

DEVELOPMENT AGREEMENT  
EMPIRICAL FOODS AND GARDEN CITY,  
KANSAS

THIS DEVELOPMENT AGREEMENT (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Garden City, a municipal corporation organized according to Kansas law (the “City”) and Empirical Foods, Inc., a corporation existing according to Nebraska law (the “Developer”). The City and the Developer are hereinafter collectively referred to as the “Parties”, and each a “Party.”

RECITALS

A. The Developer, or its affiliates, owns certain real property within the corporate limits of the City and located south of US Highway 50 at Jennie Barker Road, consisting of approximately 50.2 acres of land (the “Project

Site”), as legally described on Exhibit A, attached hereto and incorporated by reference.

B. The Developer seeks to construct upon the Project Site a lean ground beef production plant and all related facilities and improvements as further described in this Agreement.

C. The Parties agree that construction of the Project is to their mutual benefit.

D. The City and Developer have worked together to develop a plan to provide for construction and financing certain infrastructure, provision of municipal utility services, and other costs necessary to develop the Project.

E. The Developer presented information necessary and assisted in the preparation of a Development Agreement for the land consistent with the comprehensive plan for development of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the City and the Developer state, confirm and agree as follows:

## ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. **Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

A. The terms defined in this Article include the plural as well as the singular.

B. All references in this instrument to designated “Articles,” “Section” and other subdivisions are to the designated Articles,

Sections and other subdivisions of this instrument as originally executed.

C. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

D. The Article and Section headings herein are for convenience only and shall not affect the construction of this Agreement.

E. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Section.

Section 1.2. **Definitions of Words and Terms.** Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings:

“Affiliate” means any entity in which Empirical Foods, Inc., individually or as trustee, directly or indirectly, and individually or in the aggregate owns at least 50%.

“Agreement” means this Development Agreement, as amended from time to time.

“Applicable Law and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

“City Event of Default” means an event or occurrence defined in Section 6.3 of this Agreement.

“City Obligations” means bonds, notes, or other obligations of the City issued to finance all or part of the City Work.

“City Representative” means the Mayor or City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

“City Work” means the City’s agreements and representations regarding the Project as described in in Section 2.1 and the representations and agreements of the City set forth in Section 7.1 with respect to City utilities provided to the Project.

“Commercial Operation Date” means the date on which the Project has completed all required performance tests, is built to the specifications outlined in the engineering and construction contracts and begins commercial operations. The Parties anticipate the

“Commercial Operation Date” for the Project will be April 30, 2023.

“Developer Event of Default” means an event or occurrence defined in Section 6.1 of this Agreement.

“Developer Representative” means Nick Roth or such other person or persons designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Developer.

“Developer Work” refers to the work to be performed by the Developer to construct the Project as described in Section 2.1 and to the representations and agreements of the Developer set forth in Section 7.1 with respect to development of the Project.

“Excusable Delay” means any delay or interruption in the performance of obligations under this Development Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, terrorism, riot, sabotage, act of public enemies, epidemics, default of another party, freight embargoes, shortage of materials, unavailability of labor, a change in law, environmental remediation required by the appropriate Governmental Authorities (other than, with respect to the obligations of the City hereunder, the City), discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of a contractor, subcontractor or supplier to furnish labor, services, materials or equipment in accordance with its contractual obligations, acts of God, including earthquake, adverse weather



conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party, which shall include but not be limited to any pending litigation interfering with or delaying construction or performance of the City Work, Developer Work and any pending or threatened litigation interfering with or delaying issuance of City Obligations to pay costs of City Work, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review, environmental regulatory or public health regulatory approvals or permits, or other

subdivision, zoning or similar approvals required for the implementation of the Project and consistent with Applicable Law and Authorities and this Agreement.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Permitted Subsequent Approvals” means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

“Project” means the Project Site and the building and structural improvements described in Section 2.1 of this Agreement.

“Project Site” means the area to be developed pursuant to this Agreement and is legally described on Exhibit A and shown on the preliminary site concept plan on Exhibit B.

“State” means the state of Kansas.

## ARTICLE II PURPOSE OF AGREEMENT REPRESENTATIONS AND ACQUISITION OF PROJECT SITE

Section 2.1 **Purpose of Agreement**. The City and Developer acknowledge the Project is of significant importance to the City’s economic development goals and to Developer’s economic and business goals.

This Agreement is entered into for the purpose of redeveloping the Project Site as described herein. The Project Site is approximately 50.2 acres as legally described in Exhibit A and shown on the preliminary site plan attached as Exhibit B to this Agreement and located on the south side of US-50 near the intersection of Jennie Barker Road, Garden City, Kansas. The Developer agrees to perform the Developer Work as defined in this Agreement and particularly as follows:

The construction by the Developer within the Project Site of a new lean ground beef production facility including: grinding systems, processing system and equipment, refrigeration systems, cleaning systems, rail load out facilities, shipping, warehouse, support/utility space, office spaces, employee welfare areas. Other improvements include, but are not limited to, on site wastewater treatment facilities (as further described in Section 7.1 K 2), grading, site work, access road construction, landscaping

and lighting, parking lots, storm drainage, sanitary sewers, onsite water lines, and utilities. If the City decides to constructs pedestrian infrastructure (sidewalks) along Highway 50 adjacent to the Project Site in the future, and the City and the Developer agree upon the development of pedestrian infrastructure from the Project Site to the City pedestrian infrastructure, then the Developer agrees to construct, and pay the cost of, the pedestrian infrastructure from the Project Site to the City pedestrian infrastructure.

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The City agrees to perform the City Work as defined in this Agreement and particularly as follows:

- Improvements to the City's electric utility system, wastewater treatment plant, and water utility system described in and subject to Section 7.

- The City acknowledges that it will serve as conduit for a grant from the State of Kansas (KDOT) Economic Development Program No. 28-KA 5618-02 to provide supplemental funding for railroad improvements necessary for the Project, as further described in and subject to Section 3.3.

Section 2.2 **Representations of City**. The City makes the following representations and warranties which to the best of the City's actual knowledge, are true and correct on the date hereof:

A. *Due Authority*. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the limitations expressed herein or otherwise imposed by law, and this Agreement has been

duly and validly authorized and approved by all necessary City proceedings, findings and actions.

B. *No Conflicts.* Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, nor the development, construction or operation of the Project, will contravene the ordinances, rules, regulations of the City or the laws of the State of Kansas nor result in a breach, conflict with or be inconsistent with any term, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

c. *No Consents.* Other than approval by the City's governing body, no consent, authorization, approval order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and

delivery by the City of this Agreement. Except as otherwise described in this Agreement, including particularly but not limited to, Section 3.3, Section 4.1, Section 7.1 K 2, and Section 7.2, no consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

D. *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

E. *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or



conditions of any agreement or instrument to which the City is now a party, and do not and will not constitute a default under any of the foregoing.

F. *No Default.* No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.3. **Representations of the Developer.** The Developer makes the following representations and warranties, which to the best of the Developer's actual knowledge, are true and correct on the date hereof:

A. *Due Authority.* The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the

documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings.

B. *Governmental or Corporate Consents.* Apart from agreements, Permitted Subsequent Approvals, and consents obtained in connection with the Project, no other consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement.

C. *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of the Developer enforceable against the Developer according to its terms.

D. *Approvals.* The Developer has received and is in good standing with respect to all

certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as previously conducted by it and to own or lease and operate its properties as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

*E. Compliance with Laws.* To its actual knowledge, the Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority,

commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

F. *Other Disclosures.* The information furnished to the City by the Developer in connection with the matters covered in this Agreement is true and correct and does not contain any untrue statement of any material fact and does not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

G. *No Conflicts or Defaults.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which the Developer is now a party, and do not

and will not constitute a default under any of the foregoing. No default or Developer Event of Default has occurred and is continuing which with the lapse of time or the giving of notice or both, would constitute a default or Event of Default in any material respect on the part of the Developer under this Agreement.

### ARTICLE III CONSTRUCTION AND FINANCING OF PROJECT COSTS

Section 3.1. **Developer Work.** The Developer agrees to perform the Developer Work described particularly in Section 2.1 and Section 7.1 in accordance with this Agreement. The Developer Work shall be performed and constructed by the Developer and any public improvements constructed as part of the Developer Work to be conveyed to the City shall be so conveyed upon completion and acceptance by the City of such public improvements.

Developer agrees that the Developer Work will be performed and completed according to any plans approved by the City therefor. Subject to Excusable Delays, the Developer agrees the Developer Work will be performed according to specifications and timetable set forth in the Project Schedule attached as Exhibit C.

Section 3.2. **City Work**. Subject to Excusable Delays, and Section 3.3, the City agrees to complete the City Work described particularly in Section 2.1 and Section 7.1 in accordance with this Agreement in advance of or concurrently with Developer's completion of the Project and the Commercial Operation Date and as shown on the timetable set forth in the Project Schedule attached as Exhibit C.

The City will invite Developer to participate in regularly scheduled or special meetings relating to construction or other performance of City Work.

### **Section 3.3 City Work – Conditions, City Obligations, Approvals.**

A. The Parties acknowledge that the City's agreement to administer and act as a conduit for the state of Kansas Economic Development Project grant (Project No. 28 KA-5618-02) (the "Grant") is subject to the successful negotiation of a mutually acceptable agreement between the Parties setting forth the duties and responsibilities of each in connection with administration of the Grant, construction of the rail project described in the Grant agreement, compliance with performance standards, and including the agreement of Developer to reimburse the City for any reimbursements, claw back events or other financial obligation to the City occurring in connection with the City's administration of the Grant.

B. The Parties anticipate the City will issue City Obligations, the proceeds of which, less the costs of issuing the City Obligations, will be

applied to pay costs of the performance of portions of the City Work described in Section 7.1. The issuance of City Obligations is subject to market conditions, approvals by the City's governing body and by state agencies as required by applicable laws of the State, including approval of the Kansas Attorney General pursuant to K.S.A. 10-108. The City Obligations are also subject to the approving opinion of the City's bond counsel on matters of legality and the exemption of interest thereon from gross income for income tax purposes under State and federal law. The Parties acknowledge the City's ability to issue City Obligations for the purposes described herein may be affected by a change in applicable State or federal law.

## ARTICLE IV GENERAL COVENANTS

Section 4.1. **Operation of Project.** The Project shall be constructed and operated in



compliance with all Applicable Laws and Requirements. The Developer shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Developer Work, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses, which shall be Project Costs.

Section 4.2. **Taxes, Assessments, Encumbrances and Liens.** For that portion of the Project owned by the Developer or any Affiliate, the Developer shall pay or cause to be paid when due all real estate taxes and assessments within the Project. The Developer shall be permitted to contest the validity or amounts of any tax, assessment, encumbrance or lien as permitted by laws of the state of Kansas. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Project.

### **Section 4.3. Indemnification.**

A. The Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the “City Indemnified Parties”) harmless, from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys’ fees incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss or damage to any person, property, or business which arises or is alleged to have arisen due to the negligence or willful misconduct of the Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project.

B. City agrees to indemnify and hold harmless the Developer, its employees, agents and independent contractors and consultants (collectively the “Developer Indemnified Parties”) against any loss or expense arising out of any liability imposed by any law, federal or state, upon the Developer Indemnified Parties, if such liability is a consequence of the negligence or wilfull misconduct of the City in the performance of any work related to the Development Agreement. The City’s liability for any claims asserted by a person or entity by reason of injury, death, loss or damage to any person, property or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of the City, its officers, agents or employees in connection with worked performed by the City in relation to the Development Agreement shall be governed by the Kansas Tort Claims Act and other applicable laws of the State.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 4.4. **Construction of the Project.** The Developer shall have the sole responsibility to contract for the design and construction of the Developer Work subject to Applicable Laws and Requirements.

Section 4.5. **Modifications.** Modifications to the Project may require additional review by the City to ensure that the changes are generally consistent with the Development Agreement.

Section 4.6. **Public Bidding Not Required.** (a) Notwithstanding the fact that certain portions of the Developer Work will be deemed public improvements, and except to the extent described in subparagraph (b) of this Section, public bidding for the Project, and any

component thereof, will not be required, however, all plans for public improvements shall require approval of City staff and comply with standard City inspection and testing requirements. (b) The parties acknowledge that certain public bidding requirements apply to the State of Kansas (KDOT) Economic Development Program Grant No. 28-KA 5618-02 described as part of the City Work under Section 2.1 and Section 3.3.

## ARTICLE V ASSIGNMENT; TRANSFER

Section 5.1. **Restriction on Transfer and Assignments.** The Developer shall not assign or transfer all or any of its rights or duties under this Agreement nor convey any portion of the Project Site prior to completion of the Developer Work (except as described below) without the prior written approval of the City (which will not be unreasonably withheld, conditioned or delayed),

except for (i) assignments, transfers and conveyances of all or substantially all of Developer's rights and duties under this Agreement and in and to the Project Site to an Affiliate, (ii) entering into a sale/leaseback where Developer sells the Project to a third party which in turn leases back the Project to Developer; or (iii) the Project is financed and a mortgage is placed on the Project.

## ARTICLE VI DEFAULTS AND REMEDIES

### **Section 6.1. Event of Default**

*A. Developer Event of Default.* A "Developer Event of Default" shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement; a default in the performance or breach of which is specifically

dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

B. *City Event of Default.* A “City Event of Default” shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement (other than a covenant or agreement; a default in the

performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

**Section 6.2.     Remedies Upon a Developer Event of Default.**

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have



the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement, terminate the Developer's rights under this Agreement and terminate the City's obligations under this Agreement.

2. The City may pursue any available remedy at law or in equity by suit; action, mandamus or other proceeding to enforce the duties and obligations of the Developer as set forth in this Agreement; to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity, and to recover any damages incurred by the City resulting from such Developer Event of Default.

B. If the City has instituted any proceeding to enforce any right or remedy under this

Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

C. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

D. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer

shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

**Section 6.3. Remedies Upon a City Event of Default.**

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement.

2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth

in this Agreement; to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity, and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. The exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies

for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit such rights in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 6.4. **Legal Actions**. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Finney County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas sitting in Wichita, Kansas.

## ARTICLE VII GENERAL PROVISIONS

### Section 7.1. **Development of Project.**

A. *Scope.* The Project shall be developed within and subject to Applicable Law and Requirements, the preliminary, final development plat, and site plan for the Project and the plat for the Project Site, as any of the forgoing may be amended.

B. *Governmental Approvals.* The Project shall be subject to Governmental Approvals from Governmental Authorities having jurisdiction over the Project.

C. *City Approval of Zoning, Planning, Platting.* The City agrees to consider and act on site plan, zoning, planning and platting applications submitted by the Developer related to the Project expeditiously and in good faith.

*D. City and Other Governmental Permits.* Before beginning construction or development of any buildings, structures or other work or improvement related to the Project, the Developer shall, at its own expense, secure or cause to be secured any and all Governmental Approvals (excepting Permitted Subsequent Approvals) applicable to such construction, development or work. The City will cooperate with, fast track, and provide all assistance to Developer in securing such permits and approvals and expeditiously process, review and consider all such permits and approvals as may be required by law.

*E. Rights of Access.* For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Project Site, without charge or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, for the inspection of

the work being performed in constructing, improving, repairing and installing the Project. Representatives of the City shall comply with all applicable safety rules in so doing. Except in case of emergency, before making such access, representatives of the City shall make a good faith effort to check in with the Developer's on-site manager. The City representatives shall carry proper identification, shall insure their own safety and shall not interfere with construction activity, except in the enforcement of Applicable Laws and Requirements.

F. *Local, State and Federal Laws.* The Developer shall carry out the provisions of this Agreement in conformity with all Applicable Laws and Requirements.

G. *City Utilities.* City agrees to provide utility service owned and operated by the City (currently electric, water and wastewater service) to the Project for the operational life of the Project. During the construction period for the



Project, City utilities will be provided to the Project and billed at the current published rates as defined in City code. Beginning on the Commercial Operation Date (COD) of the Project, and continuing for a period of five (5) years from the COD, the City agrees (i) to charge rates as set forth in subparagraphs H and I of this Section for electrical and water utility services provided to the Project, and (ii) agrees to charge the rates as set forth in subparagraph J for wastewater utility services provided to the Project.

The Parties agree that in January of the fourth (4<sup>th</sup>) year after the COD the Parties will negotiate new rates and terms of service for electric, water and wastewater utility service beginning in the sixth (6<sup>th</sup>) year following the COD and continuing as long as agreed by the parties. The City agrees that the Developer will never pay a rate for water, electrical or wastewater services higher than the adopted rates then in effect and approved by the City at the time of the

renegotiations. The City further agrees not to create a separate rate category for City utilities provided to the Project that results in rates charged to the Project that are higher than the adopted rates for the type of service provided to the Project.

#### H. *Electrical Service.*

1. Electrical Service Rates (Applicable for 5 – year period beginning on Commercial Operation Date):

- a. Base charge of \$200.00 per month.
- b. Demand charge: \$10.00 per kW, maximum demand of 12,000kW; provided, if the maximum recorded demand exceeds 12,000kW for three (3) consecutive months the Demand Charge will increase to \$13.00

per kW for the next twelve (12) consecutive months. If the maximum recorded Demand is 12,000 kW or less for twelve (12) consecutive months, the Demand rate will be reduced to \$10.00 per kW.

- c. On Peak 7:01 AM to 9:00 PM  
energy rate of \$0.0570 per Kwh  
Off Peak 9:01 PM to 7:00 AM  
energy rate of \$0.0315 per Kwh

I. *Electric System Improvements.* In connection with electrical service to the Project, the City agrees to acquire and install necessary electrical equipment in the City's electric utility system to provide the Project load of 12 MW between two (2) substations and will install the necessary primary metering equipment to meter electrical usage of the Project (the "Electric Improvements"). The total estimated costs of the Electric Improvements is \$1,004,352.18 and the

Developer agrees to pay to the City \$502,176.09 on the date the construction permit is issued for the Project, representing 50% of the total estimated cost, which the City will apply to acquiring and installing the Electric Improvements. The City will seek bids for the required electrical equipment and award of the bid or bids will be in the City's sole discretion. If the bids result in an increase in the total estimated costs of the Electric Improvements, the Developer will pay to the City 50% of the original estimated costs of the Electric Improvements, plus the increased amount necessary to complete the Electric Improvements. The Developer agrees to make this payment before the City awards the bid or bids and begins purchase and installation of the Electric Improvements. The City agrees the Electric Improvements will be installed no later than six (6) months prior to the anticipated COD. If, upon completion of the Electric Improvements, the City determines the actual cost thereof is less than amounts previously paid

by the Developer as provided in this paragraph, the City will reimburse the Developer for any overpayment made under this paragraph. This true-up shall occur within 6 months of the COD.

In addition to the Electric Improvements described in the preceding paragraph, the City agrees to install the necessary feeder cables from the City's primary metering equipment feeders to the outdoor medium voltage switchgear serving the Project. The City will bill Developer, and the Developer agrees to pay, the City's time and material costs related to installation of the feeder cables described in this paragraph.

The City and Developer agree to continue mutual discussions concerning future possible partnering on the installation of 3-5 MW quick-start natural gas fired engine / generation combination units as part of the City's electric utility system, that could be utilized by both the Developer and the City at specific times associated with any power outage. Any

agreements regarding additional on-site generation described in this paragraph will be the subject of a separate agreement between the City and Developer.

J. *Water Service.* The City agrees to provide a maximum of 800,000 gallons per day of potable water to the Project through two (2) city owned and operated water mains as described in subparagraph J 2 for a period of 2 years following the COD of the Project. The City agrees to provide up to a maximum of 1,200,000 gallons per day (if required) following the 2 years after the COD. The parties acknowledge that the City can provide up to 1,600 GPM peak water to the Project for a period of time less than ten (10) minutes in duration. The Developer agrees that it will make every effort to manage its peak water demands to keep the peak demand lower than 1,600 GPM. The City and the Developer agree to review the actual peak water demand of the Project during the twelve (12) months following the COD and, if such review indicates the Project

will require peak water demand greater than 1,600 GPM, the parties agree to cooperate to develop a strategy to permit the City to provide peak water demands to the Project greater than 1,600 GPM. Any agreement regarding future peak water demands will be the subject of a separate agreement between the City and Developer.

1. Water Service Rates (Applicable for 5 –year period starting on the Commercial Operation Date):

a. \$2.47 per 1,000 gallons, plus \$175.00 per month base charge for a period of 5 years following the COD.

2. Water System Improvements. In connection with water utility service to the Project, the City also agrees to install offsite water mains to deliver water to the Project. The City agrees to install one new 16” water transmission main, the required pump-

station, and one sixteen inch (16”) water tap off of the sixteen (16”) inch water main, and one twelve (12”) inch tap off of the twelve inch (12”) water main to serve the Project (“Water System Improvements”). Subject to Excusable Delay, the City agrees to complete the Water System Improvements no later than six (6) months before the estimated COD. The Developer is responsible to provide all required cross connection / back flow devices as required by the City Water Department. The City agrees to install the required metering and the Developer agrees to allow the City to install the necessary metering at mutually agreed location (s). The estimated total cost of the Water System Improvements is \$1,974,312.00. The City will seek bids for construction of the Water System Improvements and award of the bids will be in the City’s sole discretion. The City and Developer agree that the Developer’s share of the estimated costs of the Water System Improvements is \$675,350.00. The



Developer agrees to pay to the City 50% of its share or \$337,675.00, on the date the construction permit is issued for the Project. The Developer will pay the remaining 50% of its share of the Water System Improvements to the City before the City awards the bid for construction. If the actual costs of the completed Water System Improvements are greater than the total estimated cost stated herein, the Developer will pay the City 35% percent of the difference between the estimated costs and the actual costs of the Water System Improvements. This true-up shall occur within 6 months of the COD. The Water Improvements described in this paragraph do not include any water main extensions onto the Project Site or any onsite fire loop, each of which will be installed on the Project Site at Developer's expense and maintained by the Developer. During construction of the Project the City will provide temporary water service from an agreed location. The

Developer will be responsible for delivering such water to locations required for construction of the Project.

The City agrees to continue discussions with the Developer about possible partnering / operating or other arrangements in construction and operation of a Reverse Osmosis's (R/O) or other water enhancing plant. Any such agreements regarding additional on-site water treatment will be handled under a separate agreement outside of this Development Agreement.

*K. Wastewater Service.*

1. Wastewater Service Rates -  
(Applicable for 5-year period starting on Commercial Operation Date):

*a. All Domestic Wastewater Flow and Pre-Treated Process Wastewater Flow from Project. \$2.00 per 1,000*

gallons of flow, plus \$14.50 per month base charge. Applicable extra strength charges will be applied in accordance with City Ordinances in effect at the time of billing.

2. *On-Site Wastewater Treatment.* Developer agrees to construct on the Project Site, and at Developer's sole expense, all necessary on-site wastewater pre-treatment facilities to achieve removal of constituents from the process flows generated by the facility to the levels listed below in Table 1 or better. A separate discharge permit will be developed that outlines the conditions and requirements for discharge of pre-treated wastewater flow to the City's wastewater treatment plant. Subject to the discharge permit, Developer is allowed to deliver a maximum of 400,000 gallons per day (gpd) of pre-treated wastewater to the City's wastewater treatment plant. The flow shall be

metered at the Project site and delivered at a steady rate over a 12-hour period as designated by the City in the discharge permit. Should the flow exceed 400,000 gallons per day for five days in any 30 day time frame a fee of \$5,000 per day will be levied for each day in excess of five days that the flow of pre-treated wastewater exceeds 400,000 gallons per day. Developer shall provide daily time-stamped flow readings to the City wastewater treatment plant.

| Table 1. Expected Effluent Concentration |         |                  |
|--|---------|------------------|
|  | Average | Max Day, Monthly |
| CBOD, mg/L                               | 181     | 405              |
| COD, mg/L                                | 473     | 1,060            |
| SCOD, mg/L                               | 350     | 789              |
| TSS, mg/L                                | 86      | 191              |
| TKN, mg/L                                | 45      | 115              |
| TP, mg/L                                 | 4       | 6                |
| FOG, mg/L                                | 68      | 122              |

3. *City Wastewater Treatment.* The parties acknowledge that improvements to the City's wastewater treatment plant will be required to receive and fully treat the process flows from the Project ("Wastewater Treatment Improvements".) The Developer will be solely responsible for all design and construction costs associated with the required improvements less any upgrades made by the City for its sole purpose. The total estimated costs of the Wastewater Treatment Improvements is \$2,552,000.00. The Developer agrees to pay to the City \$1,276,000.000 or 50% of the total estimated cost on the date the construction permit is issued for the Project. The City will seek bids for the construction of the Wastewater Treatment Improvements and award of the bids will be in the City's sole discretion. The Developer will pay the city remaining 50% of the total estimated costs (\$1,276,000) before the City awards bids for construction of the Wastewater Treatment Improvements. If the

actual costs of the completed Wastewater Treatment Improvements are greater than the total estimated cost stated herein, the Developer will pay the City 100% percent of the difference between the estimated costs and the actual costs of the Wastewater Treatment Improvements. This true-up shall occur within 6 months of the COD. The Wastewater Treatment Improvements will be installed no later than six (6) months prior to the anticipated COD.

4. *Future Process Flows.* Developer shall submit an intended plan for expansion of the Developer's on-site pre-treatment facilities (described in Section 7.1 K 3) for process wastewater flow values to the City's wastewater treatment plant, within the first 6 months after the COD. Developer shall notify the City a minimum of 24 months prior to any proposed increase in process wastewater flow to the City's wastewater treatment plant. The Developer will be solely

responsible for all design and construction costs associated with any required improvements to the City's wastewater treatment plant to accommodate the increased pre-treated flows, less any upgrades made by the City for its sole purpose.

5. Wastewater Improvements-Untreated Non-Process Domestic Wastewater. The Developer agrees to pay the costs of and be responsible for extension of facilities necessary to connect to the non-process (domestic) portions of the Project to the City sanitary sewer system to receive untreated domestic wastewater discharge.

6. Wastewater Agreements Applicable to Project Only. All agreements and provisions in this Agreement relating to wastewater produced by the Project are applicable only to the Project described in this Agreement. Any provisions regarding

wastewater services for additions or expansions to the Project not described in this Agreement will be subject to separate negotiations and agreements.

Section 7.2. **Tax Incentives.** The Developer will request an ad valorem tax abatement on the real property and improvements constituting the Project, subject to the provisions of Article 11, Section 13 of the Kansas Constitution and to the requirements of the Finney County, Kansas (“County”) statement of policies and procedures regarding tax exemptions and incentives for economic development (the “Policy”), attached as Exhibit D. Subject to (i) the provisions of the next paragraph of this section, (ii) the requirements of the Policy, and (iii) applicable Kansas Law, the City agrees to cooperate with the County in applying to the Kansas Board of Tax Appeals for a 60% ad valorem tax abatement on the taxable real property and improvements constituting the Project for a period of 10-years beginning in the



first calendar year after the year the Project begins commercial operations (the “Abatement”). The Abatement and conditions thereof will be further described in an Agreement for Payment in Lieu of Taxes between the Developer and the County and entered into in connection with the Abatement. The Developer acknowledges and agrees that pursuant to Article 11, Section 13 of the Kansas Constitution, the Abatement is available only for real property and improvements used exclusively by a business for the purpose of (A) manufacturing articles of commerce; (b) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce.

The provisions, covenants and agreements contained in this Agreement with respect to the Abatement are conditioned and depend on approval by the County, and the issuance by the Kansas Board of Tax Appeals of an order exempting the Project from ad valorem taxation

in accordance with Kansas law. The City agrees to cooperate with the County and Developer in obtaining and maintaining the Abatement; provided, however, the City shall not be liable for any failure by the Kansas Board of Tax Appeals or the County to effect or approve the Abatement. The Developer acknowledges that it is the responsible party to obtain and maintain the Abatement. Developer acknowledges that the requirements of applicable Kansas law have been fully explained to the Developer and Developer agrees to act in good faith, cooperate with the City and County, and use its best efforts in any action necessary to obtain and maintain the exemption under Kansas law. Developer further acknowledges that the Abatement, if granted, is subject to changes in law and that actions of the Developer may affect the availability of the Abatement initially and in any subsequent year regardless of this Agreement, and further, that the granting of the Abatement by the Kansas Board of Tax Appeals for one portion of the Project does not guarantee the granting of an

abatement for any other portion nor guarantee renewal of the abatement for any subsequent year.

Section 7.3. **Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.4. **Amendments.** This Agreement may be amended only in writing and by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 7.5. **Conflicts of Interest.**

A. No member of the City's governing body or of any branch of the City's government that

has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in

a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 7.6. **Validity and Severability.** It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable

provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.7. **Notice.** All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City of Garden City, Kansas  
Attn: City Manager  
P.O. Box 988  
Garden City, Kansas 67846  
Telephone: 620.276.1160

With a copy to:  
Randall D. Grisell, City Attorney  
Doering & Grisell, P.A.  
124 W. Grant Ave.  
Garden City, Kansas 67846  
Telephone: 620.275.8084

To the Developer:

Empirical Foods, Inc.  
Attn: Nick Roth  
891 Two Rivers Drive  
Dakota Dunes, South Dakota 57049  
Telephone: 605.217.8000

With a copy to:  
Rich Jochum  
891 Two Rivers Drive  
Dakota Dunes, South Dakota 57049  
Telephone: 605.217.8000

or at such other addresses as the Parties may indicate in writing to the other either by personal

delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 7.8. **Kansas Law.** This Agreement shall be governed by and contained in accordance with the laws of the State of Kansas. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.) or the Kansas Budget Law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein, the City's obligations under this Agreement are to be construed in a manner that assures the City is at all times in compliance with the Kansas Cash Basis Law and the Kansas Budget Law.

Section 7.9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original



and all of which shall constitute but one and the same agreement.

Section 7.10. **Tax Implications.** The Developer acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated herein, and (ii) the Developer is relying solely upon its own tax advisors in this regard.

Section 7.11 **Consent or Approval.** Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

Section 7.12. **Excusable Delays; Times of Performance; Extensions.** Neither the City nor

the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay. The Parties agree the City will not begin performing City Work under this Agreement until the Developer has approved and begun construction of the Project (“Developer Approval”) and that all performance dates identified in this Agreement and its Exhibits shall be revised and extended as necessary to coincide with the date of Developer Approval. The Parties further agree that all performance and other dates set forth in this Agreement shall be extended where the Party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer, to which each Party shall reasonably agree at the request of another Party.

### Section 7.13 **Termination.**

Notwithstanding anything herein stated to the contrary, if the Developer does not begin

substantial construction of the Project by March 31, 2021 this Agreement shall terminate (unless extended by written agreement of the Parties) on such date and the Parties shall have no further duties or responsibilities to each other. If this Agreement does so terminate each Party shall be responsible for its own costs.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, this Agreement is executed by City and Developer effective as to the day and year first above written.

CITY OF GARDEN  
CITY, KANSAS

[Seal]

By \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
Celyn N. Hurtado, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Randall Grisell, City Attorney

## **ACKNOWLEDGEMENT**

STATE OF KANSAS     )  
                                  ) ss.  
COUNTY OF FINNEY    )

Now       on       this       \_\_\_\_\_ day       of  
\_\_\_\_\_, 2020, before me, a notary  
public in and for said county and state,  
came \_\_\_\_\_ and Celyn N. Hurtado, Mayor  
and City Clerk, respectively, of the City of  
Garden City, Kansas, a Kansas municipal  
corporation duly authorized, incorporated and  
existing under and by virtue of the Constitution  
and laws of the State of Kansas, who are  
personally known to me to be the same persons  
who executed, as such officers, the within  
instrument on behalf of said City, and such  
persons duly acknowledged the execution of the  
same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed my official seal the day  
and year last above written.

---

Notary Public

My Commission Expires:

---

INC.

By \_\_\_\_\_  
Name (Printed)\_\_\_\_\_

# Title

## ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_)  
                                ) ss.

COUNTY OF \_\_\_\_\_)

Now on this \_\_\_\_\_ day of \_\_\_\_\_,  
2020, before me, the undersigned, a Notary  
Public, in and for the County and State aforesaid,  
came \_\_\_\_\_, \_\_\_\_\_, who is  
personally known to me to be the same persons

who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

---

Notary Public

My Commission Expires:

---



# EXHIBITS

Exhibit A Legal Description of the Project Site

Exhibit B Depiction of Project

Exhibit C Project Schedule

Exhibit D Finney County, Kansas Tax  
Abatement Policy

Lot 1, Block 1, Empirical Industrial  
Park, Garden City, Finney County, Kansas.

**PROPOSED DEVELOPMENT**

**EXISTING CONDITIONS**

**NOTES:**

1. THE PROPOSED DEVELOPMENT IS SHOWN IN THE ATTACHED PLAN.
2. THE EXISTING ROADWAY AND UTILITIES ARE SHOWN FOR REFERENCE ONLY.
3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE LOCAL GOVERNMENT.
4. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE STATE DEPARTMENT OF TRANSPORTATION.
5. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE FEDERAL AVIATION ADMINISTRATION.
6. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE ENVIRONMENTAL PROTECTION AGENCY.
7. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL HISTORIC LANDMARKS COMMISSION.
8. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL MONUMENTS SYSTEM.
9. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ANTIDISCRIMINATION ACT.
10. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL LABOR RELATIONS BOARD.
11. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL RACE RELATIONS COMMISSION.
12. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL YOUTH JURY SERVICE.
13. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL CIVIL RIGHTS COMMISSION.
14. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL HUMAN RIGHTS COMMISSION.
15. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL WOMEN'S HISTORY MUSEUM.
16. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL GAY, LESBIAN, BISEXUAL, AND TRANS GENDER COMMUNITY CENTER.
17. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL LGBTQ+ COMMUNITY CENTER.
18. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL HIV/AIDS MEMORIAL MUSEUM.
19. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ORGAN DONOR CENTER.
20. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ORGANO DONOR CENTER.
21. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL LIVER DONOR CENTER.
22. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL KIDNEY DONOR CENTER.
23. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL PANCREAS DONOR CENTER.
24. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL SPLEEN DONOR CENTER.
25. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL SMALL INTESTINE DONOR CENTER.
26. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL STOMACH DONOR CENTER.
27. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL COLON DONOR CENTER.
28. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL RECTUM DONOR CENTER.
29. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL VAGINA DONOR CENTER.
30. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL UTERUS DONOR CENTER.
31. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL OVARY DONOR CENTER.
32. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL TESTIS DONOR CENTER.
33. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL PENIS DONOR CENTER.
34. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL SCROTUM DONOR CENTER.
35. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL GLANS DONOR CENTER.
36. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL PREPUCE DONOR CENTER.
37. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL CLITORIS DONOR CENTER.
38. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL LABIA DONOR CENTER.
39. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL VULVA DONOR CENTER.
40. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL PERINEUM DONOR CENTER.
41. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ANUS DONOR CENTER.
42. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL RECTUM DONOR CENTER.
43. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL sigmoid colon donator center.
44. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL descending colon donator center.
45. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ascending colon donator center.
46. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL transverse colon donator center.
47. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL cecum donator center.
48. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL appendix donator center.
49. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL terminal ileum donator center.
50. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL caecum donator center.
51. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL vermiform appendix donator center.
52. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ileocecal junction donator center.
53. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ileocolic junction donator center.
54. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL hepatic flexure donator center.
55. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL splenic flexure donator center.
56. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL transverse mesocolon donator center.
57. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL descending mesocolon donator center.
58. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL ascending mesocolon donator center.
59. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL sigmoid mesocolon donator center.
60. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectosigmoid junction donator center.
61. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectoanal junction donator center.
62. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL internal anal sphincter donator center.
63. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL external anal sphincter donator center.
64. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL anal canal donator center.
65. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal ampulla donator center.
66. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal pouch donator center.
67. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal diverticulum donator center.
68. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal varices donator center.
69. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal polyps donator center.
70. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal cancer donator center.
71. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal adenoma donator center.
72. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal dysplasia donator center.
73. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal hyperplasia donator center.
74. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal metaplasia donator center.
75. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal dysmetaplasia donator center.
76. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal intraepithelial neoplasia donator center.
77. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal carcinoma in situ donator center.
78. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal invasive carcinoma donator center.
79. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal adenocarcinoma donator center.
80. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal squamous cell carcinoma donator center.
81. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal basaloid carcinoma donator center.
82. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal sarcoma donator center.
83. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal lymphoma donator center.
84. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal melanoma donator center.
85. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal neuroendocrine tumor donator center.
86. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal paraganglioma donator center.
87. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal pheochromocytoma donator center.
88. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal paraganglioma donator center.
89. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal paraganglioma donator center.
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99. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal paraganglioma donator center.
100. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE NATIONAL rectal paraganglioma donator center.

# Exhibit C – Project Schedule

|    |  | Task Mode         | Task Name   | Duration | Start        | Finis |
|----|--|-------------------|---|----------|--------------|-------|
|    |  |                   |   |          |              |       |
| 1  |  | Mobilize          | Mobilize on site  | 5 days   | Mon 10/5/20  | Fri 1 |
| 2  |  | Start             | Bulk excavation   | 45 days  | Mon 10/12/20 | Fri 1 |
| 3  |  | Piles             | Deep foundations - truck dock, engine room, basement            | 65 days  | Mon 11/9/20  | Fri 2 |
| 4  |  | Concrete          | Cast in place pile caps / grade beams / walls / composite slabs | 265 days | Mon 12/7/20  | Fri 1 |
| 5  |  | Shell             | Precast Concrete  | 285 days | Mon 9/14/20  | Fri 1 |
| 6  |  | Dry in            | Roof / windows / doors / sealants                               | 80 days  | Mon 10/18/21 | Fri 2 |
| 7  |  | Interior Finishes | Slabs / Brick / Coatings / Finishes                             | 260 days | Mon 2/7/22   | Fri 2 |
| 8  |  | Process           | Production Equipment  | 520 days |              |       |
|    |  |                   |   |          |              |       |
| 9  |  | Occupancy         | Certificate of Occupancy  |          | 2/3/2023     |       |
|    |  |                   |   |          |              |       |
| 10 |  | COD               | Commercial Operating Date                                       |          | 4/30/2023    |       |

# EXHIBIT D

## Finney County Tax Abatement Policy

2. **Criteria For Granting Tax Abatements:** The following criteria and factors shall be used in evaluating applications for tax abatements.

- a. Net benefit to the City, County and School Districts as shown in the Cost-Benefit Analysis
  - b. Quality job creation
- | Level | Number of FTE Jobs Created in Finney County at 150% or more than Kansas Minimum Wage (gross wages, excluding benefits) | Exemption | Payment in lieu of Taxes |
|-------|--|-----------|--------------------------|
|-------|--|-----------|--------------------------|

|   |          |          |     |
|---|----------|----------|-----|
| 1 | 10 - 44  | 2 years  | 50% |
| 2 | 45 - 59  | 3 years  | 50% |
| 3 | 60 - 74  | 4 years  | 50% |
| 4 | 75 - 89  | 5 years  | 50% |
| 5 | 90 -104  | 6 years  | 50% |
| 6 | 105 -119 | 7 years  | 50% |
| 7 | 120 -134 | 8 years  | 50% |
| 8 | 135 -149 | 9 years  | 50% |
| 9 | 150 +    | 10 years | 50% |

OR

- c. Capital investment
- Capital Investment Tax Exemptions-Incentives

| Level | Capital Investment          | Exemption | Additional Payment in Lieu of Taxes |
|-------|-----------------------------|-----------|-------------------------------------|
| 1     | \$ 1,000,000 - \$ 4,999,999 | 10 years  | 20%                                 |
| 2     | \$ 5,000,000 - \$ 9,999,999 | 10 years  | 30%                                 |
| 3     | \$10,000,000 - \$17,499,999 | 10 years  | 40%                                 |
| 4     | \$17,500,000 - \$24,999,999 | 10 years  | 50%                                 |
| 5     | \$25,000,000 +              | 10 years  | 60%                                 |

- d. Diversification of the local economy
  - e. The extent to which the project would meet an identified need in the community
3. **Transfers:** No abatement granted by the County shall be transferred as a result of a change in ownership of the exempted property. Any new owner shall file a new application for a tax abatement. Further, the County shall be notified by the business of any substantive change in the use of the tax exempt property.
4. **Special Assessments:** Special Assessments are not eligible for exemption under this policy.

### D. PROCEDURES

1. **Formal Application.** An applicant shall complete a formal application and file it with the president of the Finney County Economic Development Corporation. A fee of \$1,000.00 is due upon filing in order to help defray the County's cost in processing the application.

2. **Preliminary Review.** The Administrative Review Committee will provide an initial review of the application to ensure that it meets with County policy.
3. **Cost-Benefit Analysis (Community Return on Investment Model):** The Administrative Review Committee will complete a cost-benefit analysis utilizing the Community Return on Investment Model. This model estimates the economic impact upon the City, County and School District taking into account the public costs (tax abatement and other) and the public benefits (property tax base, sales tax base and other spin-off benefits). Generally, such cost-benefit analysis will examine a ten-year time frame, however such timeframe may be shorter or longer depending upon the term requested and the term of any other economic incentives contemplated for the applicant.
4. **Notice to Taxing Jurisdictions/ Public Hearing:** Prior to the granting of any tax abatement, the County Commission shall hold a public hearing. Notice of the public hearing shall be published in the official county newspaper at least once seven days prior to the hearing and shall indicate the purpose, time and place of the public hearing. In addition to the public hearing notice, the County Clerk shall notify in writing all of the other affected taxing entities about the public hearing and the proposed abatement at least seven days prior to the public hearing but as early as possible, and provide the taxing jurisdictions with a copy of the cost-benefit analysis and background materials.

The taxing entities will be encouraged to provide input to the County regarding the impact of the proposed abatement on the property tax base as well as other issues.

5. **Ordinance and Performance Provisions:** After the public hearing, the County Commission may adopt a resolution specifying the annual abatement and the length of the abatement. The resolution will require two readings.

The resolution shall outline annual job creation targets which the applicant must meet in order for all or a portion of the abatement to continue. The resolution shall also outline the method for decreasing the abatement if the annual job creation targets are not met.

The resolution may also specify any payment-in-lieu of tax which will be paid by the applicant to the County.

6. **Submission of Application to the Kansas Court of Tax Appeals:** After the applicant has completed and submitted all necessary documentation to the County Clerk (including the payment instrument made payable to the Kansas Court of Tax Appeals in the amount of the applicable docket fee), the County Clerk will forward all necessary documentation to the County Assessors' Office, which will then be filed with the Kansas Court of Tax Appeals. The County Commission's decision to grant an abatement is subject to the final determination of the Kansas Court of Tax Appeals.
7. **Annual Certification:** The applicant will be required to complete and submit all necessary documentation to the County Clerk for annual submission to the County Appraiser's Office and the Kansas Court of Tax Appeals. It is the applicant's obligation to see that the appropriate annual information is filed for the abatement to continue.
8. **Documents:** All documents related to tax abatements, including the annual certifications, will be kept on file with the County Clerk.

E. **WAIVER OF POLICY OR PROCEDURES**

Any portion of this policy or the procedures outlined herein may be waived by the County Commission if it is in the best interest of the County and in accordance with State law.

NOW THEREFORE, BE IT RESOLVED that the foregoing is adopted as the official policy of Finney County, Kansas with respect to the subject matter thereof this \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

ATTEST

\_\_\_\_\_  
COUNTY CLERK  
FINNEY COUNTY

\_\_\_\_\_  
CHAIRMAN OF THE BOARD OF COUNTY  
COMMISSIONERS OF FINNEY COUNTY

Finney County Tax Abatement Policy exists to benefit businesses or individuals that create economic development with an overriding benefit to the County.

Interested parties will complete the following processes when pursuing a tax abatement:

**1. Evaluation Process**

Project considered for Tax Abatement must meet one of the following criteria:

- ☐ Net Economic Benefit to City, County and School District
- ☐ Quality Job Creation
- ☐ Capital Investment
- ☐ Diversification of the Local Economy

**2. Application Process**

- a. A formal Application will be submitted to the Finney County Economic Development Corporation along with a filing fee of \$1,000.00 payable to the **Finney County Clerk**.
  - i. Applicant will coordinate with the office of the **Finney County Appraiser** to clarify project costs and values on initial application
- b. Administrative Review Committee (comprised of representatives of the taxing entities) will:
  - i. Provide an initial review of compliance
  - ii. Create a Cost Benefit Analysis
  - iii. Report their findings to the Board of Finney County Commissioners

**3. Initial Presentation to Board of Finney County Commissioners**

- a. The Board of Finney County Commissioners will hear the request and review the pre-construction Cost Benefit Analysis
- b. If approved, the Board of Finney County Commissioners will enter into a Memorandum of Understanding with the Applicant outlining their intent to approve the Abatement upon project completion

**4. Post-Construction Process**

- a. Upon completion of the project, Applicant will coordinate a post-construction audit with the **Finney County Appraiser**, prepare and submit to Finney County Appraiser the EDX Application to Court of Tax Appeals (COTA), cause publication to occur and meet all of their legal requirements of EDX process as published by COTA.
- b. A Cost Benefit Analysis will be completed to address any changes from the original request

**5. Post-Construction Hearing**

- a. The Board of Finney County Commissioners will hold a public hearing to consider the request. If approved, a Resolution agreed upon between the County and the Applicant will be adopted.
- b. Approval of the request causes the application to be filed with the Kansas Court of Tax Appeals (Minimum Fee of \$1,000.00 is required to be paid by the Applicant).
- c. Kansas Court of Tax Appeals will issue approval/ denial.

**6. Annual Certification**

- a. On or before March 1<sup>st</sup> of each year that the Abatement is in effect, the Applicant is responsible for providing annual certification, including all required documentation, to the **Finney County Clerk** and **Finney County Appraiser**, of compliance with the terms of the tax abatement.