this Agreement or the applicable Statement of Work. Advisor will promptly return any Client Materials on request or termination of Advisor's license.
- 4.5 **Modification of Client Materials.** Advisor will not modify, reverse engineer, decompile, or disassemble Client Materials except as allowed by Client to perform Work.

#### 5. **OWNERSHIP OF WORK PRODUCT**

- 5.1 **Ownership of Deliverables.** Unless otherwise specified herein or in a subsequent Statement of Work, the Parties agree that Client shall solely own, and shall have all right, title, and interest in and to, any and all Work Product, deliverables, or other work or materials created by Advisor (collectively the "Work Product") under this MSA will be deemed a "work made for hire" as that term is defined under USA copyright laws.
- 5.2 **Ownership of IP Rights in Work Product.** Unless otherwise specified herein or in a subsequent Statement of Work, Advisor agrees to assign any intellectual property rights, ideas, improvements and inventions conceived, created or first reduced to practice in the performance of the Work.
- 5.3 **Third-Party Assignment.** If third parties who are not employees of Advisors, including but not limited to subcontractors, consultants, free lancers or agents make, or have made, any contribution to the creation of any Work pursuant to this Agreement, Advisor agrees to obtain from such parties a comparable full assignment of rights that will vest in Client, free of any claims, interest, or rights of such third-parties.



## 6. **Term and Termination**

6.1 **Term and Renewal.** This MSA commences on the Effective Date and will continue for a term of twelve (12) months (the "Term") and shall automatically renew for successive twelve (12) month terms unless it is terminated earlier according to the terms of this MSA.

6.2 **Termination.** This MSA may be terminated by mutual agreement of the Parties. In addition, either Party may terminate this MSA at any time upon thirty (30) days written notice without having to possess, state, or demonstrate cause. The Parties consciously and deliberately included this mutual right of no cause termination and the exercise of such right will not violate any duty of good faith and fair dealing.

6.3 **Working in Progress.** Upon termination, any Work being performed pursuant to a Statement of Work at the time the termination goes into effect shall concurrently be cancelled and Client will pay Advisor in accordance with Section 3.1 and reimburse any prepaid fees within thirty (30) days of the effective termination date.

6.4 **Effect of Termination.** Within ten (10) days of the effective date of termination of this MSA, Advisor shall return to Client all Confidential Information and Client Materials unless otherwise instructed and deliver to Client any Work Product in progress as of the effective date of termination, and all data and materials related to them Advisor is required to deliver to Client. Advisor will assist Client with a post termination transition at Client's written request.

7. **CONFIDENTIALITY.** Except as otherwise provided herein, Client and Advisor agree that any and all information that is not otherwise publicly available (other than as a result of unauthorized disclosure) and is communicated by one party ("Disclosing Party") to the other ("Receiving Party"), including without limitation, engineering, geological, marketing, financial information, information regarding nature and location of the Work and other party's processes and procedures, whether such information be written, oral or in electronic format ("Confidential Information") shall be confidential and shall be treated as such and held in the strictest confidence by the Receiving Party. Confidential Information shall be used only for purposes of the Agreement by Receiving Party, and no information, including, without limitation, the provisions of the Agreement, shall be disclosed by the Receiving Party, its agents or employees, without the prior written consent of the Disclosing Party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the Receiving Party. The Receiving Party shall safeguard Confidential Information with at least the same degree of care that it uses to safeguard its own confidential, proprietary, privileged and trade secret information. This Section shall not apply to information (i) in the public domain, (ii) the Receiving Party had in its possession prior to receiving it from the Disclosing Party (as evidenced by dated documentation), (iii) the Receiving Party obtained from a third party who rightfully acquired such information, or (iv) the Receiving Party independently developed without reference to the information received from the Disclosing Party (as evidenced by dated documentation). If the Receiving Party must disclose Confidential Information pursuant to applicable law or regulation or by operation of law, the Receiving Party may disclose only such information as, in the opinion of counsel, is legally required, and provided, further, that the Receiving Party shall provide reasonable notice to the Disclosing Party of such requirement and a reasonable opportunity to object to such disclosure. Notwithstanding anything elsewhere in this Agreement, the terms of this Section shall apply to Confidential Information amounting to a trade secret for as long as such information remains a trade secret under applicable law and shall survive the termination of this Agreement.

8. **Representations and Warranties.**

- 8.1 Advisor has full rights and authority to enter into and perform Work according to this MSA.
- 8.2 Warranty of Work Product. The Work will be of good and merchantable quality and free from defects in design, material, and workmanship, are safe, and comply with the specifications set forth in this MSA.
- 8.3 Warranty of Performance. Advisor warrants that it will perform all Work in a good and workmanlike manner, in strict conformity with the specifications and requirements of this MSA or the applicable Statement of Work, in accordance with generally accepted professional standards and in compliance with all applicable laws, rules, and regulations. Such warranty of performance shall extend for twelve (12) months from the date such Work was performed.
- 8.4 Infringement Warranty. Advisor warrants that all work performed by Advisor for or on behalf of Client, and all Work Product produced thereby, will not violate, infringe or misappropriate the rights of any third parties, including, without limitation, the copyright, trademark, patent, or the trade secrets of any third person.
- 8.5 Compliance with Laws. Advisor agrees to comply with the provisions of all applicable federal, state, county, or municipal laws, regulations or ordinances and shall be responsible for obtaining any and all authorizations from any applicable governmental authority that may be required by Advisor to perform the Work under this Agreement.

9. **INSURANCE.**

- 9.1 General. Advisor will purchase and maintain sufficient insurance coverage to meet obligations created by this Agreement and by law. Without limiting the foregoing, Advisor will maintain at its sole cost and expense at least the following insurance coverage to meet its obligations to the extent this Agreement creates risks generally covered by these insurance policies:
- A. Commercial General Liability: including contractual and product liability with limits of at least \$1,000,000 per occurrence single limit liability, and \$1,000,000 in the general aggregate including but not limited to personal injury, premises liability, independent contractors, advertising injury, product liability, completed operations and blanket contractual coverage.
  - B. Workers' Compensation/Employer's Liability: that satisfies all statutory limits where the Work is performed.
  - C. Property Insurance: full replacement value of said property while in the care, custody, and control of Advisor.
- 9.2 Professional Liability: with limits of at least \$1,000,000 per occurrence single limit liability, and \$1,000,000 in the general aggregate.
- 9.3 Certificates of Insurance. Advisor shall furnish Client with certificates of insurance evidencing the above coverages upon request.

10. **Indemnification**. Advisor shall indemnify and hold harmless Client and the agents and employees of Client from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from the performance of Work, provided that any such claim, damage, or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) is caused in whole or in part by a negligent act or omission of Advisor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is cause in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party of person described in this Section 11. Client shall indemnify and hold harmless Advisor from and against all demands, damages, and expenses of others to the comparative extent such claim, damage, or expense is caused by Client's negligent acts or omissions or those negligent acts or omissions of person from whom Client is legally responsible.
11. **ASSIGNMENT**. Advisor will not assign this Agreement without the prior written consent of Client. This appointment and the rights of Advisor hereunder have been granted to Client solely on the understanding that this Agreement is personal to and will be performed by Advisor. Therefore, in the event of any transfer or material change in ownership in Advisor's business, if any, this Agreement shall terminate immediately. This Agreement is not transferable or assignable in any manner without Client's express written consent.
12. **CONFLICT OF DOCUMENTS**. If there is a conflict between the provisions of this MSA and any other documents concerning the Work performed under this MSA, the order of precedence for purposes of resolution shall be: (i) this MSA, (ii) the Statement of Work), (iii) any other document prepared by Client and agreed to by Advisor, and (iv) any other document.
13. **SEVERABILITY**. In the event any provision of this MSA shall for any reason be held to invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **WAIVER**. Any waiver on the part of Client or Advisor of any term or condition of this MSA shall not constitute a precedent or bind either party to a waiver of any succeeding breach of the same or any other term or condition of this MSA.
15. **NOTICES**. All notices, statements or other communications required or permitted between Client and Advisor shall be in writing and shall be considered as having been given if delivered by mail, courier, hand delivery or electronic mail to the other party at the designated physical address or electronic mail address. Date of service by mail, courier or hand delivery is the date on which such notice is received by the addressee; provided, however, if such date received is not a Business Day, then the date of service shall be considered to be the next date that is a Business Day. Date of service by electronic mail is the date sent (evidenced by the date and time stamp on the sender's email); provided, however, if an electronic mail is sent after 5 p.m. local time, then the date of service shall be considered to the next day that is a Business Day. "Business Day" means any day which is not a Saturday, Sunday or legal holiday recognized by the federal government of the United States of America. Either party may change its physical address, facsimile number or telephone number upon written notice to the other party, but such change shall not be effective until thirty (30) days after receipt by the other party. Notices shall be delivered as follows:

**If to Advisor:**

Fidelis Energy Group, LLC  
Attn: Manager  
25380 Quivira Road  
Louisburg, Kansas 66053  
[gcrow@fidelis-energy.com](mailto:gcrow@fidelis-energy.com)

**If to Client:**

City of Garnett  
Attn: City Manager  
131 West 5th Avenue  
Garnett, KS 66032  
[twilson@garnettks.net](mailto:twilson@garnettks.net)

16. **GOVERNING LAW.** This MSA shall be governed by, subject to, and construed in all respects in accordance with the laws of the state of Kansas without regard to conflict of law principles.
17. **Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this MSA through negotiations between nominated individuals from each Party with the authority to settle the dispute. If the dispute cannot be settled amicably within fourteen (14) calendar days from the date on which either Party has served written notice on the other of the dispute, then they may seek relief from a court of competent jurisdiction. The foregoing will not be construed to prohibit either Party from directly seeking injunctive relief without first complying with this Section. Advisor acknowledges that the provision of Work is critical to the business and operations of Advisor. Accordingly, in the event of a dispute between Client and Advisor, Advisor will continue to provide services, and Client will continue to pay Advisor.
18. **HEADINGS.** All headings used in this MSA are solely for the purpose of convenience and shall in no manner be deemed to be part of this MSA or used in interpreting its terms.
19. **Survival.** The expiration or termination of this Agreement shall not terminate vested rights of either Party from any liabilities or obligations incurred under this Agreement prior to or which by their nature are intended to survive expiration or termination, including but not limited to provisions relating to confidentiality, indemnification, and property rights.
20. **Amendment.** Any addition to or modification of the terms of the Agreement must be set forth in a written Amendment. When executed, the Amendment shall become part of the Agreement and subject to its terms.
21. **Counterparts and Electronic Signature.** The Parties hereto agree that the Agreement and any subsequent Statements of Work may be executed in one or more counterparts on varying dates and places, and by PDF or electronic signature, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. This Agreement is not and will not be binding and effective, however, unless and until each Party executes a counterpart. The counterparts of this Agreement and all ancillary documents, including subsequent Statements of Work, may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.
22. **EXECUTION WARRANTY.** The persons signing below represent and warrant that they have all requisite power, authority, and authorization to execute this MSA on behalf of the parties for whom they sign, and that by signing below, this MSA shall be fully binding upon and enforceable against all such parties and their affiliates.
23. **ENTIRE AGREEMENT. THIS MSA SETS FORTH THE ENTIRE AGREEMENT BETWEEN CLIENT AND ADVISOR WITH RESPECT TO ITS SUBJECT MATTER. ALL PRIOR NEGOTIATIONS AND DEALINGS REGARDING THE SUBJECT MATTER HEREOF ARE SUPERSEDED BY AND MERGED INTO THIS MSA.** No amendment, modification, or revision of this MSA or any Statement of Work shall be effective unless made in writing and signed by authorized representatives of both parties who have actual authority to amend, modify or revise this MSA.

SIGNATURE PAGE FOLLOWS IMMEDIATELY

**IN WITNESS WHEREOF**, the parties hereto have cause this MSA to be signed by their respective duly authorized representatives.

**FIDELIS ENERGY GROUP, LLC**

**CITY OF GARNETT, KANSAS**

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

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

Name: Gregory Crow

Name: Travis Wilson

Title: Manager

Title: City Manager

## STATEMENT OF WORK

This Statement of Work ("SOW") between the City of Garnett, Kansas ("Client") and Fidelis Energy Group, LLC ("Advisor") is entered into in connection with a Master Advisory Services Agreement between the Parties dated \_\_\_\_\_, 202\_ ("Agreement"). All terms used, but not defined, herein shall have the meanings set forth in the Agreement.

This SOW is entered into for the purpose of providing advisory services to Client's municipal natural gas distribution network (Facility) serving Client's customers in Garnett, Kansas.

1. NATURAL GAS SUPPLY MANAGEMENT: The following services will be provided when applicable to Client for the acquisition and management of Client's natural gas supply for Client's Facility subject to this Agreement.
  - a. Procurement of Supply: Advisor will assist Client in the procurement of natural gas supplies for Client's Facility.
  - b. Advisor will work with Client to determine the required daily or monthly supply volumes and corresponding receipt point(s) for gas delivery.
  - c. Advisor will administer a procurement process to create competition among suppliers.
  - d. Advisor will administer and monitor Client's gas supply contracts.
  - e. Logistics: Advisor will manage Client's supply and transportation assets.
  - f. Advisor will provide nomination and scheduling of Client's gas supply with the supplier(s), the pipeline and/or local gas utility.
  - g. Where necessary and where available, Advisor will obtain Client's metered natural gas consumption data for the Facility.
  - h. Client will provide Advisor with estimated usage volumes for each Facility on request and make a reasonable effort to notify Advisor when Client's usage will be interrupted or changed.
  - i. Advisor will make reasonable efforts to release any excess firm pipeline capacity held by Client in the capacity release market. Revenue for such released capacity will be the property of Client. Advisor may purchase the released capacity from the Client at prevailing market rates.
  - j. Advisor will evaluate gas storage alternatives available to Client. At Client's direction, Advisor will facilitate the acquisition of such storage and will manage the use of storage for Client.
  - k. Negotiations: Advisor will negotiate natural gas related agreements with third parties on the Client's behalf.
  - l. Advisor will provide negotiation services to establish transportation rates on interstate pipelines and gas utilities, contractual terms with suppliers, price risk management counter-parties, and transporters, trade credit with suppliers and price risk management counter-parties.
  - m. Advisor will strive to create competition among service providers where possible.
  - n. Acquisition of Trade Credit: Advisor will advise Client of credit issues for gas Facility, transportation contracts, gas supply, and gas price risk management.
  - o. Client will provide Advisor with the necessary financial information required to obtain trade credit with various vendors.

- p. Advisor will share Client's financial documents with third parties as directed and in any manner as restricted by Client in order to establish trade credit.
  - q. Advisor will work to establish trade credit with suppliers on Client's behalf. Depending on Client's gas usage, multiple sources of trade credit may be established.
  - r. Advisor makes no guarantee that adequate unsecured trade credit will be obtained from third parties. In the event adequate trade credit cannot be secured, Advisor will discuss various credit instruments with Client including but not limited to letters of credit, parental guarantees, and prepayment. It will be the Client's sole responsibility to provide the necessary security to obtain adequate trade credit.
  - s. Budget Preparation: At Client's request, Advisor will provide quarterly and annual energy budgets.
  - t. Cost and Usage Analysis: Where the utility or pipeline has provided Client's metered usage data, Advisor will:
    - i. Email Client's gas usage for each Facility to the Client on a weekly basis.
    - ii. At Client's request, Advisor will provide Client with detailed cost analyses of transportation and commodity costs for each Facility.
    - iii. Advisor will advise Client of options for Client to pursue with assistance from Advisor in the event of measurement discrepancies with the pipeline or utility.
2. Compensation. For proper performance of the services to be provided by Advisor, the Client shall pay the Advisor a retainer of \$1,650.00 per month plus pre-approved reimbursables and/or travel. Advisor shall provide detailed invoice to Client on a monthly basis. Client shall pay Advisor by check or wire transfer on or before the 10<sup>th</sup> day of each month.
3. Term and Termination. The term of this Agreement become effective on \_\_\_\_\_, 202\_ shall be month to month thereafter. Either Party may terminate the SOW by providing thirty (30) days prior written notice via email.

**IN WITNESS WHEREOF**, the parties hereto have caused this SOW to be signed by their respective duly authorized representatives.

**FIDELIS ENERGY GROUP, LLC**

**CITY OF GARNET, KANSAS**

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

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

Name: Gregory Crow

Name: Travis Wilson

Title: Manager

Title: City Manager

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

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