CITY OF COFFEYVILLE **BOARD OF COMMISSIONERS AGENDA ITEM**		
MEETING DATE	November 10, 2015	
RESOLUTION OR ORDINANCE NUMBER	R-15-142	
AGENDA TITLE	**A RESOLUTION TO APPROVE AN ENGAGEMENT LETTER WITH ALLEN, GIBBS & HOULIK, LC FOR CONSULTING SERVICES RELATED TO SALES AND USE TAX FOR THE NEW GENERATION PROJECT IN THE AMOUNT NOT TO EXCEED $15,000.**	
REQUESTING DEPARTMENT	Finance Department	
PRESENTER	Stephanie A. Richardson, Finance Director	
FISCAL INFORMATION	Cost as recommended:	Not to exceed $15,000
	Budget Line Item:	890-5-030-478 New Generation Bond Proceeds
	Balance Available	
	New Appropriation Required:	[X] Yes [ ] No
PURPOSE	To assist in the determination of the proper sales and use taxability of services and/or materials purchased related to the construction of the New Generation Project.	

BACKGROUND	Staff recently consulted the Kansas Department of Revenue (KDOR) for assistance in determining the sales and use tax application for purchases related to the New Generation Project. Discussions between the City, KDOR and Burns and McDonnell still leave some items in question pertaining to the taxability of certain services and materials. KDOR staff indicated portions of the project will be taxable while Burns & McDonnell have differing opinions based on tax treatments used on other projects completed in Kansas, including previously litigated tax issues within the State of Kansas. As a result, Burns & McDonnell recommended we consult with a tax attorney or CPA to assist the city by providing recommendations on the taxability of certain services and/or materials. Burns & McDonnell recommended Larry Arnold, Senior Tax Manager with Allen, Gibbs & Houlik, L.C. as they have worked with Mr. Arnold on other similar projects.
SPECIAL NOTES	
ANALYSIS	Staff contacted Mr. Arnold and he has provided the attached Engagement Letter outlining their role in offering tax advice related to this project. Mr. Arnold provides these services for other clients in the power generation industry in Kansas as well as around the country. The firm is offering their services at their discounted fee schedule for the Kansas power generation industry. Based on our preliminary discussions they estimate the fee to not exceed $15,000, while offering significant value in regards to sales and use tax payments.
PUBLIC INFORMATION PROCESS	N/A
BOARD OR COMMISSION RECOMMENDATION	N/A
STAFF RECOMMENDATION	Staff recommends approval of the resolution.
REFERENCE DOCUMENTS ATTACHED	AGH Engagement Letter

RESOLUTION NO. R-15-142

A RESOLUTION TO AUTHORIZE THE EXECUTION OF AN ENGAGEMENT LETTER WITH ALLEN, GIBBS & HOULIK, L.C. FOR SALES AND USE TAX CONSULTING SERVICES.

Whereas, the Board of Commissioners of the City of Coffeyville approved the construction of the Coffeyville Municipal Light & Power Generation Facility #2; and

Whereas, one of the City's goals is to develop and implement plans, policies and practices to ensure the good stewardship of public funds, and

Whereas, contracting with a Sales and Use Tax Consultant will assist in determining the proper sales and use taxability of services and/or material purchased related to the construction of the Generation Facility #2, and

Whereas, Allen, Gibbs & Houlik. L.C. is qualified to provide services requested in the areas of Sales and Use Tax and Public Finance;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and City Clerk are hereby authorized to execute a contract with Allen, Gibbs & Houlik, L.C. for Sales and Use Tax Consulting services.

Adopted this 10th day of November 2015.

_____
Christopher V. Williams, Mayor

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

AGH
CPAs & ADVISORS

October 30, 2015

Ms. Stephanie A. Richardson
Finance Director
City of Coffeyville
PO Box 1629
Coffeyville, KS 67337

Dear Stephanie:

Thank you for inviting Allen, Gibbs & Houlik, L.C. to propose on providing state and local tax services for the City of Coffeyville. We are excited about the prospect of serving your City's needs. This engagement letter has been prepared in an effort to demonstrate our firm's in-depth resources and extensive experience in providing state and local tax services.

SCOPE-STATE AND LOCAL TAX SERVICES

The purpose of this letter is to explain our understanding of the arrangement for the sales and use tax consulting services that Allen, Gibbs & Houlik, L.C. (AGH) is to perform for the City of Coffeyville (Client). Please confirm this understanding by signing below.

We anticipate the scope of our services to include general sales and use tax consulting services related to the construction of the "Generation Facility 2" project.

The undersigned Client hereby authorizes Allen, Gibbs & Houlik, L.C. (AGH) to examine the Client's records and operations in order to determine the proper sales or use taxability of services and / or property purchased related to the construction of the Generation Facility 2. Additionally, Client authorizes AGH to review, exchange and discuss information related to the construction of the Generation Facility 2 project with personnel from Burns & McDonnell.

The information generated by this engagement or contained in any reports and any subsequent information that we provide concerning the subject matter of the report is confidential and is for the sole use of the Client. The Client agrees to keep the contents of this report confidential and agrees not to disclose the contents of the report to any third party without the express written consent of Allen, Gibbs & Houlik, L.C. Allen, Gibbs & Houlik, L.C. views the contents of this report as proprietary business information, the disclosure of which would adversely affect our ability to perform similar services.

FEES, EXPENSES AND TIMING

We believe this project will produce significant current value for Client. We estimate our fees for providing sales and use tax consulting services for the construction of the Generation Facility 2 project to range from **$7,500 to $15,000**.

AGH will provide Client with an update as to the status of the hours / fees necessary to complete the project when the project is 50% complete. If our estimated hours and fees are expected to be less than the estimated range provided above, we will bill Client the lower amount. Conversely, if our estimated hours and fees are expected to be more than the range provided above, we will provide Client with a written estimate of the additional costs to complete the project and will bill accordingly.

This engagement letter and all associated fees have been prepared using our long-standing discount provided to the Kansas power generation industry.

Fees for other services will be estimated and agreed upon prior to the start of services and will be included under a separate engagement letter.

All out-of-pocket or project related direct expenses (travel, meals, lodging, special data reports, graphics, audiovisual production, report production, computer or word processing, special postage, etc.) will be charged separately. These typically do not exceed 7% of total professional fees. General administrative costs (telephone calls, normal typing, regular mail, etc.) are included in our fee estimate, but fees and expenses for any additional work are not.

Fees for other services will be estimated and agreed upon prior to the start of services and will be included under a separate engagement letter. Our fee for these services will be based on our standard consulting per diem rates and the time required, plus expenses.

Invoices not paid within 30 days will be charged a service fee of 1½% per month. Also, if additional information is submitted to us after processing a return which results in reprocessing, there will be additional costs for the reprocessing.

In the event we are requested or authorized by you or are required by government regulation, subpoena or other legal process to produce our documents or our personnel as witnesses with respect to this arrangement, you will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

CONDITIONS AND LIMITATIONS

To assist you in understanding the scope of our services and other matters related to our engagement, please see the "Allen, Gibbs & Houlik, L.C. Terms, Conditions and Limitations for Tax Services" located at www.aghlc.com/tax/terms. Our state and local tax research and consulting services and other AGH tax services are expressly subject to these conditions and limitations, and by signing below you will be agreeing to them.

CONCLUSION

If this letter accurately describes the arrangement for our services to you, please sign the enclosed copy of this letter and return it to us.

We appreciate the opportunity to work with the City of Coffeyville on this project. If you have any questions or wish to discuss this further, please do not hesitate to call me at (785) 691-5297.

Respectfully,

ALLEN, GIBBS & HOULIK, L.C.

P. Larry Arnold

By:

P. Larry Arnold
Senior Tax Manager
State & Local Taxation

PLA: me

Acceptance: Your signature below confirms your understanding that our services will be subject to the current *Allen, Gibbs & Houlik, L.C. Terms, Conditions and Limitations for Tax Services* and the *Allen, Gibbs & Houlik, L.C. Reportable Transaction Disclosure Requirements* in effect when you sign your return, which are located at www.aghlc.com/tax/terms. You may contact AGH to request a printed copy.

Signature	Date
Printed Name	Title

Allen, Gibbs & Houlik, L.C.
CPAs & Advisors

Terms, Conditions and Limitations for Tax and Other Services

In the course of delivering services relating to tax return preparation, tax advice, and assistance in tax controversy matters, Allen, Gibbs & Houlik, L.C. and its affiliates ("we" or "us" or "AGH") applies customary practices intended to provide these services in a cost-effective manner. This document describes certain of these customary practices, as well as other standard terms, conditions, and limitations relating to our provision of tax services. Except to the extent we expressly agree in a written instrument signed by our authorized representative that specifically refers to a specific engagement , all services that we provide to any client or third party ("you") relating to tax return preparation, tax consultation and advice, representation in any tax controversy matter, any other Federal, state, local, or foreign tax matter, or any other service as defined in Section 4, are subject to the following terms, conditions, and limitations (these "Terms"). References to the "Arrangement Letter" mean the letter or other document describing the scope of our services and the associated fee arrangement to which these Terms are attached. References to the "Code" mean the Internal Revenue Code of 1986, as amended.

1. Terms Regarding Tax Return Preparation

1.1 Scope of Return Preparation Services. Our services in preparing your tax returns are limited to tax return preparation, and our preparation of a return should not be viewed as assurance that any particular reported position is correct. If we become aware of a return position for which we believe a penalty under the Code is likely to apply, we will bring that position to your attention. If you would like us to advise you concerning any specific matter on your tax return, please contact us to discuss expanding the scope of our services. Any Tax Advice rendered in connection with the preparation of any tax return is subject to the provisions described under "Terms Regarding Tax Advice" below.

1.1.1 Scope of Services – Miscellaneous Income Tax Consultation Services. Our services in providing miscellaneous income tax consultation services are limited to responding to your specific inquiries about your income tax matters, using information about your income and deductions furnished by you. It is understood that if you need income tax projection or tax planning services or if you have questions about tax matters other than income taxes (including sales tax, use tax, property tax, alternative minimum tax, excise tax, or other non-income taxes), such additional services would constitute a separate engagement at an additional cost.

1.1.2 Scope of Services – Basis Tracking Services. Partners in partnerships and shareholders in S Corporations are required to track the basis of their individual interests in those entities. Such tracking is beyond the scope of our normal return preparation services. If such tracking is requested it will be a separate service subject to additional cost.

1.1.3 Scope of Services – Tax Advisory and Tax Controversy Services. Our services in providing pre-transaction advice or advice in connection with federal, state or international tax controversies, including examinations by the IRS or other tax authorities, shall be limited to responding to inquiries based upon facts and assumptions provided by you and to representations made by you. These services are considered separate engagements that are provided at an additional cost to you.

1.2 Reliance on Information. We will not investigate or verify any facts underlying the transactions reported on your tax return, but we will rely on the financial statements or other financial information that you provide us and the financial information that we receive in connection with any attest services as provided in paragraph 3.8. If the actual facts are different from the facts represented to or understood by us, or if there are other facts of which we are not aware, the reporting of the transactions could be materially different than that reported on the returns prepared by us. We have the absolute right to rely on information provided by you.

1.3 Your Responsibility for Accuracy. We will exercise due professional care and judgment to include all required information in your tax returns, but you are ultimately responsible for your tax returns. The Code provides that by signing or authorizing the electronic filing of your returns, you are verifying that they are true, correct and complete. Accordingly, you should review each tax return carefully before signing the return or any e-filing authorization, and bring any questionable items or omissions to our attention.

1.4 Jurisdictions for Returns. We will prepare tax returns for those Federal, state, local, and foreign jurisdictions requested by you in writing. We are not responsible for making other filings, including but not limited to those related to international filings or state credits, or providing services related to transfer pricing issues (international and multistate) unless specifically requested to do so. These services are beyond the scope of normal tax return preparation and will result in additional fees. We will advise you if we believe, based on the information that you provide us, that a tax return should be filed in any other jurisdiction, but we will not prepare any such tax return without your approval of the expansion of our scope of services.

1.5 Level of Assurance and Return Disclosures. The Code prohibits tax preparers from signing any tax return known to report any position (i) that is not supported by "substantial authority" unless certain disclosures are made concerning the position or (ii) attributable to certain "tax shelters" or "reportable

transactions" that the preparer does not reasonably believe is more likely than not correct. Because of the limited scope of analysis in evaluating a reporting position, a conclusion that disclosure is not required to enable us to sign a return may not be sufficient to avoid the application of tax penalties under the Code. Except as expressly provided in the engagement letter, we will not review any reporting position or perform any tax research for the purpose of either (i) determining whether a position can be reported without disclosure or (ii) determining whether tax penalties may apply. If you wish to report a position without disclosure on the return, or if you are concerned about the potential application of tax penalties, please contact us to discuss expanding the scope of our services to include rendering Tax Advice that may address your concerns.

1.6 Disclosure of Transactions and Other Financial Information. The Code and certain state laws require that you disclose on or with your tax return certain transactions or other financial information. There are significant financial penalties for failure to disclose these matters, and these penalties may apply even if there is no understatement of tax. Our tax return preparation services do not include any separate investigation to evaluate whether there are any transactions or other matters that must be disclosed on your returns, but we will advise you if we conclude that any such disclosure is required. If you would like us to specifically review any matter to evaluate whether specific reporting is required please contact us to discuss expanding the scope of our services.

1.7 GAAP Differences. Tax return preparation services do not constitute accounting or auditing services and are not designed to disclose defalcations or other irregularities, should any exist. Conversely, financial statement audits and reviews are not designed or intended to examine or address every potential income or franchise tax issue. In addition, certain potential adjustments that are deemed immaterial for financial statement reporting purposes may be required for tax reporting purposes. Please contact us if you would like us to review any specific financial statement items for compliance with applicable tax laws.

2. Terms Regarding Tax Advice

2.1 Limitations on Oral and Email Communication. We may discuss with you our views regarding the tax treatment of certain items. We may also provide you with tax information in the body of an email. Any advice or information delivered orally or in the body of an email (as opposed to a memorandum delivered as an email attachment) will be based upon limited tax research and a limited discussion and analysis of the underlying facts. Additional research or a more complete review of the facts could affect our analysis and conclusions. Because of these limitations and the related risks, it may not be appropriate to proceed with any transaction or any tax return reporting solely on the basis of any oral or email communication. You accept all responsibility for any loss, cost, or expense resulting from your decision (i) not to have us perform the research and analysis necessary to reach a more definitive conclusion and (ii) to instead rely on an oral or email communication. The limitation in this paragraph will not apply to an item of written Tax Advice that is delivered to you as a document attached to an email.

2.2 Facts and Assumptions. Our investigation to confirm or verify any facts described in any letter, memorandum, or opinion addressing the application of tax laws to a particular situation ("Tax Advice"), will be limited to the investigation described in the body of the Tax Advice, and we will rely on the assumptions and representations described in the Tax Advice. Any change in or addition to these facts, assumptions, or representations could materially and adversely affect our analysis and conclusions. If you for any reason believe that any facts, assumptions, or representations in any Tax Advice are incorrect or incomplete, you must notify us immediately to discuss the impact on our analysis and conclusions. You should not rely upon any item of Tax Advice that is based on facts, assumptions, or representations that you believe to be incorrect or incomplete.

2.3 Applicable Law. Unless expressly stated in our Tax Advice, our analysis and conclusions will relate solely to Federal income tax consequences under the Code as of the date of our Tax Advice. If you would like us to address tax consequences to you under any other applicable state, local, or foreign tax law, please contact us to discuss expanding the scope of our services.

2.4 Issues Addressed. Each item of Tax Advice will be limited to advice concerning the tax issues described in the Tax Advice, and it may not consider all of the issues that may arise in connection with the subject matter of the advice. Our analysis and conclusions are limited to discussing the tax consequences to the addressee(s) arising from the transactions described in that Tax Advice. It is possible that there may be alternative transaction structures that offer more favorable tax consequences. Except as expressly stated in an item of Tax Advice, our advice is not an endorsement of any particular transaction structure or accounting method, nor is it a recommendation that any addressee proceed with any transaction or other matter described in the Tax Advice.

2.5 Reportable Transactions and Other Disclosures. The Code and certain state laws require that you disclose on your tax return certain transactions or other matters. There are significant financial penalties for failure to disclose these matters, and these penalties may apply even if there is no understatement of tax. We will not review any transaction or matter to determine whether reporting is required except as

expressly provided in the Tax Advice. If you would like us to review any transaction or matter to determine whether it must be separately reported please contact us to discuss expanding the scope of our services.

2.6 Level of Assurance for Tax Advice; No Guarantee. Many areas of tax law are unclear and the application of the tax law to any particular facts may be subject to more than one interpretation. Our Tax Advice will be based upon our interpretation of applicable law and regulations, and certain case and ruling authority as of the date of the Tax Advice. The level of assurance for any particular item of Tax Advice will depend on the underlying facts, the clarity of applicable law, regulations, rulings, and court cases, and the extent of factual due diligence and tax research performed. The conclusions in our Tax Advice will be based on our good faith belief that they meet the level of assurance stated in the Tax Advice. Obtaining Tax Advice at a particular level of assurance may in some cases provide a defense to certain tax penalties, but you should not assume that an item of Tax Advice will offer you protection from penalties except as expressly stated in the Tax Advice.

Our analysis and conclusions will be based upon our professional judgment, will not be a guarantee of the ultimate tax consequences of the transactions described in the Tax Advice, and will not be binding on the IRS, any state, local, or foreign tax authority, or any court. If you would like greater certainty regarding the tax treatment of any particular transaction, please contact us to discuss the possibility of obtaining a ruling from the appropriate tax authority.

2.7 Reliance and Distribution. Each item of Tax Advice is rendered only for the benefit of the named addressee(s), and does not address the tax consequences to any other person or entity that is not an addressee. No person or entity other than the named addressee(s) may rely on the Tax Advice. To avoid confusion regarding matters of reliance, our Tax Advice may not be delivered to any other party unless you advise the recipient of these limitations on reliance. Unless expressly provided in an item of Tax Advice but subject to the limitation in the preceding sentence, you are free to share the Tax Advice with any third party. You may deliver a copy of any Tax Advice to the IRS or any state, local, or foreign tax authority for the purpose of demonstrating good faith and reliance on the analysis and conclusions expressed therein. You should be aware that the delivery of any item of Tax Advice to a third party may act as a waiver of any otherwise available claim of privilege. Before delivering an item of Tax Advice to a third party, we recommend that you consult with legal counsel to assess the matters relating to claims of privilege.

3. Terms Applicable to All Tax Services

3.1 Scope of Services. Our services will be limited to the services specifically described in our Arrangement Letter. Services in providing Tax Advice or in preparing a tax return do not include representation in the event of an examination by the IRS or other tax authorities. If you need tax services beyond those specifically described in our Arrangement Letter, these additional services would constitute either a separate engagement or an expansion of an existing engagement at an additional cost. Our agreement to provide services for one engagement does not obligate us to accept any other engagement.

3.2 Your Responsibilities. In order for us to provide effective services, you must cooperate with us and provide us with any information that we request, all on a timely basis. You must cause your employees and contractors to cooperate fully and timely with us. You must designate for us a person authorized to make or obtain all management decisions with respect to our services on a timely basis. We will rely in good faith on all information and management decisions communicated to us by you, your employees, or your contractors, and we will not be responsible for any loss or other obligation arising from our reliance. Any failure to fulfill your responsibilities will be grounds for our suspending or terminating our services.

3.3 Tax Strategy Patents. In the past, the U.S. Patent and Trademark Office has issued business method patents for certain tax planning strategies. Federal legislation in 2011 precluded future tax strategy patents, but did not terminate previously issued tax strategy patents. The validity of these previously issued patents and the coverage of any patent claims, involves legal interpretations and judgments concerning U.S. patent law, rather than professional judgment concerning the Code. Accordingly, we cannot advise you concerning the applicability of any tax strategy patents. If during the course of our providing tax services to you under the Arrangement Letter we actually become aware that the owner of any tax strategy patent is likely to assert that the patent extends to any of your tax planning or tax reporting positions, we will bring this to your attention so that you can seek legal counsel. However, we will not conduct separate due diligence procedures to identify potentially applicable tax strategy patents.

3.4 Reliance on Oral Information. From time to time, you may provide information or instructions to AGH orally. AGH will attempt to use such information as understood by them to provide the required service and may record their understanding of the verbal information or instructions in their work files. In the event of a dispute arising out of such verbal communications, the client agrees AGH's recording of the communication or

application of their understanding of the communication to the service rendered shall be considered accurate and conclusive.

3.5 Decisions. While we will provide you with advice concerning tax return reporting and the tax consequences of certain transactions, you will retain all authority and responsibility for any decisions based on our advice.

3.6 Independent Contractor. For all tax services that we perform, we will be an independent contractor and not your employee, agent, or partner, and we will determine the method, details and means of performing our services. We assume full and sole responsibility for the payment of all compensation and expenses of our employees and for all of their applicable employee withholdings.

3.7 Confidentiality. We will maintain the confidentiality of your Confidential Information. We may disclose your Confidential Information to our employees and third-party contractors as necessary to provide our services, including without limitation the disclosures authorized by paragraph 3.9. Without limiting the foregoing, we may in certain circumstances disclose your Confidential Information to software vendors for the purpose of obtaining technical support in the course of providing services to you, but it is our policy to require these vendors to maintain the confidentiality of Confidential Information disclosed to them. We may also disclose Confidential Information if required by a court or governmental agency, but we will use commercially reasonable efforts to inform you prior to disclosure. By agreeing to the Arrangement Letter, you specifically authorize the disclosures described in this paragraph.

To protect your Confidential Information, you agree that you will not disclose any Confidential Information to us except as we request or as necessary for us to provide our services.

In certain circumstances, information that you disclose to us could be the subject of a claim of privilege, but you must generally assert and maintain the privilege claim. You should contact your legal counsel if you have questions concerning the availability of any privilege or how and whether to assert a privilege.

We will use reasonable precautions to protect your Confidential Information, but we have no obligation to employ any measures that you do not regularly employ in protecting your Confidential Information. Except as provided in the following sentence, "Confidential Information" means (i) information contained in your internal financial and business records, (ii) information reported on your tax returns, and (iii) other information concerning you or your business that is marked "confidential" or otherwise identified as "confidential" in writing at the time of disclosure. Confidential Information does not include information (i) that is or becomes publicly available or generally known to persons in your industry without breach of our obligations under this section, or (ii) received by us after the termination of the Arrangement Letter.

A majority of our clients choose to communicate with us by email, and we will use email unless a client directs otherwise. Because email is not secure, it may not be an appropriate means for sending certain confidential or sensitive data. If you are concerned about the security of particular information, please contact us to discuss alternative arrangements.

3.8 Accounting and Attest Services. If you engage us to provide you with audit, review, compilation or other accounting and attest services, (1) we may use and rely on information that we obtain in such an engagement in performing any tax services to which these Terms relate and (2) you authorize us to use any information we receive in providing tax services in performing our audit, review, compilation or other accounting or attest services. Financial statement audits and reviews are not designed or intended to examine or address every potential income or franchise tax issue and our performance of any audit, review, compilation or other accounting or attest services does not affect our right to rely on information as provided in paragraphs 1.2, 2.2 and 3.2.

3.9 Engagement of Other Parties. Depending upon the circumstances, we may engage the services of other domestic tax preparers, including seasonal preparers, independent contractors and other third party personnel. By engaging us, you have authorized us to allow such third parties access to your files, financial information and other confidential information subject to the provisions of paragraph 3.7. If we use a third party service provider we will endeavor to use reliable service providers; however, it is understood that AGH shall not be responsible for any confidential information breaches, error or omissions committed by third party service providers.

3.10 Changes in Law. Subsequent changes to applicable law or regulations, or the issuance of new case or ruling authority, could materially and adversely affect the analysis and conclusions in an item of Tax Advice or a position reported on a tax return. Neither the delivery of any Tax Advice nor the preparation of a tax return is an undertaking on our part to monitor or to advise you concerning any changes in law.

3.11 Possibility of Litigation. If the IRS or another tax authority adopts a position contrary to any analysis or conclusions in our Tax Advice or to any position reported on a tax return, it might be necessary to pursue administrative appeals or litigation. Decisions of whether and how to pursue administrative appeals or litigation may be based on considerations of cost, publicity, and other matters unrelated to the technical merits of a tax position. In some cases, taxpayers

elect not to pursue appeals or litigation even though a reported position may ultimately be sustained on appeal or in litigation.

3.12 Disclaimer of Legal and Investment Advice. Our services under the Arrangement Letter and these Terms do not constitute legal or investment advice. We recommend that you retain competent legal counsel and investment advisers.

3.13 Warranty and Limitation. We warrant that our services will be performed with reasonable care in a diligent and competent manner. **THIS WARRANTY IS OUR ONLY WARRANTY CONCERNING OUR SERVICES, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, ALL OF WHICH ARE HEREBY DISCLAIMED.**

3.14 Documents and Files. Upon your written request, we will return to you all original documents provided to us by you or on your behalf in connection with the performance of our services. We may retain copies of these documents for our files. If you do not request that we return a particular original document, it will be retained and destroyed in accordance with our record retention policies then in effect.

3.15 Work Product. We will deliver to you the tax returns, Tax Advice or other items expressly enumerated in and subject to the terms of the Arrangement Letter. All our work product and files will remain our property, and we retain all copyrights and intellectual property with respect to our work product. We, in our sole discretion, may provide you with access to or copies of our files, but you will be obligated to pay all costs associated with such access or copies.

3.16 Document Production and Testimony. If we are requested or authorized by you, or if we are required by government regulation, subpoena or other legal process, to produce any documents or files, or to make our personnel available as witnesses with respect to this engagement, you will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the reasonable fees and expenses of our counsel, incurred in responding to such requests.

3.17 Conflicting Engagements. If we at any time determine in our sole discretion that a conflict of interest exists that prevents us from providing our services in accordance with applicable ethical rules, we will notify you of the conflict and may withdraw from representing you to the extent that such withdrawal is required or permitted by applicable ethical rules.

3.18 Record Retention. Federal tax law requires us to retain either copies of tax returns we prepare or specified information relating to those returns, as well as certain other documents related to our tax services for varying time periods. Our current policy (which we may revise at any time and in our sole discretion) is to retain copies of tax returns and certain related workpapers for seven years after the return is filed, subject to casualties beyond our control. We provide our clients with a file copy of each Federal income tax return for which we are a signing preparer, and we recommend that you retain this copy for seven years.

Although taxpayers are not required to retain their tax records for longer than our seven-year recommendation, there are situations in which tax returns older than seven years may contain information useful in future tax planning. For example, prior year returns may contain information relating to the basis of assets for gain/loss calculations, and corporations may use tax return information in calculating "earnings and profits" for corporate tax planning. We recommend that taxpayers consider maintaining separate accounting records or workpapers with this information. If you would like us to assist you in developing these separate records, please call us to discuss the scope of such a project.

It may also be advisable to retain accounting or tax records for longer than seven years for reasons unrelated to taxes. Decisions regarding document retention may involve a variety of legal considerations (*e.g.*, statutes of limitations, rules of evidence), so you may wish to consult your legal counsel to address these legal considerations.

4. Terms Applicable to Other Services

4.1 Scope of Other Services. Other services are defined as any communications provided by AGH, oral or written, for which AGH has billed you and for which you have made payment in full.

4.2 Due Care. We will perform other services in accordance with due care as provided for by the AICPA Code of Professional Conduct, as applicable. It is understood and agreed that any other services provided are not, by their nature, attest, audit or assurance services. Any attest, audit or assurance services shall be provided only under the provisions of a written arrangement letter.

4.3 Your Oversight Responsibilities. It is understood that any other services provided by AGH are in the nature of advisory services to you, and accordingly, are subject to oversight by you or your designee. It is further understood that in providing such advisory services, AGH is not acting as your agent, nor is AGH assuming any decision-making responsibilities on your behalf, or on behalf of your organization; you acknowledge that it is your responsibility to make decisions, in consideration of our advice, and other factors, as you determine appropriate to

consider. Further, it is understood that it is your responsibility to oversee the services provided by AGH, to evaluate their adequacy for your purposes, and to evaluate the suitability of the results of those services for your intended use.

4.4 Reliance on Information. It is understood that any other services provided by AGH necessarily rely on information provided by you or your organization, including your representations. Accordingly, you acknowledge your responsibility to provide accurate and complete information to AGH, and you agree to indemnify AGH and its owners and employees, and hold them harmless from all claims, liabilities, losses, or costs, in connection with any services provided by AGH, that are in any way related to erroneous, misleading, or incomplete information furnished by you, your organization, or your designee. We have an absolute right to rely on information provided by you.

4.5 Reliance on Oral Information From time to time, you may provide information or instructions to AGH orally. AGH will attempt to use such information as understood by them to provide the required service and may record their understanding of the verbal information or instructions in their work files. In the event of a dispute arising out of such verbal communications, the client agrees AGH's recording of the communication or application of their understanding of the communication to the service rendered shall be considered accurate and conclusive.

4.6 Work Product and Document Production. The working papers for services we provide are the property of AGH and constitute confidential information. However, as may be required by certain laws or regulations, we may be required to make certain working papers available to regulators upon request for their regulatory oversight purposes. Access to the requested working papers will be provided to the regulators under our AGH personnel supervision and at a location designated by AGH.

4.7 Confidentiality of Information. AGH acknowledges that it may have access to nonpublic information about you or your organization, and that such information is confidential. AGH also acknowledges that you may have a responsibility to your customers and/or employees to keep certain information confidential and proprietary. AGH agrees that it shall maintain the confidentiality of your nonpublic, confidential information that we obtain in the course of performing services for you.

4.8 Use of Third-Party Providers. Depending upon the circumstances, we may and likely will use third-party service providers to assist us in providing professional services with or without notice to you. Such services will likely include but are not limited to tax return preparation processing and paperless tax data information storage that is electronic and off-site. In performing any tax services, we may engage the services of other third-party providers including seasonal preparers, independent contractors or other third-party personnel with or without notice to you. By engaging us, you have authorized us to allow employees of such other third parties access to your files, financial information and other confidential information. If we use a third-party service provider we will endeavor to use reliable service providers; however, it is understood that AGH shall not be responsible for any confidential information breaches, errors or omissions committed by third-party service providers.

5. General Business Terms

5.1 Requests for Services. In responding to requests for services made by your officers, managers, employees, or agents, we will presume that all requests have been authorized by your internal procedures. If you wish to limit the individuals who can request services, you must notify us of any limitations in writing.

5.2 Billing. Our fees and expenses will be billed on a regular basis. If we are entitled to bill you for certain expenses and at the time of our invoice to you we have not received a third party bill for any such expenses, then we may include a reasonable, good faith estimate of the amount of those expenses on our invoice. Each invoice is payable upon receipt of the invoice. If you believe that any invoice is incorrect or if you wish to dispute any invoice, you must notify us in writing within 30 days of your receipt of the invoice. We reserve the right to charge interest on any invoice that is not paid within 30 days of the invoice date.

5.3 Uncontrollable Delays. The time for performance of any of your or our obligations (other than the obligation to pay money due) will be extended for a reasonable time in the event of causes beyond your or our reasonable control, including without limitation acts of God, war, acts of government, fire, flood, strike or labor problems, sabotage, and delays in obtaining labor, materials, equipment, or transportation.

5.4 Suspension of Services. If you fail to pay any invoice when due, we reserve the right to suspend the performance of services until your account is paid in full or you have made other payment arrangements satisfactory to us. Our suspension of services will not affect your obligations to us under the Arrangement Letter or these Terms.

5.5 Withholding of Deliverables and Files. If you have failed to pay any invoice when due, we reserve the right (if permitted by applicable law and professional standards) to withhold any tax return, Tax Advice, other deliverable, document or file until your account is paid in full or you have made other payment arrangements satisfactory to us.

5.6 Termination. You may terminate the Arrangement Letter at any time by written notice to us. Subject to any restrictions imposed by applicable ethical rules, we may terminate the Arrangement Letter at any time upon written notice to you. Termination for any reason will not affect your obligation to pay us for fees and expenses incurred prior to termination or in transferring files to and otherwise cooperating with any successor tax preparer or tax advisor. If you terminate any Arrangement Letter after we have commenced performing services under a fixed fee arrangement, you will be obligated to pay us the entire fixed fee upon termination.

5.7 Survival of Provisions. All provisions of these Terms will survive the termination or cancellation of the Arrangement Letter, except that (i) we will not have any obligation to provide services after termination and (ii) except as provided in paragraphs 3.15, 3.16 and 5.6, you will not have any obligation to pay us for any services that we perform after termination.

5.8 Entire Agreement; Interpretation. These Terms and the Arrangement Letter represent our entire agreement and understanding concerning the engagement described in the Arrangement Letter, and they supersede all prior and contemporaneous agreements. All Terms and the Arrangement Letter must be construed according to their fair meaning and not strictly for or against any party.

5.9 Amendment. Neither these Terms nor the Arrangement Letter may be amended except by our mutual written agreement.

5.10 Waivers and Consents. No waiver of any breach of these Terms or the Arrangement Letter will be effective unless the waiver is in writing and signed by the party against whom the waiver will be enforced. No waiver of any one breach will be deemed a waiver of any other or subsequent breach.

5.11 Assignment. You may not assign the Arrangement Letter or these Terms to any other party without our prior written consent, except that you may assign the Arrangement Letter and these Terms to any party that acquires substantially all of your assets and goodwill.

5.12 Successors; No Third-Party Beneficiaries. These Terms and the Arrangement Letter will be binding on our and your respective successors and assigns. There are no third-party beneficiaries to the Arrangement Letter or to these Terms except as expressly provided in the Arrangement Letter.

5.13 Interpretation. All Terms and the Arrangement Letter must be construed according to their fair meaning and not strictly for or against any party.

5.14 Newsletters and Similar Communications. We may as a courtesy from time to time send newsletters, emails, explanations of tax law developments or similar communications to selected clients, former clients or other interested parties. These communications are of a general nature and are not definitive advice. We do not send all such communications to all clients, former clients or interested parties. These newsletters do not establish or continue a client relationship with any person and they do not constitute an undertaking on our part to monitor tax or other issues for you or for any other parties.

6. Liability and Dispute Resolution

6.1 Opportunity to Cure and Liability Limitations. In the event that we fail to meet our obligations under the Arrangement Letter or these Terms, including without limitation paragraph 3.13, you must notify us in writing and provide us with the opportunity to re-perform the services. If the services cannot be re-performed, or if re-performance will not cure the breach or mitigate any damages caused by the breach, then your remedy will be for us to refund our fees relating to these services up to the amount of your direct damages caused by our failure to meet our obligations. In no event will our liability for any claim, whether in contract, in tort, at law, or in equity, arising out of or relating to our failure to meet our obligations under the Arrangement Letter or these Terms exceed the amount of our fees actually paid to us under the Arrangement Letter. In no event will we be liable for loss of profits or any consequential, indirect, special, exemplary, or punitive damages.

6.2 Indemnification. Subject to the provisions of paragraph 6.1, each party will indemnify the other for any loss, liability or obligation arising out of or relating to a failure to fulfill its obligations under the Arrangement Letter or these terms.

6.3 Time Limitation on Claims. No claim or action by either party, regardless of whether the claim is in contract, in tort, at law or in equity, arising out of or relating to any matter under the Arrangement Letter may be brought by either party (i) more than 24 months after the party first knows or has reason to know that the claim or cause of action has accrued or (ii) more than 60 months following the completion of the services under the Arrangement Letter. This paragraph may shorten, but in no event will it extend, any period of limitation on actions otherwise provided by applicable law.

6.4 Mediation. We agree that any dispute arising out of, or relating to, this agreement or an interpretation of this agreement that we are not able to resolve ourselves shall be submitted to mediation under the American Arbitration Association Rules for Professional Accounting and Related Services Disputes before resorting to arbitration, litigation or some other dispute resolution procedure.

6.5 Costs and Expenses of Mediation. Costs and expenses of the mediation shall be borne equally by each of us. Mediation shall take place within two weeks after notification by the aggrieved party of a request for mediation unless extended by the mediator. If the mediation does not result in an agreement acceptable to all sides, any party may take such other further action as he, she, or it deems advisable under law or equity. In the event any party takes such legal action without first submitting the issue(s) to mediation as required by this clause, that party shall pay the legal expenses of the responding party plus all court costs incurred by said action.

6.6 Governing Law. Any claim arising out of services rendered pursuant to this agreement shall be resolved in accordance with the laws of the State of Kansas and in Sedgwick County, Kansas. All services shall be considered to be performed in the State of Kansas and subject only to the Accountancy Act of the State of Kansas. The parties agree to this choice of law, jurisdiction and venue, and waive any defense of an inconvenient forum. The parties also waive trial by jury and agree that any dispute or claim should be resolved by a judge without a jury.

6.7 Effect on Other Agreements. The provisions of paragraphs 6.1 and 6.2 will not limit our obligations or liability under any separate agreement for the provision of audit, review, compilation or other accounting or attest services.