

**BUILD-OPERATE-TRANSFER
AGREEMENT
(Jamestown WWTP Improvements 2025)**

This Build-Operate-Transfer Agreement (the "Agreement" or "BOT Agreement") is executed this ____ day of _____, 2025, by and between Reynolds Construction, LLC (the "Developer"), and the Town of Jamestown ("Owner").

1. Defined Terms.

Books and Records shall mean all of the books and records pertaining to the acquisition of materials to construct, and the construction and operation of, the Project in accordance with this Agreement and the Construction Contracts.

BOT Agreement shall mean this contractual agreement pursuant to which Owner shall purchase from Developer and Developer shall convey to Owner the completed Project upon the expiration of the Operating Period pursuant to a combination quitclaim deed and completion certificate in a form substantially similar to that which is attached as Exhibit C hereto.

BOT Payments shall mean monthly installment payments for the purchase of the completed Project which shall, in the aggregate, total the BOT Purchase Price.

BOT Purchase Price shall mean the purchase price for the acquisition of the completed Project pursuant to the BOT Agreement, the amount of which shall not exceed Three Million Eight Hundred Fifty Thousand (\$3,850,000) Dollars.

Change Order shall mean a change order executed by Developer and Owner finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing shall mean the closing with respect to the execution of the BOT Agreement.

Closing Date shall mean the date of the Closing.

Construction Contracts shall mean one or more contracts executed by and between Developer and one or more Contractors for construction of the Project in accordance with the Final Plans, the approved BOT Purchase Price, and the terms and conditions of this Agreement.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project with a Substantial Completion Date not later than the dates listed in the respective GMP Report.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Contingency shall mean an amount of up to ten (10%) percent of Project Costs, which shall be included in the BOT Purchase Price, for utilization by Developer for unanticipated costs in accordance with the terms of this Agreement.

Contractors shall mean one or more entities that will be subcontractors of Developer in connection with the construction of the Project.

Cure Period shall mean a period of twenty (20) days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within twenty (20) days, despite the exercise of reasonably diligent efforts, then the twenty (20) day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) substantially commences to remedy the failure within the twenty (20) day period; and (b) diligently pursues such remedy to completion.

Easement Agreement shall mean an agreement pursuant to which Owner grants to Developer a temporary easement to construct the Project on the Project Sites in accordance with the terms and conditions of this Agreement, which

agreement shall recognize that Developer is the owner of the completed Project, which it shall ultimately transfer to Owner in accordance to the terms of this Agreement.

Engineer shall mean the engineer of record for the design of the Project directly hired by the Owner.

Event of Default shall have the meaning set forth in Subsection 12(a).

Final Documents and Drawings shall mean the Final Plans and specifications as each is finalized and approved by Owner pursuant to Section 7.

Final Inspection shall mean an inspection of the Project by Owner after Substantial Completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party, any cause that is not within the reasonable control of such party or such party's contractors and consultants including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services, or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers.

GMP Report shall mean a report including the: (a) inclusions, exclusions, and qualifications not otherwise addressed in this Agreement; (b) the BOT Purchase Price summarized and broken down by line item with an estimated cost per line item for the Work; (d) allowances and contingencies; and (d) list of plans and specifications related to the Project. The GMP Report is attached as Exhibit B.

Hazardous Environmental Condition means the presence at the Project Sites of constituents of concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Project Sites of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Applicable Laws, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable

Latent Defect shall mean those defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by Owner during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, codes, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a defect in workmanship or materials that impairs the ability of the Owner to utilize the Project, or a portion of the Project, (b) deviates from the Final Plans; or (c) has not been constructed in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from Owner that identifies Material Defects with respect to the Project discovered by Owner during a Permitted Inspection or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is one (1) calendar day after the Substantial Completion Date; or (ii) that is specified in a written notice delivered by Owner to Developer. The Developer shall not be responsible for operating the existing plant but will be responsible to coordinate with the Owner operators and to provide for necessary piping, pumps and other construction systems and methods to avoid interference with the existing plant operation and ability to meet the Owner's water production requirements while under construction.

Permitted Change shall mean any change proposed by Developer to the Final Plans, so long as such change: (a) does not result in the Final Plans containing structurally or operationally flawed elements; (b) does not result in the use of construction materials inferior in quality or appearance to those contemplated in the Final Plans; (c) does not result in an increase in the BOT Purchase Price; (d) does not increase operational costs, required man power or difficulty; (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule; and (f) is not objected to by the Owner within fourteen (14) days of receipt by the Owner of the Change Order Request.

Permitted Inspection shall mean an inspection by Owner of any item or component of the Project when reasonably deemed to be necessary or appropriate by Owner.

Preliminary Design Documents shall mean plans and specifications progressed sufficiently to enable the Developer to provide a proposed BOT Purchase Price.

Project shall mean the expansion of the existing water treatment plant and wellfield, to be constructed on the Project Site, as depicted in greater detail in the project description attached hereto as Exhibit A.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including, without limitation: (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied or will be waived by Developer and Owner; (c) the cost to construct the Project in accordance with the terms and conditions of this Agreement; (d) the Contingency.

Project Sites shall mean the areas of land where the construction of the water treatment plant will occur including the temporary easements obtained by the Owner.

Quitclaim Deed shall mean a quitclaim deed with completion certificate substantially in the form attached hereto as Exhibit C.

Required Permits shall mean all permits, approvals, and consents required by the Laws for the construction of the Project.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which Owner shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Substantial Completion Date shall mean the date, after the Final Inspection, on which (a) all Material Defects have been completed or corrected; (b) Developer delivers to Owner a copy of a certificate of substantial completion executed by the Engineer indicating that the Project, or an agreed-upon portion thereof, has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not adversely affect the use of the Project.

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, and other utility services.

2. General Obligations.

(a) **Project.** Subject to the terms and conditions of this Agreement: (i) Developer and Owner shall execute the BOT Agreement; (ii) Developer shall construct the Project on the Project Sites; (iii) Developer shall operate the Project for the duration of the Operating Period; (iv) Owner shall deposit funds in an amount equal to the BOT Purchase Price into escrow for distribution to pay the BOT Purchase Price after which time Developer shall convey to Owner the completed Project pursuant to the terms of this Agreement, which funds shall be provided from proceeds of the project financing to be issued by the Owner. The parties hereby agree that it is sufficient for purposes of escrowing the BOT Purchase Price if the proceeds of the project financing are held in a construction account with a financial institution for such purpose.

(b) **Site Access.** Owner shall execute the Easement Agreement in favor of Developer in order to allow for construction of the Project.

(c) **Utilities and resources.** Owner shall pay for all costs of the Utilities, chemicals, and consumables required to startup, commission and operate the new and existing facilities for the duration of the Project.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before March 20, 2025. The Closing Date shall be established mutually by Developer and Owner, and the Closing shall take place at such location as Developer and Owner mutually agree. Developer and Owner acknowledge that commencement of this Project is predicated upon Owner's ability to obtain adequate bond financing and that Closing shall not occur until

said bond financing is secured.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered.

- (a) the BOT Agreement.
- (b) the Easement Agreement.
- (c) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or Owner, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or Owner of its obligations hereunder and under the foregoing documents, have been authorized by Developer or Owner, as the case may be; and
- (d) such other customary documents and instruments as either party reasonably may request in connection with the Closing.

5. Conditions.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and Owner to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection. Developer and Owners further agree that they shall each bear their own costs to ensure that the Conditions are met prior to the Closing and to satisfy any obligations imposed upon them within this Section 5.

- i. Owner has obtained, or Developer and Owner are satisfied that Owner will be able to obtain, all Required Permits.
- ii. Owner has obtained, or Developer and Owner are satisfied that Owner will be able to obtain, all required easements.
- iii. Developer and Owner have agreed to the form and substance of each of the BOT Agreement and the Easement Agreement.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

- i. Developer has determined that no test, inspection, examination, study, investigation, or title search of or with respect to the Project Sites establishes that there are conditions that would interfere with, or prohibit, the construction of the Project in accordance with the terms and conditions of this Agreement.
- ii. Developer has verified it can obtain a Payment bond and a Performance bond for the Project as required by law and has obtained insurance coverage as required by this Agreement.
- iii. There is no continuing breach by Owner of this Agreement, and all of the representations and warranties of Owner set forth in Section 6 are true and accurate in all respects.
- iv. Developer is satisfied, in the exercise of its reasonable discretion, that the Owner has secured sufficient funding for the Project and is able to disburse funds required by the Developer as provided in Article 12. As herein before provided, the BOT Purchase Price will be funded through the proceeds of the project financing to be issued by the Owner.

(c) This contract terminates in the event that the owner is unable to obtain financing.

(d) Owner. In addition to the conditions set forth in Subsection 5(a), the obligation of Owner to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by Developer of this Agreement; (ii) all of the representations and warranties of Developer set forth in

Section 6 are true and accurate in all respects; (iii) Owner, at its discretion, has secured adequate funding for the Project.

(e) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 12. Notwithstanding anything to the contrary set forth herein, Developer and Owner shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations and Warranties.

- a) Each of Developer and Owner represents and warrants to the other that: (a) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (b) it has the power to enter into this Agreement and to perform its obligations hereunder; (c) it has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (d) this Agreement, once executed, is its legal, valid, and binding obligation. In addition to the foregoing: (a) Developer represents and warrants to Owner that it is a limited liability company organized and existing under the laws of the State of Indiana; and (b) Owner represents and warrants to Developer that: (i) to the best of its knowledge, there is not now, and there has not been, any contamination or pollution of the Project Sites or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, except as may be disclosed in any property information provided by Owner to Developer; and (ii) it is a public body organized and existing under the laws of the State of Indiana.
- b) Workmanship performed by Developer and its Contractors in connection with the construction of the Project shall be in accordance with the general standards of the municipal wastewater treatment industry; shall be performed in a competent, good, and workmanlike manner and in compliance with pertinent laws, rules and regulations, shall be free from defects in workmanship and materials and shall comply with the Final Plans. If the Developer fails to meet the foregoing construction standards, Developer will perform, at its own cost, and without reimbursement from the Owner, the work and services necessary to correct such defects and conditions, and which are reported to Developer within one (1) year from Substantial Completion.
- c) Notwithstanding any other provisions in this Agreement to the contrary, nothing herein contained shall be construed as:
 - i. Obligating the Developer to exercise professional skill and care different from that ordinarily provided by other developers under like circumstances; or
 - ii. An assumption by the Developer of liability greater than or differing from those explicit in this Agreement, or
 - iii. An assumption by the Developer of liabilities of any other party.
- d) To the fullest extent permitted by law, the total liability, in the aggregate, of Developer, Developer's officers, directors, partners, employees, agents, and sub-consultants to Developer, and anyone claiming by, through or under Developer for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to torts, negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the Indiana statutorily limits, if applicable, or the BOT Purchase Price, whichever is less.
- e) To the fullest extent permitted by law, the total liability, in the aggregate, of Owner, Owner's employees, agents, and elected officials and anyone claiming by, through or under Owner, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to torts, negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty shall not exceed any Indiana statutorily limits, if applicable, or the BOT Purchase Price, whichever is less.

- f) Notwithstanding anything in this agreement to the contrary, it is agreed that neither party shall be liable to the other in any event for any indirect, speculative, punitive, special, or consequential damages suffered by the other party arising out of the Project. Special or consequential damages as used herein shall include, but not be limited to, loss of capital, principal office expenses, loss of profit, loss of use on any system, or other property whether arising in contract, tort (including negligence), or strict liability.
- g) Developer also warrants the Project shall be free from any Material Defect for a period of one (1) year from the Substantial Completion Date. To the extent possible, Developer shall assign to the Owner all warranties that Developer receives from its vendors and Contractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.
- (g) Developer represents and warrants that:
 - (i) Non-Discrimination. As required by Law, Developer agrees: (a) that in the hiring of employees for the performance of the work under this Agreement, no Contractor, or subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall, by reason of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age, discriminate against any citizen who is qualified and available to perform the work to which the employment relates; (b) that no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of the work under this Agreement on account of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age; (c) that there may be deducted from the amount payable to Developer by Owner a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and (d) that this Agreement may be cancelled or terminated by Owner, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of Ind. Code 5-16-6-1.
 - (ii) E-Verify. The "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
 - (a) "Unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).
 - (b) As required by Ind. Code § 22-5-1.7, Developer shall enroll in and verify the work eligibility status of all newly hired employees of Developer through the E-Verify program, unless the E-Verify program no longer exists.
 - (c) Not later than the date of execution of the Agreement, Developer shall sign an affidavit affirming that Developer does not knowingly employ an unauthorized alien.
 - (d) Developer may not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Developer subsequently learns is an unauthorized alien.
 - (e) As required by Ind. Code § 22-5-1.7, Developer shall require the Contractors to certify to Developer that the Contractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and has enrolled and is participating in the E-Verify program. Developer shall maintain on file such certifications throughout the duration of the contract with the Contractors.

7. Not Used.

8. BOT Purchase Price and Costs.

A. BOT Purchase Price/Costs.

- a) The Developer has provided the GMP Report, which includes a BOT Purchase Price summarized and broken down by line item with an estimated cost per line item for the Work to the Owner, inclusive of all costs for labor, materials, subcontractors, equipment, and Contingency necessary to complete the Project per the Project Schedule and depicted by the Final Documents and Drawings.

B. Sales Tax.

- a) As soon as reasonably is practicable, Owner shall deliver the Sales Tax Exemption Form to Developer.
- b) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer (or the Contractors, pursuant to the terms and conditions of the Construction Contracts) promptly shall notify Owner in writing. From and after receipt of the foregoing notice, Owner shall provide such cooperation, information, and assistance as Developer and/or the Contractors reasonably shall request.
- c) Owner shall indemnify and hold harmless Developer, the Contractors, and the members, directors, officers, and employees of Developer and the Contractors, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials that become a permanent part of the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the nonpayment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials that become a permanent part of the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of Owner under this clause shall survive the termination of this Agreement.

C. Contingency.

- a) Contingency shall be available for Developer's exclusive use for unanticipated costs that are considered Project Costs but not the basis for a Change Order. By way of example, such costs may include: 1) material escalation; 2) overtime or acceleration; 3) correction of defective, damaged, or non-conforming work; 5) subcontractor defaults; 6) warranty repairs; or 7) Force Majeure events that exclusively result in changes to the Project Schedule.
- b) On a monthly basis, Developer shall provide the Owner an accounting of all anticipated charges against the Contingency, including all potential uses of the Contingency in the upcoming three (3) months. At the conclusion of the Project, any unused Contingency will be removed from the BOT Purchase Price via a deductive Change Order and returned to the Owner.
- c) If, after completion of the Work, the Project Costs (including contingency) do not exceed the BOT Purchase Price, the difference between the Project Costs (including contingency) and the BOT Purchase Price will be credited to the Owner in the final invoice(s).

9. Change Orders.

(a) **Developer Changes.** If Developer desires to make changes to the Final Plans, then Developer shall submit a Change Order Request to Owner for review and approval, together with an estimate of any increases to the BOT Purchase Price that would result from the change proposed in the Change Order Request. Within fourteen (14) days after Owner receives the Change Order Request, Owner shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that:

- (i) Owner shall not withhold its approval unreasonably.
- (ii) by way of example, and not limitation, it shall not be unreasonable for

Owner to reject a Change Order Request from Developer if the change proposed in the Change Order Request would result in: (A) use of construction materials inferior to those contemplated in the Final Plans; (B) a change in the Construction Schedule that would make it unlikely, impracticable, or impossible for Developer to complete the Project by the then-current date set forth therein; ; (C) an increase operational costs, required man power or difficulty or (D) an increase in the BOT Purchase Price.

(iii) if Owner approves a Change Order Request for a change that would result in an increase in the BOT Purchase Price (notwithstanding that, as provided above, Owner has the right to reject such Change Order Request), then, notwithstanding anything to the contrary set forth herein, the amount of such increase: (A) shall not be included in the BOT Purchase Price; and (B) instead, shall be paid by Owner as such costs are incurred.

If Owner rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that Owner is rejecting; and (ii) include the specific basis for such rejection. If Owner approves a Change Order Request, then Developer and Owner shall execute a Change Order.

(b) Owner Changes.

(i) If Owner desires to make any changes to the Final Plans, then Owner shall submit a Change Order Request to Developer for review and approval. Within five (5) business days after Developer receives the Change Order Request, Developer shall deliver to Owner written notice stating whether the change proposed in the Change Order Request would result in an increase in the BOT Purchase Price; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(ii) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the BOT Purchase Price, then, within five (5) business days after delivery of such notice, Developer shall deliver to Owner written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the BOT Purchase Price, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within fourteen (14) business days after receipt of such notice, Owner shall provide written notice to Developer as to whether Owner would like to withdraw the Change Order Request. If Owner does not elect to withdraw the Change Order Request, then, within five (5) additional business days, Developer shall deliver to Owner written notice that it approves or rejects the Change Order Request, provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request from Owner, then Developer and Owner shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the BOT Purchase Price, then, notwithstanding anything to the contrary set forth herein, the amount of such increase: (A) shall not be included in the BOT Purchase Price; and (B) instead, shall be paid by Owner as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer

shall not be required to obtain the approval of Owner with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

(d) Differing Site Conditions.

a. Concealed or latent physical conditions or subsurface conditions at the Project Sites that (i) materially differ from the conditions indicated in the Final Plans or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as “**Differing Site Conditions.**” If Developer encounters a Differing Site Condition, Contractor will be entitled to an adjustment in the BOT Purchase Price and/or Project Schedule to the extent Developer’s cost and/or time of performance are adversely impacted by the Differing Site Condition. Prior to proceeding with work to mitigate a Differing Site Condition or a situation which would require the Developer to incur additional cost, the Developer shall first notify the Owner in writing and receive written confirmation to proceed.

b. Upon encountering a Differing Site Condition, Developer shall provide prompt written notice to Owner of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. Developer shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

c. Hazardous Environmental Conditions or the demolition or relocating of existing buried utilities or facilities which are not identified during the design process or differ from the Final Plans in depth, type, service conditions or location shall constitute a Differing Site Condition.

d. Differing Site Conditions are, by definition, “unusual” and therefore the cost to mitigate them are not to be funded by the Developer’s contingency.

10. Construction.

(a) Permits. Prior to commencing construction of the Project, the Developer, and/or Engineer on behalf of the Owner, with the Owner’s cooperation and at the Owner’s cost and expense, shall obtain the Required Permits.

(b) Construction. Developer shall construct the Project and warrants to the Owner that such construction shall be: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits.

(c) Operating. Developer shall convey the completed Project, or completed portion thereof, to Owner upon the expiration of the Operating Period and otherwise in accordance with the terms and conditions of the BOT Agreement. The Parties expressly agree that additional demolition work on the existing facility may continue after the conclusion of the Operating Period.

(d) Records. Developer shall keep and maintain true, correct, accurate and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. Owner and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

(e) Safety. Developer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of its obligations under the Agreement and shall be in full compliance with all Laws. Developer shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees constructing the Project and other persons who may be affected thereby; (ii) the work and materials and equipment to be incorporated into the Project, whether in storage on or off the site, under care, custody or control of Developer or Developer’s Contractors; and (iii) other

property at the Project Sites adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Developer shall comply with and give notices required by applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss. Developer shall erect and maintain, as required by existing conditions and performance of its obligations under this Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. Developer shall promptly remedy damage and loss to the Project or adjacent property caused in whole or in part by Developer, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, except damage or loss attributable to the negligence or intentional misconduct of Owner.

(f) Liens and Claims. If any liens or claims are filed against all or any portion of the Project Sites or against the Owner for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such liens or claims to be released or discharged of record within thirty (30) days after notice of the filing by bonding or providing other adequate security therefor, as provided or required by the Laws.

11. Inspection.

(a) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, Owner or its Engineer may perform a Permitted Inspection. If applicable after a Permitted Inspection, Owner shall deliver a Non-Compliance Notice to Developer. Upon receipt of a Non-Compliance Notice, Developer shall correct or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice.

(b) Final Inspection. Developer shall deliver to Owner a written request for the Final Inspection of the Project at least five (5) business days prior to the anticipated Substantial Completion Date. On or before the date that is five (5) business days after receipt by Owner of such request, Owner or its Engineer shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon receipt of a Non-Compliance Notice, Developer shall correct or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 11(c); Owner shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five (5) business days after Owner conducts the Final Inspection, Developer and Owner shall identify the “punch-list” items. Developer shall complete all “punch-list” items within 60 days after the “punchlist” items are identified.

(c) Non-Compliance. If Owner delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section, then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or have been deemed to have been accepted, by Owner. If Developer fails to cure any item in a Non-Compliance Notice or any Material Defect identified in writing by the Owner, in each case, within forty-five (45) days of the receipt of such notice, then the Owner, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to a credit to the BOT Purchase Price for reasonable cost to remedy such defect. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by Owner.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by Owner pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) General.

- (i) In connection with any Inspection pursuant to this Section, Owner shall:
 - (A) comply with all health and safety rules of which Owner has been informed

that have been established for personnel present on the Project Sites; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, Owner during any Inspection.

(ii) An acceptance, or deemed acceptance, by Owner pursuant to this Section shall not mean that Owner has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

12. BOT Payment Disbursements. Owner shall disburse BOT Payments to Developer on a monthly basis upon Developer's request for the same. Any request for BOT Payment by Developer shall be accompanied by an itemized summary of the Work for which the requested BOT Payment is being applied including a description of the labor and material utilized by Developer for same and an itemization of those costs. Developer shall remit any and all additional documentation that Owner shall reasonably require in support of such request. BOT Payments will be based on percentage of work completed at the time the request is made. Developer anticipates submission of BOT Payment requests every month throughout the duration of the Project. Each monthly request shall be accompanied by conditional waivers of liens and claims from Developer and all Contractors and suppliers. The Owner shall pay all amounts owed within thirty (30) days of receipt of each BOT Payment request and retain five percent (5%) of the amount of each monthly BOT Payment until the Developer's disbursement request at the Substantial Completion Date. Such retainage shall be placed in an escrow account with interest to the benefit of the Developer. At the conclusion of the Project, the Developer will submit a final invoice for the Project along with a lien waiver from the Developer and additional lien waivers from all suppliers and Contractors. The BOT Payments shall be effectuated by the Owner through the disbursement of proceeds from the determined structure of financing.

13. Conveyance. Upon the expiration of the Operating Period, Developer shall convey the Project improvements to the Owner via the Quitclaim Deed.

14. Record and design documents. The Developer shall maintain record documents in good order, in a safe place at the Project Sites. At the conclusion of the construction, Developer shall deliver the Record Documents to the Owner and Engineer. All drawings, specifications and other documents and electronic data furnished by Developer to the Owner under this Agreement ("Work Product") are deemed to be instruments of service and Developer shall retain ownership and intellectual property interests therein.

15. Insurance and Bonds

- a) During construction of the Project, Developer shall maintain the policies of insurance at the stated coverages as indicated on the certificate attached hereto as Exhibit D. Each such policies shall be written by a company reasonably acceptable to Owner, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to Owner at least 30 days in advance. The policy of commercial general liability insurance required by this Section to be maintained by Developer shall name Owner and their Engineer as an additional insured and such coverage shall be primary and non-contributory. Developer shall deliver to Owner certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. From and after one (1) year following the end of the Operating Period, Developer shall have no obligation to maintain any policies of insurance with respect to the Project.
- b) Payment and performance bonds which are compliant with Indiana statutes and in an amount equal to the BOT Purchase Price shall be obtained by the Developer. Developer shall provide the bonds to Owner prior to commencement of any construction activities at the Project Sites.
- c) Prior to start of construction, the Developer shall purchase and maintain a builder's risk "all risk" insurance policy upon the project on a completed value basis, in the full amount of the full insurable replacement cost thereof. In the case of a builder's risk claim, the Developer shall pay for costs not covered because of the application of a policy deductible.

16. Default.

- (a) Events of Default. It shall be an "Event of Default" if either party fails to perform or

observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within fourteen (14) days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement, including that, during the continuance of any Event of Default by Developer, Owner may require Developer to assign to Owner all rights of Developer under the Construction Contracts so that Owner is able to complete the Project; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, attorneys' fees and court costs), together with interest at the rate of 12% per annum.

(c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

17. Indemnification.

(a) Developer. To the fullest extent permitted by law, Developer shall indemnify, defend, and hold harmless Owner from and against any and all Claims arising from or connected with: (i) mechanics' liens or claims filed against the Owner, the Project or the Project Sites for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Sites by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Sites but only to the extent caused by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(b) Owner. To the fullest extent permitted by law, Owner shall indemnify, defend, and hold harmless Developer from and against any and all Claims arising from or connected with: (i) any Hazardous Environmental Condition existing at the Project Sites; (ii) the negligence or willful misconduct of Owner or any party, excluding Developer and its subcontractors, acting by, under, through, or on behalf of Owner; or (iii) the breach by Owner of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the completion of the Project or termination of this Agreement.

18. Dispute Resolution

In the event a dispute arises among the parties, the disputing party shall provide the other party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving

party shall submit to the other a written response.

The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high-level executive officer to work together in good faith to resolve the dispute; the name and title of said officer shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they deem reasonably necessary to resolve the dispute. If the executives, having acted in good faith, have not resolved the dispute within ninety (90) days of receipt of the initial written notice, then the parties shall try to resolve the dispute by non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules as a condition precedent to litigation. All costs attributed to mediation shall be borne equally by both parties. If either party is unsatisfied with the results of mediation, said party may then initiate litigation. The parties agree that any litigation will take place in the county where the project is located. The parties further agree to waive trial by jury and agree to toll any applicable statutes of limitation periods, which shall begin to run on the date immediately following unsuccessful mediation.

19. Assignment. Neither Owner nor Developer shall assign this Agreement without the prior written consent of the other party. Notwithstanding any assignment permitted under this Section, Developer or Owner, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Developer or Owner, as the case may be, from such performance.

20. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows:

Town of Jamestown
Attn: Clerk Treasurer and
Council President
421 E. Main Street, PO Box 165
Jamestown, IN 46147
clerk@townofjamestown.in.gov
council2@townofjamestown.in.gov
(765) 676-6331

Reynolds Construction, LLC
Attn: Scott Huber
12220 North Meridian, Suite 175
Carmel, IN 46032
scott.huber@reynoldscon.com
812-791-2879

Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

21. Authority. Each undersigned person executing this Agreement on behalf of Developer and Owner represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and Owner, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and Owner, respectively.

22. Delays. Notwithstanding anything to the contrary set forth herein, if the Developer is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of the act, negligence, delay, or default of the Owner or by any Force Majeure event; then: (a) the Developer shall promptly deliver written notice to the Owner; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. If Developer is delayed exclusively by actions or inactions of the Owner or its agents or employees, the Owner shall be required to reimburse Developer for its additional costs incurred as a result of such delay. Notwithstanding anything in this Agreement to the contrary, approval by the Indiana Department of Environmental Management of the Preliminary Engineering Report for the Project shall not be considered an event of Force Majeure and shall not be considered an event of delay which would permit the Developer to utilize funds from the Contingency.

23. Financing Documents Controlling. In the event of any conflict with the terms of this Agreement and the terms of the documents authorizing and securing the project financing, such as the ordinance authorizing the project financing, the project financing purchase agreement, the terms of the project financing documents shall be deemed to control in all events solely for the purpose of ensuring the security provided to the holders of the project financing

shall not be adversely affected by any such conflicting provisions. It is understood that the Owner is pursuing final financing through Residential Housing Infrastructure Assistance Program and the associated Residential Infrastructure Fund (RIF), which is administered by the Indiana Finance Authority (IFA) and as such the Developer agrees to comply with any requirements imposed by the State of Indiana, the IFA, or RIF and provide any and all documents required by the State of Indiana, the IFA, or RIF. The Developer will complete all forms, paperwork and provide all documentation required by the State of Indiana, the IFA, or RIF.

24. Miscellaneous. Subject to Section 19, this Agreement shall inure to the benefit of, and be binding upon, Developer and Owner, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and Owner with respect to the subject matter hereof and may be modified only by a written agreement signed by both Developer and Owner. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

25. BOT Statute. This Agreement is intended to be a “public-private agreement” authorized by Indiana Code §5-23. If and to the extent this Agreement is not such a “public-private agreement”, then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a “public-private agreement”.

26. Investment Activities with Iran. Developer represents that it is not engaged in investment activities with Iran as prohibited by Ind. Code § 5-22-16.5-8 and that it is not on the list published and/or endorsed by the State of Indiana pursuant to Ind. Code § 5-22-16.5-9 as a company engaged in investment activities with Iran. Developer agrees to sign and return the Certification Regarding Investment Activities in Iran contemporaneously with the execution of this Agreement, as required by Indiana Law.

27. Independent Contractor. Developer shall perform its duties hereunder as an independent contractor and not as an employee of Owner. Neither Developer nor any agent or employee of Developer shall be or shall be deemed to be an agent or employee of Owner. Developer shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Agreement. Developer acknowledges that Developer and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Developer shall have no authorization, express or implied, to bind Owner to any agreements, liability, or understanding except as expressly set forth herein. Developer shall be solely responsible for the acts of Developer, its employees, and agents.

{Signature page follows}

IN WITNESS WHEREOF, Developer and Owner have executed this Project Agreement as of the date set forth above.

Reynolds Construction, LLC

By: _____

Printed: _____

Title: _____

Date: _____

Town of Jamestown

By: _____

Printed: _____

Title: _____

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of _____, who having been duly sworn acknowledged the execution of the foregoing Build-Operate-Transfer Project Agreement for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 20__.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

INDEX TO EXHIBITS

Exhibit A	Project Description/Scope
Exhibit B	GMP Report
Exhibit C	Quitclaim Deed and Completion Certificate
Exhibit D	Developer Insurance Certificate
Exhibit E	N/A
Exhibit F	Escrow Agreement

EXHIBIT A
PROJECT DESCRIPTION

The project includes a new SBR treatment tank & associated equipment, new SBR influent and effluent, and sludge valve vaults, retrofitting the existing aerated holding tank to an aerobic digester (to match the existing digester), converting the existing sludge holding tank to a post-SBR equalization/post-aeration tank with new diffused aeration, two (2) new effluent pumps, new digested sludge pump & relocation of the existing digested sludge pump, site work & yard piping, updated electrical & controls improvements, and all other incidental work necessary for construction of the project as described in the project documents.

EXHIBIT B
GMP REPORT

SEE ATTACHED

EXHIBIT B-1
GMP SCHEDULE OF VALUES

SEE ATTACHED

EXHIBIT C
QUITCLAIM DEED AND COMPLETION CERTIFICATE

This Quitclaim Deed and Completion Certificate (the "Deed/Certificate") is executed by and between Reynolds Construction (the "Grantor") and the Town of Jamestown (the "Grantee") this ____ day of _____, 2026.

Recitals

WHEREAS, Grantor and Grantee have executed that certain Build-Operate-Transfer Agreement (the "BOT Agreement") dated _____, 2025.

WHEREAS, pursuant to the BOT Agreement, Grantor is obligated to construct certain improvements (the "Project") on that certain real estate more particularly described on Exhibit A (the "Project Site");

WHEREAS, pursuant to the BOT Agreement, upon the expiration of the Operating Period, Grantor is obligated to convey to Grantee its right, title, and interest in and to the completed Project; and

WHEREAS, the Operating Period has expired as to the Project or a discrete portion thereof.

Quitclaim and Certificate

- 1. Substantial Completion.** Grantor and Grantee agree that the Substantial Completion Date occurred on _____, 2025.
- 2. Conveyance.** For the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Grantor QUITCLAIMS to Grantee all of its right, title, and interest in and to the completed Project, as more particularly described in Exhibit A, attached hereto and incorporated herein.

Legal Description or other Identification

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed/Certification as of the date set forth above.

Reynolds Construction

By: _____

Printed: _____

Title: Vice President

ACKNOWLEDGMENT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared **Scott Huber of Reynolds Construction**, who acknowledged the execution of the foregoing Quitclaim Deed and Completion Certificate on behalf of such entity.

WITNESS my hand and Notarial Seal this day of _____

By:

Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____

Executed and Delivered in my presence:

_____ [Witness Signature]

Legal Description or other Identification

Town of Jamestown

By:_____

Printed:_____

Title: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of the Town of Jamestown, who acknowledged the execution of the foregoing Quitclaim Deed and Completion Certificate on behalf of such entity.

WITNESS my hand and Notarial Seal this day of _____

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____.

Return following recording to: the Town of Jamestown, Indiana.

EXHIBIT D
DEVELOPER INSURANCE CERTIFICATE

SEE ATTACHED

EXHIBIT E

N/A

EXHIBIT F
ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“Agreement”) made and entered into this ____ day of _____, 2025, by and between the Town of Jamestown (herein called Owner), Reynolds Construction, LLC (herein called Developer), and CIBC US as Escrow Agent, (herein called Escrow Agent) witnesseth:

WHEREAS Owner and Developer entered into a Public Private Agreement dated _____, 2025, providing for the construction of the Jamestown WWTP improvements in accordance with contract documents, for the Town of Jamestown and subject to the provisions of IC 36-1-12-14; and

WHEREAS, said agreement provides that a portion of the payments by Owner to the Developer shall be retained by Owner (herein called Retainage) and

WHEREAS all retainage shall be deposited in an Escrow Account.

NOW, THEREFORE, it is agreed as follows:

1. The Owner will hereafter deliver or cause to be delivered to the Escrow Agent that portion of the Retainage to be placed in escrow, to be held in escrow in accordance with the terms of this Agreement.
2. The Escrow Agent will promptly invest this Retainage in such obligations as selected by the Escrow Agent at its discretion. All income earned on such funds shall be added to and become a part of the escrowed principal.
3. The Escrow Agent shall pay over the net sum held by it hereunder as follows:
 - a. In the manner directed by the joint written authorization of the Owner and Developer.
 - b. In the absence of such a joint written authorization, upon receipt from the Owner of a written notice pursuant to Article 22 of the General Conditions showing that the Owner has terminated the Contract with the Developer, then the Escrow Agent shall pay over to the Owner the net sum held by it hereunder.
 - c. In the absence of such a joint written authorization and in the absence of the termination of the Contract with the Developer as provided in b., above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.
4. This Escrow Agreement shall constitute the direction from the Owner and Developer to the Escrow Agent of the manner in which the Retainage is to be paid by the Escrow Agent, pursuant to IC 36-1-12-14.
5. The Escrow Agent shall deduct, before any payment from the amounts received hereunder, its fee as Escrow Agent, which fee shall be payable from the income earned by the retainage and which escrow fee shall in no event exceed fifty percent (50%) of said income earned.

6. This Agreement and anything done or performed hereunder by either the Developer or Owner shall not be constructed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.

7. This instrument constitutes the entire Agreement between the parties regarding duties of the Escrow Agent with respect to the investment and payment of escrow funds; the Escrow Agent is not liable to the Owner and Developer for any loss or damages other than by its own negligence or willful misconduct.

Developer: Reynolds Construction LLC

Owner: Town of Jamestown

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

12220 N. Meridian Street, Suite 175
Carmel, IN, 46032

Escrow Agent:
CIBC US
120 LaSalle Street
Chicago, IL 60603

Routing No. _____

Account No. _____