AGENDA
CITY COUNCIL
Tuesday, July 20, 2021
9:00 AM

The regular meeting of the City Council will be held on July 20, 2021 at 9:00 AM in the City Council Chambers
455 N. Main Street, Wichita, KS 67202.

OPENING OF REGULAR MEETING

Call to Order

Invocation and Pledge of Allegiance

Approve the minutes of regular meeting on July 13, 2021

Proclamations:

Awards:

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda.
Rules of decorum as provided in this code will be observed.

1. Jane Byrnes - Climate Action Plan.

2. Michael McCorkle - Climate Action Plan.

3. Shirley Starr - Ideas for Century II and the poor condition of the streets.

4. Kellen Hagans - Climate Action Plan

5. Lindsay Drees - The Need for Trans Protections in Wichita's Non-Discrimination Ordinance.

II. CONSENT AGENDA ITEMS 1 THROUGH 13

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately (The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.

COUNCIL BUSINESS

III. BOARD OF BIDS AND CONTRACTS

1. Report of Board of Bids and Contracts dated July 19, 2021.

   RECOMMENDED ACTION: Receive and file report, approve the contracts and authorize the necessary signatures.

IV. PETITIONS FOR PUBLIC IMPROVEMENTS - NONE

V. UNFINISHED COUNCIL BUSINESS

VI. NEW COUNCIL BUSINESS

1. 2022 Annual Operating Budget and 2022-2031 Capital Improvement Program

   RECOMMENDED ACTION: Set the public hearing on the Proposed 2022 Budget (including the Tax Increment Financing Districts and the Self-Supporting Municipal Improvement District) and the Recertification for the Union Station TIF Fund for August 24, 2021; authorize publication of the formal public hearing notices; approve first reading of the ordinances for the general tax levy for the City of Wichita, TIF districts, and SSMID; authorize staff to make any technical adjustments required to comply with state statute; set a maximum amount of taxes levied for the City of Wichita at $129,165,203, based on an anticipated mill levy of 32.749 mills and an estimated assessed valuation of $3,944,096,063; set the maximum amount of taxes levied for the Self-Supporting Municipal Improvement District at $698,186, based on an estimated levy of 6.713 mills and an estimated assessed valuation of $104,005,138; and authorize staff to notify the Sedgwick County Clerk of the intent to exceed the revenue neutral rate for the City of Wichita taxing funds and the SSMID taxing fund. It is also recommended the City Council receive and file the 2022-2031 Proposed Capital Improvement Program.
   City of Wichita TIFs Cert Form 2022.pdf

City of Wichita Cert Form 2022.pdf
City of Wichita Amended Cert Form 2021.pdf
City of Wichita SSMID Cert Form 2022.pdf
Wichita SSMID Indication of Revenue Neutral Rate.pdf
Wichita Indication of Revenue Neutral Rate.pdf
Agenda Report No. VI-1.docx
Ord 51-610 Old Town Cinema Redevelopment District - 2022 Adopted Budget.doc
Ord 51-611 Ken Mar Redevelopment District - 2022 Adopted Budget.doc
Ord 51-612 Center City South Redevelopment District - 2022 Adopted Budget.doc
Ord 51-613 Douglas & Hillside Redevelopment District - 2022 Adopted Budget.doc
Ord 51-614 Union Station Redevelopment District - 2022 Adopted Budget.doc
Ord 51-615 Southfork District - 2022 Adopted Budget.doc
Ord 51-616 West Bank District - 2022 Adopted Budget.doc
Ord 51-606 General Tax Levy - 2022 Adopted Budget.doc
Ord 51-607 General Tax Levy Downtown SSMID - 2022 Adopted Budget.doc
Ord 51-608 North Industrial Corridor Redevelopment District - 2022 Adopted Budget.doc
Ord 51-609 East Bank Redevelopment District - 2022 Adopted Budget.doc

2. Public Hearing and Request for Letter of Intent to Issue Industrial Revenue Bonds, Air Capital Flight Line, LLC. (District III)

RECOMMENDED ACTION: Close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.
Agenda Report No. VI-2.docx
Resolution No. 21-272
Letter of Intent

3. Public Hearing and Resolution of Intent to Issue Industrial Revenue Bonds, MWCB, LLC. (District I)

RECOMMENDED ACTION: Close the public hearing, adopt the Resolution and authorize the necessary signatures.
Agenda Report No. VI-3.docx
MWCB - Deloitte IRB application 062221.pdf
Resolution No. 21-277

4. Building Façade Improvements Project Close Out – 500 South Topeka. (District I)

RECOMMENDED ACTION: Approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.
Agenda Report No. VI-4.docx
FSOC 500 S Topeka C9007-47502919.pdf
Ordinance 51-601

5. Building Facade Improvements Project Close Out – 1700 East Douglas. (District I)

RECOMMENDED ACTION: Approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.
Agenda Report No. VI-5.docx
FSOC 1700 E Douglas C0002-47503020.pdf
Ordinance 51-602

6. Building Facade Improvements Project Close Out – 1029 West Douglas. (District IV)

RECOMMENDED ACTION: Approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.
Agenda Report No. VI-6.docx
FSOC 1029 W Douglas B C9001-47502519.pdf
Ordinance 51-603

7. Capital Improvement Design Agreements for Bridge, Multiple Arterial Streets, Water Main Dead-End Extensions and Water Main Replacements. (Districts I, IV, V, and VI)

RECOMMENDED ACTION: Approve the design agreements and budgets, waive City Council Policy No. 2 regarding the use of project savings to allow the transfer of funds, adopt the resolutions and authorize the necessary signatures.
Agenda Report No. VI-7.doc
119th 37th Water Main - Full Agreement with Garver Scope on Wichita Standard Form 6.30.21.pdf
Agmt_21StI135toMosley_Signed.pdf
Agmt_29th West to Hoover.pdf
Agmt_29thStN_I135Ohio.pdf
Agmt_NE RiversideWMRepl_Ph12.pdf
Agmt_West_I235toMacArthur_Signed.pdf
Agmt_WestMacArthurto47thSt_Signed.pdf
Agmt_WestPressureZone_Central151stWM.pdf
Agmt_WMDeadend2ndFeedMaizeK42.pdf
Agmt_WMDeadend2ndFeedViaChristiStTheresa.pdf
BartlettWest_Agmt_N Market WM Repl.pdf
BartlettWest_Agmt_RandomNorthWMRepl.pdf
JEO_Agmt_AmidonBridge.pdf
Wood_CountrysideWMReplPh12.pdf
Water Map.pdf
Paving Map.pdf
resolution 21-273 085732.docx
resolution 21-274 085733, 002927.docx

8. Chester I. Lewis Reflection Park Project - Public Art (District I)

RECOMMENDED ACTION: Approve the donor agreement, increase the project

budget, approve the revised bonding resolution and authorize the necessary signatures.
Agenda Report No. VI-8.doc
AGREEMENT - COW and WPF for public art - Chester I. Lewis Reflection Park 7-7-21-FINAL.pdf
Resolution No. 21-278

9. Chester I. Lewis Reflection Park Project – Artist Contracts (District I)

RECOMMENDED ACTION: Approve the exception to City Code section 2.15.080 for directly hiring of artists, approve the contracts and authorize the necessary signatures.
Agenda Report No. VI-9.doc
signed_Chester I Lewis Contract_EllamoniqueBaccus (1).pdf
MM SIgned comments - Artist Contract CIL-COW_MatthewMazzotta.pdf

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

VII. NON-CONSENT PLANNING AGENDA

1. PUD2021-00010 – City Zone Change from SF-5 Single-Family Residential to PUD Planned Unit Development for the Nguyen Senior Village Development Located Approximately 370 Feet West of North Oliver Avenue on East 15th Street North at 4640 East 15th Street North. (District I)

RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the requested zone change and place the ordinance on the first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four votes or a simple majority vote).
Agenda Report No. VII-1.doc
PUD2021-00010 Supporting Documents.docx
PUD2021-00010 MAPC Min Excerpt.docx
PUD2021-00010 DAB 1 Report.docx
Ordinance 51-604

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City

ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. A Housing Member is also seated with the City Council.

VIII. NON-CONSENT HOUSING AGENDA

1. Rental Assistance Demonstration Conversion Commitment

RECOMMENDED ACTION: Authorize execution of the Rental Assistance Demonstration Conversion Commitment, together with such subsequent changes and corrections as may be necessary to complete the proceedings for closing.
Agenda Report No. VIII-1.doc
Wichita RAD Senior - RCC (Unexecuted) 4831-4646-7057 v.1.pdf

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. NON-CONSENT AIRPORT AGENDA - NONE

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA - NONE

XI. COUNCIL MEMBER APPOINTMENTS AND COMMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the appointments.

Adjournment

ATTACHMENT 1 - CONSENT AGENDA ITEMS 1 THROUGH 13

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Applications for Licenses for Cereal Malt Beverages:

a. Applications for Licenses to Retail Cereal Malt Beverages:

RECOMMENDED ACTION: Approve licenses subject to staff review and approval.
CMBS FOR July 20, 2021.docx

2. Preliminary Estimates:

a. List of Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.
PEsforCC_07-20-21.pdf

3. Agreements/Contracts:

a. Grant with the Kansas Department of Transportation.

RECOMMENDED ACTION: Approve the KDOT grant and authorize the necessary signatures.

Agenda Report No. II-3a.doc
KDOT PT-0779-22 Agreement.pdf

b. Derby and Butler County 2021 Interlocal Agreements.

RECOMMENDED ACTION: Approve the interlocal agreements and authorize the necessary signatures.
Agenda Report No. II-3b.doc
Derby Agreement 2021.pdf
Butler County Agreement 2021.pdf

4. Minutes of Advisory Boards/Commissions:

a. Library Monthly Activity Report, June 2021
Library Board of Directors, June 15, 2021

RECOMMENDED ACTION: Receive and file
Library Monthly Activity Report June 2021.pdf
Library Board of Directors June 15, 2021.pdf

Uncategorized Items:

5. Community Event with Alcohol Consumption - Blessed Sacrament's Oktoberfest. (District I)

RECOMMENDED ACTION: Adopt the resolution to allow alcohol consumption upon sidewalks and public streets within the parameters outlined in the Community Event Application during the Blessed Sacrament's Oktoberfest event on October 2, 2021, and authorize the necessary signatures.
Agenda Report No. II-5.docx
Oktoberfest Site Map 2.pdf
Resolution No. 21-275

6. Lease of 230 North Mosley for Wichita Police Department (District VI)

RECOMMENDED ACTION: Approve the lease, authorize necessary signatures, and approve budget adjustments as required.
Agenda Report No. II-6.docx
Police Lease.pdf
Police Lease Supporting.pdf

7. Encroachment Agreement with Phillips 66 across City-Owned Property Located at Sherwood Glen Park, Womer and 37th Street North. (District VI)

RECOMMENDED ACTION: Approve the Encroachment Agreement and authorize all necessary signatures.
Sherwood Glen Phillips Easement.docx
Agenda Report No. II-7.doc

8. Castlegate 3rd Addition Sanitary Sewer Petition. (District V)

RECOMMENDED ACTION: Approve the revised petition and revised budget, adopt the amending resolution, and authorize the necessary signatures.
Agenda Report No. II-8.doc
Castlegate 3rd Addn.pdf
Resolution 21-276 017401.docx

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

9. VAC2021-00014 – City Request to Vacate a Drainage Easement Dedicated by Separate Instrument on Limited Industrial (LI) Zoned Property Generally Located on the East Side of North Oliver Avenue, Midway Between East 37th Street North and East K 96 Highway on the South Side of the Railroad Right-of-Way (District I).

RECOMMENDED ACTION: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.
Agenda Report No. II-9.docx
VAC2021 14 -Vacation Order.docx
VAC2021 14 -MAPC Minutes Excerpt.docx
VAC2021 14 -drainage easement.pdf

10. VAC2021-00017 – City request to Vacate a Platted Street Side Yard Setback on

General Office (GO) Zoned Property Generally Located on the Northeast Corner of East Central Avenue and North Hillside Avenue (550 North Hillside Avenue) (District I).

RECOMMENDED ACTION: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.
Agenda Report No. II-10.docx
VAC2021 17 -Vacation Order.docx
VAC2021 17 -MAPC Minutes Excerpt.docx

11. VAC2021-00024 – City Request to Vacate a Portion of a Platted Rear Yard Setback on Single-Family Residential (SF-5) Zoned Property Generally Located Midway Between North Tyler and North Ridge Roads, Approximately a Third of a Mile North of West 21st Street North and Northeast of the West Reflection Ridge Road – North Morning Dew Street Intersection. (2408 North Morning Dew Street) (District V).

RECOMMENDED ACTION: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.
Agenda Report No. II-11.docx
VAC2021 24 -Vacation Order.docx
VAC2021 24 -MAPC Minutes Excerpt.docx

12. ZON2021-00032 – City Zone Change from SF-5 Single-Family Residential to GO General Office on 23 Acres; Generally Located One-Half Mile West of South Meridian Avenue and One-Quarter Mile North of West MacArthur Road (3310 West MacArthur Road). (District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the requested zone change and place the ordinance on the first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four votes or a simple majority vote).
Agenda Report No. II-12.doc
ZON2021-00032 Supporting Documents.docx
ZON2021-00032 MAPC Min Excerpt.docx
ZON2021-00032 DAB IV Report.pdf
Ordinance 51-605

II. CONSENT HOUSING AGENDA ITEMS - NONE

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. A Housing Member is also seated with the City Council.

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

13. Assignment and Assumption of Lease for 7227 W. Harry Street Honeywell International, Inc., to Epoch, LLC - Wichita Dwight D. Eisenhower National Airport

RECOMMENDED ACTION: Approve the Assignment and Assumption of Lease between Honeywell and Epoch, and acknowledge sublease of the property from Epoch to Millennium.
Agenda Report No. II-13.docx
Assignment and Assumption of Lease Honeywell Epoch.docx

NOTICE OF BUDGET HEARING

2022

The governing body of

Wichita

will meet on August 24, 2021 at 9:00 AM at City Hall 1st Floor for the purpose of hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of ad valorem tax.

Detailed budget information is available at City Hall Finance Department 12th Floor and will be available at this hearing.

BUDGET SUMMARY

Proposed Budget 2022 Expenditures and Amount of 2021 Ad Valorem Tax establish the maximum limits of the 2022 budget.

Estimated Tax Rate is subject to change depending on the final assessed valuation.

	Prior Year Actual for 2020		Current Year Estimate for 2021		Proposed Budget for 2022		
FUND	Expenditures	Actual Tax Rate *	Expenditures	Actual Tax Rate *	Budget Authority for Expenditures	Amount of 2021 Ad Valorem Tax	Estimate Tax Rate *
General							
Debt Service							
Library							
Gilbert and Mosley	998,887		7,023,493		16,279,902		
North Industrial Corridor	5,362,922		6,752,242		9,061,632		
East Bank	1,195,600		1,472,798		1,502,254		
Old Town Cinema	522,079		538,621		632,979		
Center City	872,508		661,406		744,868		
Ken Mar	8,645		194,650		506,636		
Douglas & Hillside	55,000		176,184		371,991		
Union Station	91,000		215,000		320,000		
South Fork	221,360		179,150		220,000		
West Bank	70,840		67,860		656,521		
Totals	9,398,841	0.000	17,281,404	0.000	30,296,783	0	0.000
*Revenue Neutral Rate***							*0.000*
Less: Transfers	3,223,509		2,530,001		3,446,478		
Net Expenditure	6,175,332		14,751,403		26,850,305		
Total Tax Levied	0		0		xxxxxxxxxxxxxxxxx		
Assessed Valuation	0		0		0		

Outstanding Indebtedness, January 1,	2019	2020	2021
G.O. Bonds	0	0	0
Revenue Bonds	0	0	0
Other	0	0	0
Lease Purchase Principal	0	0	0
Total	0	0	0

*Tax rates are expressed in mills

***Revenue Neutral Rate as defined by 2021 Kansas Senate Bill 13*

Wichita City Clerk

City Official Title: City Clerk

Page No.

NOTICE OF BUDGET HEARING

2022

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BUDGET SUMMARY

Proposed Budget 2022 Expenditures and Amount of 2021 Ad Valorem Tax establish the maximum limits of the 2022 budget.

Estimated Tax Rate is subject to change depending on the final assessed valuation.

	Prior Year Actual for 2020		Current Year Estimate for 2021		Proposed Budget Year for 2022		
FUND	Expenditures	Actual Tax Rate *	Expenditures	Actual Tax Rate *	Budget Authority for Expenditures	Amount of 2021 Ad Valorem Tax	Estimate Tax Rate *
General	236,513,513	25.214	253,699,419	25.742	283,014,267	101,556,530	25.749
Debt Service	79,886,891	7.507	70,136,451	7.007	93,233,027	27,608,673	7.000
Library							
Homelessness Assistance	311,894		382,736		382,736		
Tourism & Convention	4,049,726		6,622,473		9,327,467		
Special Alcohol Programs	2,136,787		2,290,953		3,195,326		
Special Park & Rec.	2,006,998		1,703,914		2,327,608		
Landfill	1,763,663		3,631,089		6,116,395		
Landfill Post Closure	632,750		1,345,193		8,267,524		
Building & Construction	3,748,367		3,993,191		5,142,187		
Economic Development	1,351,059		1,747,096		3,018,600		
Sales Tax Const. Pledge	28,611,371		32,498,954		39,361,222		
Downtown Parking	1,257,153		1,980,216		1,934,251		
Municipal Court Restricted	18,501		1,440,000		3,001,000		
Cemeteries	20,931		115,348		115,360		
Sewer Utility	55,559,222		61,010,247		66,568,526		
Water Utility	80,479,370		91,114,469		96,511,307		
Stormwater Utility	10,587,038		13,716,912		29,126,639		
Information Technology	12,540,319		14,263,325		16,591,073		
City/County Joint Operations	3,627,992		4,212,567		4,334,682		
Equipment Motor Pool	11,762,233		17,053,907		18,957,865		
Self Insurance	54,400,034		67,351,068		70,541,807		
TBID	2,064,694		2,225,433		2,817,494		
CID	1,048,620		2,343,452		2,772,558		
Totals	594,379,125	32.721	654,878,413	32.749	766,658,921	129,165,203	32.749
*Revenue Neutral Rate***							*31.632*
Less: Transfers	17,011,226		16,550,237		18,508,252		
Net Expenditure	577,367,899		638,328,176		748,150,669		
Total Tax Levied	118,590,749		124,758,623		xxxxxxxxxxxxxxxxx		
Assessed Valuation	3,624,370,098		3,809,596,880		3,944,096,063		
Outstanding Indebtedness, January 1,	2019		2020		2021		
G.O. Bonds	567,965,000		584,230,000		554,640,000		
Revenue Bonds	398,500,000		422,291,482		421,710,000		
Other	10,037,434		11,549,563		13,028,129		
Lease Purchase Principal	0		0		0		
Total	976,502,434		1,018,071,045		989,378,129		

*Tax rates are expressed in mills

***Revenue Neutral Rate as defined by 2021 Kansas Senate Bill 13.*

Wichita City Clerk

City Official Title: City Clerk

Page No.

Notice of Budget Hearing for Amending the
2021 Budget
The governing body of
City of Wichita
will meet on the day of August 24, 2021 at 9:00 AM at City Hall 1st Floor for the
purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds.

Detailed budget information is available at City Finance Department 12th Floor
and will be available at this hearing.

Summary of Amendments

Fund	2021 Adopted Budget			2021 Proposed Amended Expenditures
	Actual Tax Rate	Amount of Tax that was Levied	Expenditures	
Union Station			188,272	215,000
			0	0
			0	0
			0	0
			0	0
			0	0

Wichita City Clerk
Official Title: City Clerk

Page No.

State of Kansas
Special District
2022

NOTICE OF BUDGET HEARING

The governing body of
Self-Supported Municipal Improvement
Sedgwick County
will meet on August 3, 2021 at 9:00 am at City Hall, 455 N. Main St, 1st Floor for the purpose of hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of tax to levied.
Detailed budget information is available at Department of Finance, 12th Floor and will be available at this hearing.

BUDGET SUMMARY

Proposed Budget 2022 Expenditures and Amount of 2021 Ad Valorem Tax establish the maximum limits of the 2022 budget. Estimated Tax Rate is subject to change depending on the final assessed valuation.

	Prior Year Actual 2020		Current Year Estimate for 2021		Proposed Budget Year for 2022		
FUND	Expenditures	Actual Tax Rate*	Expenditures	Actual Tax Rate*	Budget Authority for Expenditures	Amount of 2021 Ad Valorem Tax	Estimate Tax Rate*
General							
Debt Service							
SSMID	719,303		752,416	6.560	725,727	698,186	6.713
Totals	719,303	0.000	752,416	6.560	725,727	698,186	6.713
*Revenue Neutral Rate***							*6.712*
Less: Transfers	0		0		0		
Net Expenditures	719,303		752,416		725,727		
Total Tax Levied	0		698,036		xxxxxxxxxxxxxxxx		
Assessed Valuation	0		106,407,330		104,005,138		

Outstanding Indebtedness, Jan 1,	2019	2020	2021
G.O. Bonds	0	0	0
Revenue Bonds	0	0	0
Other	0	0	0
Lease Pur. Princ.	0	0	0
Total	0	0	0

*Tax rates are expressed in mills.
***Revenue Neutral Rate as defined by 2021 Kansas Senate Bill 13.*

Wichita City Clerk

Sedgwick County...
working for you

County Clerk's Office
Kelly Arnold, County Clerk
525 N. Main, Suite 211, Wichita, KS 67203
TEL: 316-660-9223 - www.sedgwickcounty.org - FAX: 316-383-7961
sgclerk@sedgwick.gov

INDICATION OF REVENUE NEUTRAL RATE

PURSUANT TO K.S.A 79-1460, 79-1801, 79-2024, 79-2925c

Please indicate below whether your governing body will be exceeding the Revenue Neutral rate:

☑ Yes, we intend to exceed the Revenue Neutral Rate and our proposed mill levy is 6.713

The date of the Hearing is 08/24/21 at 9:00 a.m. and will be held at 455 N. Main Street, 1st Floor in Wichita, KS

☐ No, we do not plan to exceed the Revenue Neutral Rate and will submit our budget to the County Clerk on or before August 25, 2021.

SIGNATURE DATE

City Clerk

Title

City of Wichita-SSMID

Tax District

Sedgwick County...
working for you

County Clerk's Office
Kelly Arnold, County Clerk
525 N. Main, Suite 211, Wichita, KS 67203
TEL: 316-660-9223 - www.sedgwickcounty.org - FAX: 316-383-7961
sgclerk@sedgwick.gov

INDICATION OF REVENUE NEUTRAL RATE

PURSUANT TO K.S.A 79-1460, 79-1801, 79-2024, 79-2925c

Please indicate below whether your governing body will be exceeding the Revenue Neutral rate:

☑ Yes, we intend to exceed the Revenue Neutral Rate and our proposed mill levy is 32.749

The date of the Hearing is 08/24/21 at 9:00 a.m. and will be held at 455 N. Main Street, 1st Floor in Wichita, KS

☐ No, we do not plan to exceed the Revenue Neutral Rate and will submit our budget to the County Clerk on or before August 25, 2021.

SIGNATURE DATE

City Clerk

Title

City of Wichita

Tax District

Agenda Item No. VI-1

City of Wichita
City Council Meeting
July 20, 2021

TO:	Mayor and City Council
SUBJECT:	2022 Annual Operating Budget and 2022-2031 Capital Improvement Program
INITIATED BY:	City Manager's Office
AGENDA:	New Business

Recommendation: Set the public hearing date, authorize the publication of the public hearing notice, authorize the revenue neutral rate notification to the County Clerk, and place the ordinances on first reading.

Background: The 2022-2023 Proposed Budget has been developed over the past several months based on input from the public and direction from the City Council. An initial revenue outlook was provided at the City Council retreat on April 8, 2020, providing an overview of the potential impact of the American Rescue Plan Act of 2021 (ARPA) fund on the operating budget. Due to improved financial condition and ARPA funding, 32 concepts were presented at the City Council retreat on May 25, 2021. The discussion of community investments that could be funded by ARPA provided the framework for community engagement efforts.

Resident engagement is a key element of the budget process. The Social Media Town Hall was hosted for the tenth consecutive year in order to get feedback on the four community investments concepts topics from the May 25 City Council Retreat. Staff also continued the more traditional budget presentations at City Council District Advisory Board (DAB) meetings. Feedback from residents will guide development of the plan for allocating ARPA resources in 2021.

The City's budget process and timeline is dictated by State statute. Statutory changes made during the 2021 Legislative session will change the budget process used to adopt the 2022 Budget. Prior to 2022, the State tax lid law required an election if a budget was adopted with property tax growth exceeding growth in new construction and growth based on the inflation rate. For 2022, the tax lid was changed to limit the dollar amount of property taxes levied to the exact same amount levied the previous year, unless a notice of intent to exceed the revenue neutral rate is approved.

The statutory changes also amended the budget calendar. Previously, the budget had to be adopted by August 15, and the notice of the public hearing had to be made prior to August 5. Under current law, if the budget is proposed with the level of property taxes levied higher than the previous year, staff must notify the Sedgwick County Clerk no later than July 20. In addition, the budget cannot be adopted prior to August 20, and the City must provide notice of the budget hearing date no later than 10 days prior to the hearing date.

The 2022-2031 Capital Improvement Program (CIP) represents a ten-year plan for improvements to infrastructure in the City of Wichita. Engagement on the CIP has been more challenging due to social distancing concerns, but has included a virtual presentation to the Bicycle and Pedestrian Advisory Board. The CIP will be presented to the Metropolitan Area Planning Commission (MAPC) Advance Plans Committee on August 5 and the entire MAPC is scheduled on August 19. The Proposed CIP has been posted to the City's website.

Analysis: The 2022-2023 Proposed Budget totals $670,668,931 (which does not include internal service funds, capital projects, grant funds, trust funds, or interfund transactions). Interfund transactions ($139,205,125) and the General Fund appropriated reserve ($28,300,000) increases this amount to $838,174,056. The inclusion of trust funds is an additional $105,073,848, increasing the total to $105,073,848.

The 2022 Proposed expenditure authority for the General Fund and Debt Service Fund totals $347,947,294 (not including appropriated reserves) and is balanced. The General Fund reserve level for 2022 is estimated at $41,092,854, or 16.1% of budgeted expenditures for 2022, in accordance with policy. The 2022 Proposed Budget requires a tax levy of $129,165,203, including $101,556,530 for the General Fund and $27,608,672 for the Debt Service Fund. This compares to a total levy of $124,758,623 in 2021. An estimated 2022 mill levy rate of 32.749 (25.749 mills for the General Fund and 7.000 mills for the Debt Service Fund) is required based on an estimated valuation of $3,944,096,063.

The estimated 2022 mill levy rate equals the 2021 final mill levy rate of 32.749. However, because the revenue neutral rate for 2022 (based on the tax lid law) is 31.632, staff will provide appropriate notification to the Sedgwick County Clerk. Remaining at the revenue neutral rate would result in $4,406,580 less property tax revenue than is currently included in the 2022 Proposed Budget.

Assessed valuation is projected to increase by $134,499,183, or 3.53%, to a total of $3,944,096,063. Most of the increase in valuation was due to new construction (contributing $48,305,427), and reappraisal (contributing $93,669,459). The value of personal property decreased by $8,901,229 and other adjustments total $1,425,526.

The Self-Supporting Municipal Improvement District (SSMID) Fund is included in the 2022 Proposed Budget. This property tax is levied only in the SSMID, which is located in downtown Wichita. Assessed valuation of the SSMID decreased by $2,402,192 (2.3%) to an estimated $104,005,138. The 2022 Proposed Budget for the SSMID Fund is based on an estimated mill levy of 6.560, which is equal to the 2021 mill levy rate. The 2022 Proposed Budget is based on a property tax levy of $682,274, compared to a levy of $698,036 in 2021.

The revenue neutral rate for the SSMID Fund in 2022 is 6.712, which is higher than the estimated 2022 mill levy rate of 6.560. However, staff recommend providing notification to the Sedgwick County Clerk of the intent to exceed the revenue neutral rate for the SSMID, and including a tax levy of $698,186 in the publication of notice. This will ensure compliance with the State tax lid law, and provide policy flexibility in approving the SSMID budget.

There are a total of nine Tax Increment Financing (TIF) Funds that will receive property taxes and that are included in the 2022 Proposed Budget. These include one environmental TIF (the North Industrial Corridor) and eight economic development TIFs (East Bank, West Bank, Old Town Cinema, South Fork, Center City, Ken Mar, Douglas and Hillside, and Union Station). The combined resources of the nine TIF funds are $7,570,215, of which $7,280,424 is derived from property tax increments.

The Proposed Budget includes the recertification of the Union Station TIF Fund for 2021. Recertification is necessary when the revised 2021 expenditure budget exceeds the 2021 Adopted Budget which was approved one year ago. Revenues in the Union Station TIF have exceeded expectations and in order to utilize these revenues it is necessary to revise upward the expenditures authority for this fund.

The dollar amounts for fund expenditures or taxes levied, after those are set in the published notice of hearings on the proposed budget, cannot be exceeded; however, the City Council may determine subsequently to reduce the taxes levied or expenditure levels. The formal hearing and adoption of the budget and CIP is scheduled for August 24, 2021. After the adoption of the budget, if subsequent actions result in an increase to budgeted expenditure levels, a process of re-publication, including additional public hearings and re-certifications, will be required.

The 2022-2031 Capital Improvement Program (CIP) totals $1.971 billion in expenditures over ten years. This includes $85 million in freeway improvements, $464 million in street improvements, $672 million in Sewer and Water improvements, $50 million in public facility improvements, $121 million in public safety

improvements, $47 million in Park improvements, and a total of $532 million in other improvements. The CIP has been developed based on three concepts: [1] the CIP is consistent with the City's mission statement; [2] the plan includes projects based on a prioritization model that objectively scores projects for inclusion in the CIP; and [3] the plan is built around City Council policy direction regarding rates and financial capacity guidelines.

The Proposed CIP focuses on street maintenance and public safety, both of which consistently are ranked highly by residents. Consistent with the Community Investments Plan, the Proposed CIP also is directed towards the maintenance of current assets and infrastructure. The CIP is designed to be consistent with policy direction and fiscally sound. The CIP mill levy for the Debt Service Fund is 7.0 mills. Water and Sewer rates necessary to fund projects recommended in the CIP are consistent with the Cost of Service Analysis (COSA) that Public Works & Utilities staff have previously presented. The CIP is expected to require additional debt (particularly over the next five years) to finance improvements. However, General Obligation (GO) at-large debt levels, using the most commonly used debt performance measure (percent of property tax revenues used to finance GO at-large debt service) are expected to continue to be below the benchmark level of 67%.

Financial Considerations: For the operating budget, publication of the notice of formal hearing will set the maximum amount that may be expended in each fund and the official budget adoption date. The City Council may subsequently reduce expenditures required (and proposed tax dollars to be levied). The Proposed CIP is financed with $283 million in GO at-large funds, $342 million in Local Sales Tax funds, $672 million in Water and Sewer funds, $311 million in special assessments, $185 million in federal and state funds, and $178 million from other funding sources for a total of $1.971 billion.

Legal Considerations: State statutes require the City Council to publish notice of the public hearing scheduled for approval of the annual operating budget and for budget amendments of published funds. This publication must be made at least ten days prior to the budget adoption public hearing. In addition, this publication must set the maximum proposed tax levies, as well as the maximum proposed expenditures (including appropriated balances) for each certified fund. The 2022 Budget and 2022-2031 CIP are scheduled to be adopted by the City Council on August 24, 2021.

State statutes require the City to notify the County Clerk if the Proposed Budget will exceed the "revenue neutral rate." The 2022 Proposed Budget will result in an estimate mill levy rate that is equal to the 2021 rate, but which does exceed the "revenue neutral rate." In addition, although the SSMID as proposed will not exceed the revenue neutral rate, staff recommended providing notification of the intent to exceed the revenue neutral rate, to preserve flexibility and to ensure compliance with the new State statute.

The attached ordinances have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council set the public hearing on the Proposed 2022 Budget (including the Tax Increment Financing Districts and the Self-Supporting Municipal Improvement District) and the Recertification for the Union Station TIF Fund for August 24, 2021; authorize publication of the formal public hearing notices; approve first reading of the ordinances for the general tax levy for the City of Wichita, TIF districts, and SSMID; authorize staff to make any technical adjustments required to comply with state statute; set a maximum amount of taxes levied for the City of Wichita at $129,165,203, based on an anticipated mill levy of 32.749 mills and an estimated assessed valuation of $3,944,096,063; set the maximum amount of taxes levied for the Self-Supporting Municipal Improvement District at $698,186, based on an estimated levy of 6.713 mills and an estimated assessed valuation of $104,005,138; and authorize staff to notify the Sedgwick County Clerk of the intent to exceed the revenue neutral rate for the City of Wichita taxing funds and the SSMID taxing fund. It is also recommended the City Council receive and file the 2022-2031 Proposed Capital Improvement Program.

Attachments:
Notice of Budget Hearing – Proposed Budget 2022 Expenditures
Notice of Budget Hearing – Recertification of 2021 Budget Expenditures – Union Station TIF
Notice of Budget Hearing – Proposed Budget 2022 Tax Increment Financing Funds (TIF)
Notice of Budget Hearing – Proposed Budget 2022 Expenditures – Downtown Wichita Self-Supporting Municipal Improvement District
Indication of Revenue Neutral Rate – City of Wichita
Indication of Revenue Neutral Rate - Downtown Wichita Self-Supporting Municipal Improvement District
Ordinance – Fixing General Tax Levy – City of Wichita
Ordinance – Fixing General Tax Levy – Downtown Wichita Self-Supporting Municipal Improvement District
Ordinance – North Industrial Corridor Redevelopment TIF
Ordinance – East Bank Redevelopment TIF
Ordinance – Old Town Cinema TIF
Ordinance – Center City South Redevelopment TIF
Ordinance – Ken Mar Redevelopment TIF
Ordinance – Douglas and Hillside Redevelopment TIF
Ordinance – Union Station Redevelopment TIF
Ordinance – South Fork Redevelopment TIF
Ordinance – West Bank Redevelopment TIF

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-610

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Old Town Cinema Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Old Town Cinema Redevelopment District, the District being created in 1999; and,

WHEREAS, an additional redevelopment project plan was authorized for the Mosley Street Project Area in the Old Town Cinema Redevelopment District, which includes, but is not limited to, the reconstruction of Mosley Avenue from 2nd Street to 3rd Street and Rock Island Avenue for one-half block south of 3rd Street in 2015; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Old Town Cinema Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance reduced the District boundaries, the District boundaries being modified in 2001; and,

WHEREAS, the boundaries of the Old Town Cinema Redevelopment District are described in Exhibit “A” attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $591,600 of increment funds in ad valorem taxes from the Old Town Cinema Redevelopment District (the current boundaries of the District are described in Exhibit “A” attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Old Town Cinema Redevelopment District at $591,600 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a,

such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022 and December 31, 2022 including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Old Town Cinema Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT (TIF DISTRICT #7)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of East 3rd Street North and Washington Street, thence south along the centerline of Washington Street to the intersection of Washington Street and East 2nd Street North, thence west along the centerline of East 2nd Street North to the intersection of East 2nd Street North and Santa Fe Street, thence north along the centerline of Santa Fe Street to the intersection of Santa Fe Street and East 3rd Street North, thence east along the centerline of East 3rd Street North to the intersection of East 3rd Street North and Washington Street, being the point of beginning.

THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #7)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-611

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE KEN MAR REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Ken Mar Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Ken Mar Redevelopment District, the District being created in 2008; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Ken Mar Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Ken Mar Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $35,700 of increment funds in ad valorem taxes from the Ken Mar Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Ken Mar Redevelopment District at $35,700 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on the tax increment financing loan referenced in that certain Amendment to Development Agreement Regarding Revitalization of Ken Mar Shopping Center (Providence Square) dated as of the 4th of October, 2011, which was issued to finance in whole or in part certain acquisition and paving reconstruction expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Ken Mar Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE KEN MAR REDEVELOPMENT DISTRICT (TIF DISTRICT 14)

All property parcels located between the center line of 13th Street North on the south, the north right of way line of 14th Street North on the north, the center line of Oliver Avenue on the east and the west right of way line of Pershing Avenue on the west, in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas.

THE KEN MAR REDEVELOPMENT DISTRICT
(TAX INCREMENT FINANCING DISTRICT 14)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-612

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Center City South Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Center City South Redevelopment District, the District being created in 2007; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Center City South Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance added property and increased the District boundaries, the District boundaries being modified in 2008; and,

WHEREAS, the boundaries of the Center City South Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $712,759 of increment funds in ad valorem taxes from the Center City South Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Center City South Redevelopment District at $712,759 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the

Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Center City South Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

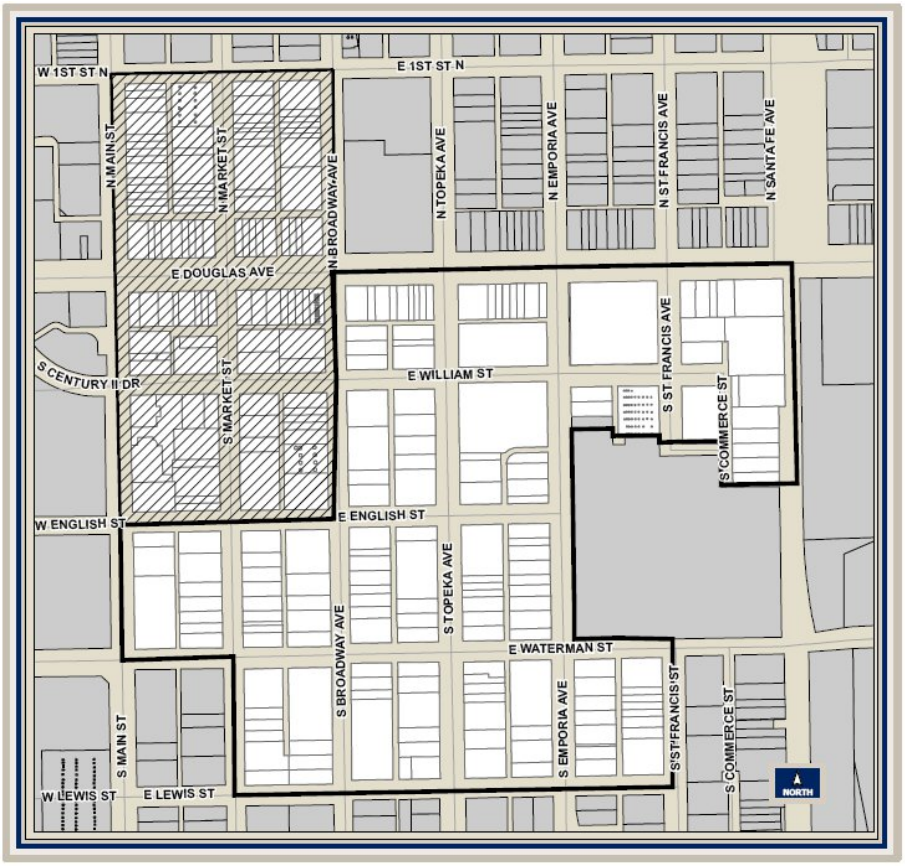
APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT (TIF DISTRICT #12)

All property located in Wichita, Sedgwick County, Kansas within the boundaries beginning at the intersection of the centerline of Main Street and the north right of way line of 1st Street North; thence east to the east right of way line of Broadway Avenue; thence south to the north right of way line of Douglas Avenue; thence east to the east right of way line of Santa Fe Avenue; thence south to the south right of way line of Waterman Street; thence west to the east right of way line of St. Francis Street; thence south to the south right of way line of Lewis Street; thence west to the west right of way line of Market Street; thence north to the south right of way line of Waterman Street; thence west to the centerline of Main Street; thence north to the point of beginning; excluding Lot 1 Block 1 Sedgwick County Arena Addition; and including all street rights of way within such described area.



THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #12)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-613

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Douglas & Hillside Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Douglas & Hillside Redevelopment District, the District being created in 2006; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Douglas & Hillside Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Douglas & Hillside Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $371,991 of increment funds in ad valorem taxes from the Douglas & Hillside Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Douglas & Hillside Redevelopment District at $371,991 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022 and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Douglas & Hillside Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

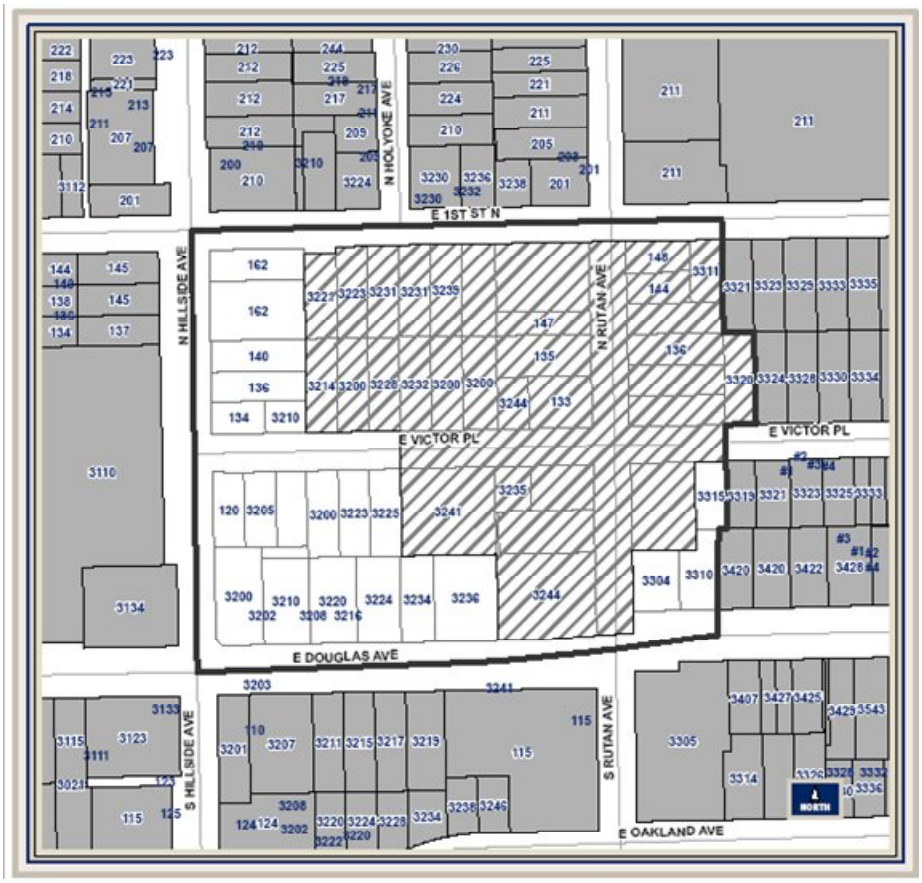
APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT (TIF DISTRICT #15)

All property located in Wichita, Sedgwick County, Kansas, bounded on the south by Douglas Avenue, on the west by Hillside Avenue, on the north by 1st Street North, and includes property adjacent to Rutan Avenue on the east.



THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #15)

(Published in The Wichita Eagle on August 24, 2021) 10010701

ORDINANCE NO. 51-614

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE UNION STATION REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Union Station Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Union Station Redevelopment District on March 17, 2015, with the District being previously created on October 7, 2014; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Union Station Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Union Station Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $320,000 of increment funds in ad valorem taxes from the Union Station Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Union Station Redevelopment District at $320,000 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Union Station Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

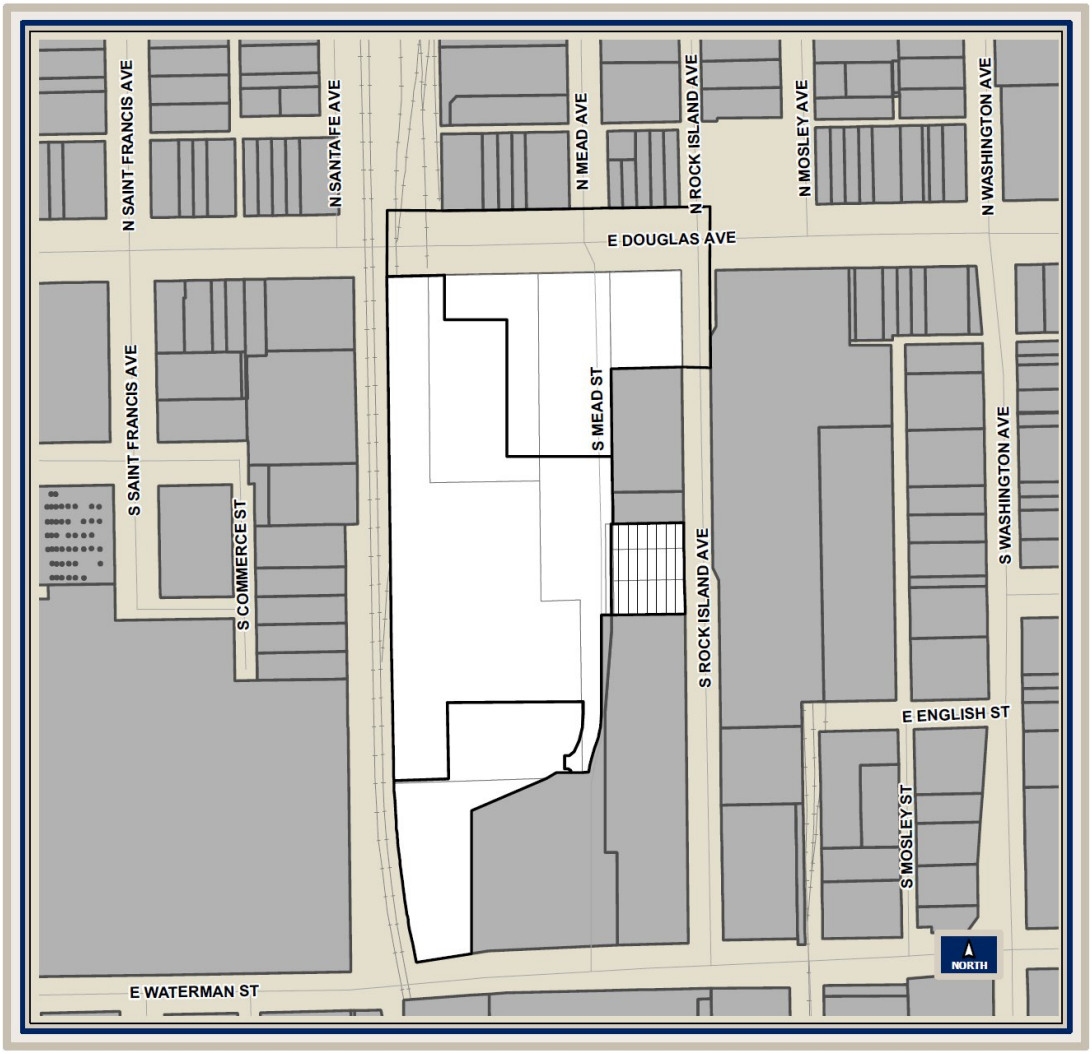
APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE UNION STATION REDEVELOPMENT DISTRICT (TIF DISTRICT #16)

The property within the existing district includes all property generally bounded by the railroad right of way on the west, the north right of way line of Douglas Avenue on the north, the east right of way line of Rock Island from Douglas to the south property line of 801 E. Douglas and the east property line of 725 E. Douglas on the east, and the south property line of 801 E. Doulas and south property line of lot 2 of Union Station Addition, and with regards to the property to be added to the expanded district, the east edge of the existing district on the west, the north property line of 155 S. Rock Island to the north, the east west property line of Rock Island to the east and the south property line of 165 S. Rock Island to the south, all in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas.



THE UNION STATION REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #16)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-615

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE SOUTHFORK DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Southfork District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Southfork District on April 16, 2013, with the District being previously created on April 10, 2012; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Union Station Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Southfork District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $220,000 of increment funds in ad valorem taxes from the Southfork District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Southfork District at $220,000 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Southfork District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

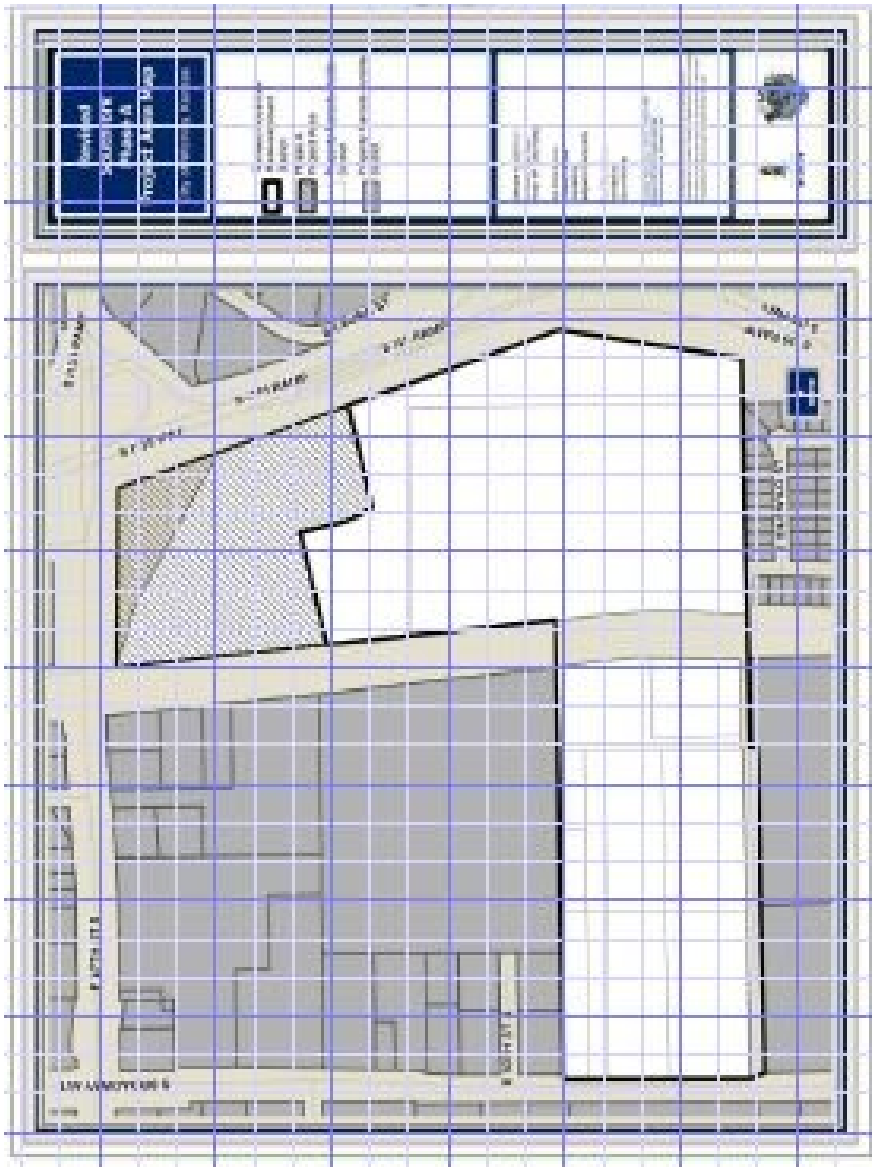
_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE SOUTHFORK DISTRICT (TIF DISTRICT #17)



THE SOUTHFORK DISTRICT
(TAX INCREMENT FINANCING DISTRICT #17)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-616

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE WEST BANK DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the West Bank District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the West Bank District on June 13,2017, with the District being previously created on March 7, 2017; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Union Station Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the West Bank District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $563,279 of increment funds in ad valorem taxes from the West Bank District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the West Bank District at $563,279 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the West Bank District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

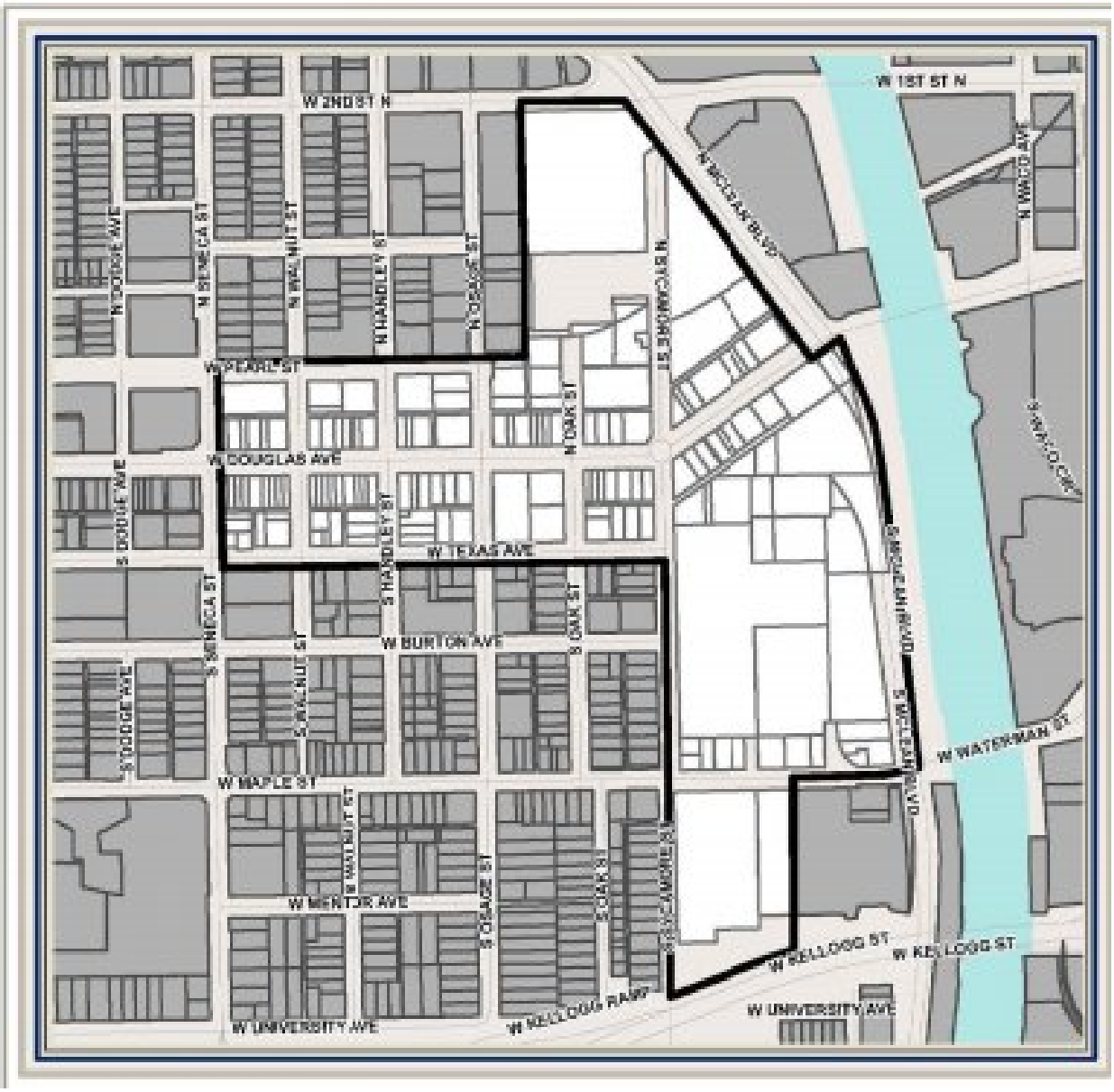
_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE WEST BANK DISTRICT (TIF DISTRICT #18)



(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-606

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE CITY OF WICHITA, KANSAS, FOR THE YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022, AND RELATING THERETO, AND CONCURRENTLY APPROVING CERTAIN AMENDMENTS TO THE 2022 ADOPTED BUDGET.

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

SECTION 1. The City of Wichita, Kansas has adopted a budget requiring $129,165,203 in general taxes to be levied for the funds as specified below.

There is hereby levied by the City of Wichita, Kansas on all taxable tangible property in the City of Wichita, Kansas, according to the estimated assessed valuation thereof, a mill levy rate for the City of Wichita, Kansas, and said mill levy rate is subject to the actual determination of assessed valuation by the County Clerk. It is the intention of the City of Wichita to set a levy sufficient to raise the above amounts; PROVIDED, that said levy must remain within those limitations set by statute or charter ordinance.

SECTION 2. That in accordance with Section 1 hereof, there be and hereby is levied by the City of Wichita, Kansas, upon all the taxable property in the City of Wichita, Kansas, according to the assessed valuation thereof, the following amount for the use of the City of Wichita, Kansas, for the year 2022, which begins January 1, 2022, and ends December 31, 2022, for the following purposes, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

	City of Wichita	**Mill Levy**
Assessed Valuation	$3,944,096,063	
Taxes to be Levied:		
General Fund	101,556,530	25.749
Debt Service Fund	27,608,673	7.000
Total:	**129,165,203**	**32.749**

SECTION 3. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the property taxes required in this ordinance to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 4. That the amendments to the 2022 Adopted Budget of the City of Wichita, Kansas, as proposed for consideration and noticed for public hearing concurrently with the proposed 2022 budget, be, and the same (together with any modifications thereto as may have been made following the public hearing) hereby are, approved and adopted.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-607

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE DOWNTOWN WICHITA SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT FOR THE YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established the Downtown Wichita Self-Supported Municipal Improvement District ("District") by Ordinance No. 44-895 under the authority of K.S.A. 12-1794, et seq., effective March 24, 2001, and the governing body of the City serves as the governing body of the District; and,

WHEREAS, on February 12, 2008, the City of Wichita, Kansas established the term of the District Ordinance to the year 2012, and then automatically for one more year, for each year the City adopts a District budget; and

WHEREAS, pursuant to K.S.A. 12-17,102, the governing body of the District is authorized to levy taxes annually within the District to carry out the purposes of the District; and

WHEREAS, the Downtown Wichita Self-Supported Municipal Improvement District Advisory Board has submitted a proposed budget to the governing body of the District as required by law;

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

SECTION 1. The governing body of the Downtown Wichita Self-Supported Municipal Improvement District ("District") has adopted a budget requiring $682,274 in general taxes to be levied for the fund of the District for the year 2022, which begins January 1, 2022, and ends December 31, 2022. The boundaries of the District are as follows:

> Beginning at the east bank of the Arkansas River and the Kellogg Street Fly Over, eastward to Washington Street; North along Washington Street to Central Avenue; West along Central Avenue to its intersection with Greenway Boulevard; and along a line south through the War Memorial Park to the east bank of the Arkansas River; South along the east bank of the Arkansas River to the point of beginning at the Kellogg Street Fly Over, all in Wichita, Sedgwick County Kansas, EXCEPT AND EXCLUDING THEREFROM THE REAL PROPERTY DESCRIBED AS Lot 2, Emerson Addition to the City of Wichita, Sedgwick County, Kansas.

And as shown upon the map attached as Exhibit A and made a part of this ordinance.

SECTION 2. There is hereby levied by the governing body of the District on all taxable tangible property in the District, according to the estimated assessed valuation thereof, a mill

levy rate for the District, and said mill levy rate is subject to the actual determination of assessed valuation by the County Clerk. It is the intention of the City of Wichita to set a levy sufficient to raise the above amounts; PROVIDED, that said levy must remain within those limitations set by statute or ordinance.

SECTION 3. That in accordance with Section 2 hereof, there be and hereby is levied upon all the taxable property in the District, according to the assessed valuation thereof, the following amount for the use of the District, for the year 2022, which begins January 1, 2022, and ends December 31, 2022, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

	District	Mill Levy
Assessed Valuation	$104,005,138	
Taxes to be Levied:	$682,274	6.560

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the property taxes required in this ordinance to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August, 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

DESCRIPTION OF THE DOWNTOWN SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT (SSMID)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the east bank of the Arkansas River and the Kellogg Street Fly Over, eastward to Washington Street; north along Washington Street to Central Avenue; west along Central Avenue to its intersection with Greenway Boulevard; and along a line south through the War Memorial Park to the east bank of the Arkansas River; south along the east bank of the Arkansas River to the point of beginning at the Kellogg Street Fly Over, all in Wichita, Sedgwick County, Kansas, EXCEPT AND EXCLUDING THEREFROM THE REAL PROPERTY DESCRIBED AS Lot 2, Emerson Addition to the City of Wichita, Sedgwick County, Kansas.

THE DOWNTOWN SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT (SSMID)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-608

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has previously, by Ordinance No. 43-009, established a Redevelopment District designated as the North Industrial Corridor Redevelopment District under authority of K.S.A. 12-1770, *et seq.*; and,

WHEREAS, the City has by ordinance passed, upon a 2/3 affirmative vote of the governing body, a redevelopment plan for the North Industrial Corridor Redevelopment District, the District being created in 1996; and,

WHEREAS, the City has previously found that the conditions set forth in K.S.A. 1995 Supp. 12-1771(a)(2) did exist and therefore the increment in ad valorem taxes for the North Industrial Corridor Redevelopment District is set on a yearly basis as provided in K.S.A. 12-1771a(b); and,

WHEREAS, the boundaries of the North Industrial Corridor Redevelopment District are described in "Exhibit A" attached hereto

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget requiring $1,165,300 of increment funds in ad valorem taxes from the North Industrial Corridor Redevelopment District (the boundaries of the District are described in "Exhibit A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby sets the increment to be collected from ad valorem taxes produced from property located within the North Industrial Corridor Redevelopment District at $1,165,300 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of investigation and remediation of the contaminated condition that exists in the North Industrial Corridor Redevelopment District that are anticipated to be incurred between January 1, 2022, and December 31, 2022, including costs of remediation and investigation, and feasibility studies, operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. The increment set herein does not exceed twenty percent (20%) of the amount of taxes that were produced in 1996, which is the year in which the North Industrial Corridor Redevelopment District was first established.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment to be produced from ad valorem taxes that are to be levied in the North Industrial Corridor Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

BUDGET SUMMARY

The expenditures, revenues and the amount of 2022 tax to be levied (published below) establish the maximum limits of the 2022 budget for the Groundwater Contamination Project of the North Industrial Corridor Redevelopment District.

North Industrial Corridor Redevelopment District		**Amount To**
Revenues:	**2022 Proposed Budget**	**Be Levied**
Motor Vehicle Taxes	$0	
Other Revenue	0	
Cost to be funded by a levy from the North Industrial Corridor Redevelopment District*	1,165,300	**$ 1,165,300**
Total Revenues	**$1,165,300**	
Expenditures:		
Personal services	$0	
Contractuals	1,395,072	
Commodities	121,246	
Capital outlay	0	
Other	245,314	
Environmental remediation projects	7,300,000	
Total Expenditures	**$9,061,632**	

* The North Industrial Corridor Redevelopment District was formed under authority of Ordinance No. 43-009 and K.S.A. 12-1770 *et seq*.

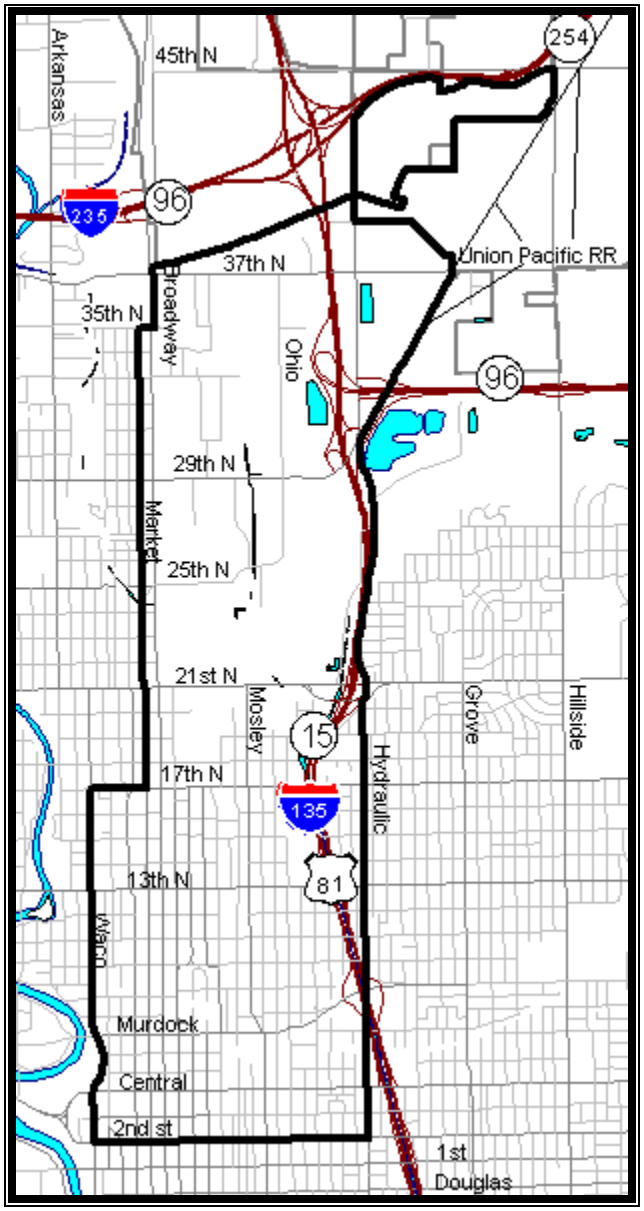
K.S.A. 12-1771a(d) provides that the real property taxes produced by the environmental increment from a redevelopment district shall be allocated and paid by the County Treasurer to the Treasurer of the City and deposited in a special separate fund of the City to pay the direct cost of investigation and remediation of contamination in the redevelopment district. K.S.A. 12-1771a(b) provides that the environmental increment is set on a yearly basis and each year's increment shall be set in an amount sufficient to pay the direct costs of investigation and remediation of the contaminated condition anticipated to be incurred that year. The mill levy rate for property located inside the Redevelopment District does not increase as a result of this levy. Therefore, an estimate of the mill levy rate is not included in this budget summary.

_____

Karen Sublett, City Clerk

DESCRIPTION OF THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT (TIF DISTRICT #2)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of 37th Street North and Broadway Avenue, thence south along the center line of Broadway Avenue to the intersection of Broadway Avenue and 35th Street North, thence west along the center line of 35th Street North to the intersection of 35th Street North and Market Street, thence south along the center line of Market Street to the intersection of Market Street and 17th Street, thence west along the center line of 17th Street to the intersection of 17th Street and Waco Avenue, thence south along the center line of Waco Avenue to the intersection of Waco Avenue and Second Street, thence east along the center line of Second Street to the intersection of Second Street and Hydraulic Avenue, thence north along the center line of Hydraulic Avenue to the point where the center line of Hydraulic Avenue intersects the east right of way of Interstate Highway I-135, thence generally north along the east right of way of Interstate Highway I-135 to the point where the east right of way of Interstate Highway I-135 intersects the west right of way of the Union Pacific Railroad, thence generally northeast along the west right of way of the Union Pacific Railroad to the center line of 37th Street North, thence generally northwest and southeast along the boundary line of the corporate limits of the City of Wichita as defined by the boundary resolution of December 19, 1995, to the center line of Hydraulic Avenue, thence north along the center line of Hydraulic Avenue to the south right of way of State Highway K-254, thence generally east along the south right of way of State Highway K-254 to the center line of Hillside Avenue, thence generally northeast and southwest along the boundary line of the corporate limits of the City of Wichita to the intersection of 37th Street North and Broadway Avenue, being the point of beginning.



THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT
(TAX INCREMENT FINANCING DISTRICT #2)

(Published in The Wichita Eagle on August 27, 2021) 10010701

ORDINANCE NO. 51-609

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE EAST BANK REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022, AND ENDING DECEMBER 31, 2022.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the East Bank Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the East Bank Redevelopment District, the District being created in 1995; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the East Bank Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance removed property and reduced the District boundaries, the District boundaries being modified in 2002; and,

WHEREAS, the City has by ordinance expanded the District boundaries, the District boundaries being modified in 2004; and,

WHEREAS, the City has by ordinance expanded the District boundaries, the District boundaries being modified in 2016; and,

WHEREAS, the boundaries of the East Bank Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $1,502,254 of increment funds in ad valorem taxes from the East Bank Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the East Bank Redevelopment District at $1,502,254 for the year beginning January 1, 2022, and ending December 31, 2022.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2022, and December 31, 2022, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and

maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the East Bank Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of August 2021.

_____
Brandon J. Whipple, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and Director of Law

EXHIBIT "A"

DESCRIPTION OF THE EAST BANK REDEVELOPMENT DISTRICT (TIF DISTRICT #3)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of Main Street and Kellogg Avenue, thence north on Main Street to the intersection of Main Street and Douglas Avenue, thence west on Douglas Avenue to the intersection of Douglas Avenue and Waco Street, thence north on Waco to the intersection of Waco Street and Greenway Boulevard, thence north on Greenway Boulevard to Central Avenue, thence west on Central Avenue to Seneca Street, thence south on Seneca Street to the intersection of Seneca Street and McLean Boulevard, thence south on McLean Boulevard to Kellogg Avenue, thence east on Kellogg Avenue to Main Street, being the point of beginning, plus an approximately five-acre parcel located at the southwest corner of Maple Street and McLean Boulevard.

An area including the following additions, lots and parcels all located in Wichita, Sedgwick County, Kansas:

Advanced Learning Library Addition; Sycamore Addition; Odd Lots 21 to 51 on Oak Street and half of vacated Pearl on the south, West Wichita Addition; Even Lots 22 to 52 on Oak Street and half of vacated Pearl on the south, West Wichita Addition; Odd Lots 21 to 51 on Sycamore Street and half of vacated Pearl on the south, West Wichita Addition; Odd Lots 101 to 143 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 102 to 140 and the West 5 feet of Lot 142 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 144 to 160 and the East 20 feet of Lot 140 and the vacated alley adjacent on the South on Chicago, now Douglas Avenue, West Wichita Addition; Reserve A, West Wichita Addition except that part lying east of the center line of the railroad right-of-way and except the northwest 10 feet taken for alley and except that part replatted as part of Payne's Park Addition; Payne's Park Addition; that part of the Southwest ¼ of Section 20-Township 27-Range 1 East of the 6th P.M. lying South of Reserve A, West Wichita Addition and East of Payne's Park Addition and lying north of the South line of Lot 9, Block 6, Payne's Park Addition extended East to the center line of the railroad right of way and except that part dedicated for street; Wichita Ice Center Addition; All public streets and rights of way contiguous to the above described parcels including parcels condemned in CC A-60844; and any portions of the Big Arkansas River lying contiguous to the above described parcels.

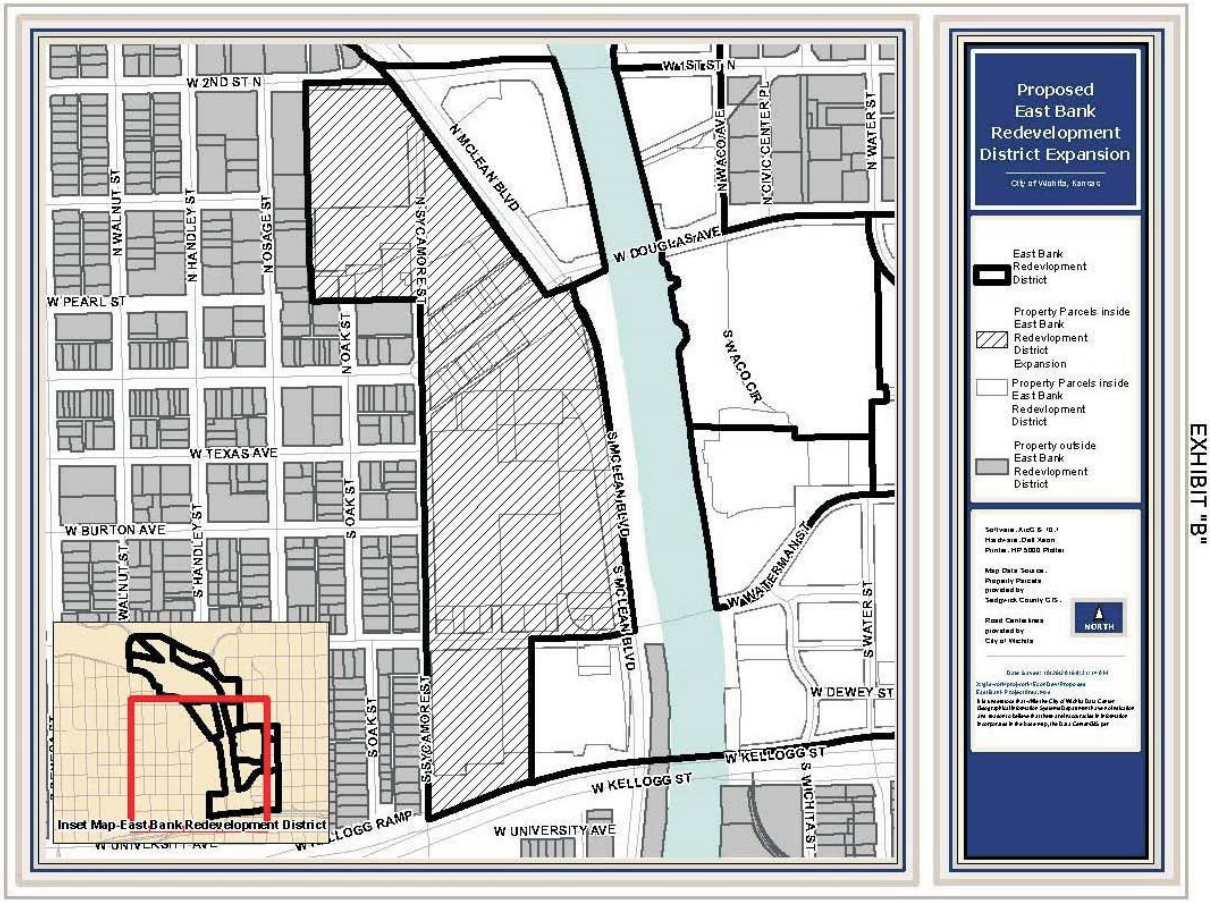


EXHIBIT "B"

THE EAST BANK REDEVELOPMENT DISTRICT
(TAX INCREMENT FINANCING DISTRICT #3)

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Public Hearing and Request for Letter of Intent to Issue Industrial Revenue Bonds (Air Capital Flight Line, LLC) (District III)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.

Background: Air Capital Flight Line, LLC (ACFL) is requesting a Letter of Intent through December 31, 2022, for the issuance of Industrial Revenue Bonds (IRBs) in the amount not to exceed $8,900,000 and a 100% five-plus-five-year tax abatement. The company intends to construct an addition to a building located at 3800 S. Oliver in south Wichita for the benefit of Spirit AeroSystems (Spirit).

Analysis: The existing facility, Building 39K, is located at 3800 S. Oliver and is a former Boeing facility and is approximately 144,000 square feet. It was constructed for Spirit in 2018-2019. ACFL intends to add an additional 55,000 square feet of manufacturing space to building 39K. The former Boeing campus was acquired in 2014 by Air Capital Flight Line, which is a partnership between developers Johnny Stevens and Dave Murfin. The building will be leased to Spirit.

Spirit has a diversified customer base that includes Boeing, Airbus, Bombardier, Rolls Royce, Mitsubishi, Bell Helicopter and Northrup Grumman. The company has also expanded its capabilities to include the manufacturing of metal and composite aerostructures for both commercial and defense programs.

As a result of the new expansion, Spirit projects adding at least 150 employees with average wages in excess of $100,000 annually.

The property tax abatement for this building is subject to the developers signing a lease agreement with Spirit. Additionally, should Spirit terminate its lease, or should Spirit not achieve the requisite benchmarks required at a five-year review of capital investment and job creation, the abatement would terminate.

The impact on Spirit and other aerospace-related companies in Wichita due to both the Boeing 737 Max grounding and the global pandemic has been significant, resulting in many business and job losses. The City's Economic Guidelines provides direction to the City in the event of such industry-wide economic downturns when it comes time to conduct five-year IRB reviews on a company's required job creation, wages, and capital investment. An economic downturn is evidenced by a significant decline (at least a 5 point decline) in the WSU's Civilian Aircraft Exports index (CAE) from the point at which the incentive agreement was signed.

In 2016, the City Council approved a new, five-year Letter of Intent to issue IRBs in an amount not to exceed $280,000,000. At the time, Spirit employed 10,800 in Wichita and projected it would add 349 new employees over five years.

Spirit did exceed the capital investment requirement and reached 13,000 employees at one point, but currently employs 8,500 in Wichita which is below the base employment at the time of the 2016 IRB agreement. In the first quarter of 2016, the CAE index was at 109.912 (reported in billions). By the second quarter of 2019, the number had dropped to 99.74, a drop of more than 10 points. In the second quarter of 2020 the number was 41.48. As of the first quarter this year, it had only rebounded to 53.067. Consequently, when the City conducts the five-year review later this year, Spirit will be eligible for a deferment of the review until such time as the index returns to the base index of 109, plus the period of time of the economic downtown. In the event the index does not return to the 2016 level of 109 prior to year 10 of the tax abatement, the abatement will still end at year 10.

Financial Considerations: Air Capital Flight Line, LLC agrees to pay all costs relative to the issuance of the bonds. The company also agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds.

Based on the Economic Development Incentive Policy, Spirit qualifies for a 100% five-plus-five-year tax exemption on real property acquired with bond proceeds. Based on the latest available mill levy, and assuming that the real property improvements are valued at 80% of the actual capital investment, the estimated value of the property tax for the first full year is approximately $230,693. The value of a 100% real property tax exemption as applicable to taxing jurisdictions:

City	$ 58,293	State	$ 2,670
County	$ 52,296	USD 260	$ 117,434

A benefit/cost analysis report has been completed using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research. The ratios of benefits-to-costs are as follows:

City of Wichita	44.73 to 1.00
City of Wichita Gen Fund	22.55 to 1.00
City of Wichita Debt Serv	NA to 1.00
Sedgwick County	2.02 to 1.00
USD 260	1.15 to 1.00
State of Kansas	31.04 to 1.00

Legal Considerations: Bond documents needed for the issuance of the bonds will be prepared by bond counsel, Gilmore & Bell PC. The City's Law Department will review and approve the final form of bond documents prior to the issuance of any bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.

Attachments: Letter of Intent Application, Resolution of Intent

Gilmore & Bell, P.C.
06/26/2021

RESOLUTION NO. 21-272

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AN EXISTING MANUFACTURING FACILITY LOCATED IN THE ENVIRONS OF SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, for the purpose of providing funds to finance the cost of acquiring, constructing and equipping improvements to an existing manufacturing facility (the "Project") located in the environs of the City and to be leased by the City to Air Capital Flight Line, LLC, a Kansas limited liability company (the "Tenant"). The Tenant will be required to continue to sublease the existing facility and the Project to Spirit Aerosystems, Inc., a Delaware corporation (the "Subtenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City and its environs, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed $8,900,000 (collectively, the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's and Subtenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds (the "Letter of Intent") in accordance with the City of Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines"); (b) the successful negotiation and sale of the Bonds

to a purchaser or purchasers to be determined by the Tenant and Subtenant and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Tenant and Subtenant and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Tenant and Subtenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Tenant, Subtenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

Section 4. Property Tax Exemption. The Governing Body hereby determines, that pursuant to the provisions of K.S.A. 79-201a, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; and further provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth;* and (c) for real estate on which the Project will be located. The Governing Body hereby conditionally approves a 100% ad valorem property tax exemption on the Bond-financed property not excluded in the prior sentence of this section, for a five-year term, with an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's and Subtenant's ongoing compliance with the Guidelines. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore and compliance with State Department of Revenue procedures ad guidelines. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 6. Reliance by Tenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds; provided that such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant and Subtenant that the Bonds will actually be issued. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant or Subtenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant and Subtenant. After compliance with the provisions of the Letter of Intent by the Tenant and Subtenant has been demonstrated, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant and Subtenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such

other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; and (b) cooperate with the Tenant and Subtenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2022 unless extended by affirmative vote of a majority of the Governing Body.

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ADOPTED by the City Council of the City of Wichita, Kansas, on July 13, 2021.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on July 13, 2021, as the same appears of record in my office.

DATED: July 13, 2021.

Karen Sublett, City Clerk

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EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON JULY 13, 2021

The City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent: .

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

* * * * * * * * * * * * * *

(Other Proceedings)

Among other business, in accordance with notice published on July 2, 2021, in the ***Wichita Eagle***, a public hearing was held by the Governing Body relating to the proposed issuance of not to exceed $8,900,000 principal amount of Taxable Industrial Revenue Bonds (Building 39K Expansion Project) (the "Bonds"). All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

> **A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AN EXISTING MANUFACTURING FACILITY LOCATED IN THE ENVIRONS OF SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.**

Thereupon, [_____] moved that said Resolution be adopted. The motion was seconded by [_____]. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the Governing Body, the vote being as follows:

Aye:

Nay:

Thereupon, the Resolution was then duly numbered Resolution No. 21-272, and was signed by the Mayor and attested by the Clerk.

(Other Proceedings)

* * * * * * * * * * * * * *

CERTIFICATE

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

[SEAL]

_____

Karen Sublett, City Clerk

600809.20591\RESOLUTION OF INTENT

(Signature Page to Excerpt of Minutes)

GILMORE & BELL, P.C.
07/14/2021

[FORM OF LETTER OF INTENT]
[CITY LETTERHEAD]

July 20, 2021

Mr. Johnny W. Stevens
Air Capital Flight Line, LLC
3800 South Oliver Street
Wichita, KS 67210

Mr. Sam Sackett
Spirit AeroSystems, Inc.
3801 South Oliver Street
Wichita, KS 67210

At its regular meeting held on July 20, 2021, the City Council (the "Governing Body"), of the City of Wichita, Kansas (the "City") adopted Resolution No. 21-[___] (the "Resolution of Intent") indicating an intent to issue, in one or more series, an aggregate principal amount not to exceed $ 8,900,000 in City of Wichita Taxable Industrial Revenue Bonds (Building 39K Expansion Project) (collectively, the "Bonds"), for the purposes further set forth below, subject to certain conditions, including the execution of a letter of intent as described in the Resolution of Intent.

The Mayor of the City, on behalf of the Governing Body, hereby tenders its written intent to issue the Bonds. Absent subsequent rescission or extension by action of the Governing Body, this intent to issue the Bonds will remain in effect for a period ending December 31, 2022. This letter (the "Letter of Intent") is an indication of the intent of the City to issue the proposed Bonds, and is subject in all respects to the Governing Body's final approval of the terms of a Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty Agreement and other related documents for each series of the Bonds (collectively, the "Financing Documents"). In the event that the proposed Bonds are not ultimately issued for any reason, the City shall not be deemed to have assumed or incurred any liability or obligation to Air Capital Flight Line, LLC, a Kansas limited liability company (the "Tenant") or Spirit AeroSystems, Inc., a Delaware corporation (the "Subtenant"), or any other party by virtue of any proceedings or actions taken in connection therewith.

At its regular meeting held on November 13, 2018, Governing Body, of the City of Wichita, Kansas (the "City") adopted Resolution No. 18-402 (the "2018 Resolution") indicating an intent to issue, in one or more series, an aggregate principal amount not to exceed $ 18,000,000 in City of Wichita taxable industrial revenue bonds to finance the costs of acquiring, constructing and equipping of the Existing Facility. Pursuant to the 2018 Resolution the City and the Tenant entered into a letter of intent, dated November 13, 2018 setting forth certain terms and conditions of the issuance of such revenue bonds and agreements relating to certain public incentives relating thereto (the "2018 LOI"). On December 20, 2019, pursuant to the 2018 Resolution and 2018 LOI, the City issued its City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series X, 2019 (Air Capital Flight Line, LLC) in the principal amount of $ 17,085,050.13 (the "2019

Bonds") to finance costs associated with the Existing Facility. The parties hereto acknowledge that the terms, provisions and conditions set forth in the 2018 LOI and the documents associated with the issuance of the 2019 Bonds remain in existence so long as the 2019 Bonds remain outstanding and are not affected by this Letter of Intent.

The purpose of the Bond issue associated with this Letter of Intent will be to enable the Tenant to finance the cost of acquiring, constructing and equipping improvements to an existing manufacturing facility (the "Existing Facility") on the east side of South Oliver Street between 31st Street South and E. MacArthur Road in Sedgwick County, Kansas and known as Building 39K, which is outside of but within 3 miles of the corporate boundaries of the City (the "Project") to be leased by the City to the Tenant and subleased to the Subtenant.

The Tenant has represented that a total capital investment of at least $7,487,708 will be made in the Project and the Subtenant will maintain its current employment level of full time jobs at its existing facility and add an additional 150 jobs at the Project over the next five years, with an average wage for the net new jobs of at least $110,000.

The Governing Body, pursuant to the provisions of K.S.A. 79-201a and the Resolution of Intent, has conditionally approved a 100% *ad valorem* property tax exemption on the Project, to the extent purchased or constructed with the proceeds of the Bonds, for a five year term, with an additional five year term of exemption to be considered thereafter, at the discretion of the Governing Body; provided no exemption is to be granted from the *ad valorem* property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth;* and (c) for real estate on which the Project will be located. *Ad valorem* property taxes levied for matters described in (a), (b), and (c) above shall be the responsibility of the owner of the Project.

The Governing Body has also determined that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. This sales tax exemption has an estimated value of $224,684. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

The *ad valorem* property tax exemption and sales tax exemption are within the description of "public incentives" in the City of Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines") and will be fully subject to the ongoing compliance and repayment provisions of such Guidelines, the provisions of the Resolution of Intent and the requirements set forth in this Letter of Intent.

This intent to issue the Bonds is given subject to the following conditions:

1. Preparation of an appropriate Bond Ordinance, which will contain a provision pledging the financed property and net earnings therefrom as security for payment of the Bonds, pursuant to K.S.A. 12-1744.
2. Negotiation of a Lease Agreement (the "Lease") which shall incorporate the following:

a) A provision prohibiting assignments or subleases made without the City's consent, subject to any prior City approval of required subleases;

b) A provision regarding the Tenant's option to purchase the Project that states a firm option price and the obligation of the Tenant to provide for payment of all other expenses related to the exercise of such option to purchase;

c) An agreement that the Tenant will use and operate the Project in accordance with all applicable environmental laws and regulations, and will indemnify and hold the City harmless from any and all liabilities (other than liabilities resulting from environmental contamination primarily caused by the City's own agents or employees) arising under any environmental law or regulation;

d) An agreement to obtain all insurance the City may require in connection with the construction, maintenance or operation of the Project, or liabilities arising out of the operation of the Project;

e) An agreement requiring the Tenant and Subtenant to comply with the ordinances of the City, as then in existence or as may thereafter be adopted, pertaining to civil rights and equal employment opportunity, as required by Section 2.12.950 of the Code of the City;

f) An agreement by the Tenant and Subtenant that it will not discriminate or permit discrimination against any person on the basis of race, color, national original or ancestry, religion, sex, age, disability or marital status in its operations or services, and its use or occupancy of the Project;

g) An agreement by the Tenant and Subtenant that it will comply with all application provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000 et seq.; the Code of the City of Wichita Section 2.12.950; and, any laws amendments or regulations promulgated thereunder, including any ordinance of the City presently existing or hereinafter enacted, which pertains to civil rights and equal employment opportunity;

h) An agreement by the Tenant and Subtenant that it will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and the Subtenant will annually file an Equal Employment Opportunity/Affirmative Action Plan with the City;

i) An agreement by the Tenant and Subtenant that it will, during the term of the Lease, in addition to performing the Tenant's and Subtenant's obligations to pay impositions relating to the Project or its interest therein required by the Lease, (subject to any lawful right to contest the same) timely pay all other ad valorem property taxes lawfully levied against the Tenant's and Subtenant's real or personal property in Sedgwick County, Kansas;

j) An agreement by the Tenant and Subtenant that it will, during the term of the Lease, comply with all applicable governmental laws, rules and regulations applicable to the Project; and

k) An agreement by the Tenant and Subtenant that it will, during the term of the Lease, abide by the terms and conditions of this Letter of Intent.

3. Execution of guarantees for the payment of the Bonds that may be required by the purchaser or underwriter of the Bonds, (which, for the Tenant, may be in the form of an unconditional guaranty incorporated in the Lease).

4. Agreement by the Tenant, Subtenant or other party to the transaction to pay all costs incurred by the City for processing the application to issue the Bonds and in connection with the subsequent issuance of the Bonds.

5. Agreement by the Tenant to enter into the City's Administrative Service Fee Agreement providing for annual payments of $2,500 in each year that the Bonds are outstanding.

6. Agreement that, prior to the issuance of the Bonds, the Subtenant will have an approved Equal Employment Opportunity/Affirmative Action Plan on file with the City.

7. Agreement by the Subtenant or other appropriate party to furnish to the City copies of any annual financial statements and accompanying audit reports required by the Guidelines.

8. Agreement that, prior to issuance of the Bonds, the Tenant or Subtenant will provide proof that all *ad valorem* property taxes on the Project Additions property which are due and owing up to the proposed date of issuance have been paid.

9. Agreement that, prior to the issuance of the Bonds, the Tenant will obtain a suitable commitment for a policy of title insurance insuring the title of any real property conveyed to the City in connection with the financing, or if no real property is conveyed to the City, evidence acceptable to the City that the Tenant has title to the real property on which the Project will be located.

10. An arrangement (such as a Bond Purchase Agreement or a Bond Placement Agreement) for the sale/placement of the Bonds which shall contain suitable indemnification agreements from the Tenant and any underwriter indemnifying and holding the City harmless from liabilities arising from disclosure or registration provisions of state or federal securities laws.

11. If the Bonds are to be sold by public sale, agreement that the Tenant or Subtenant will not, while any of the Bonds are outstanding, have a commercial banking relationship with the trustee for the Bond issue; or, if the Bonds are to be privately placed, agreement that the Tenant and Subtenant will not have such a relationship with the trustee for the Bond issue unless the purchasers of the Bonds shall first acknowledge in writing the existence of the relationship and waive any conflict that might exist as a result of such relationship.

12. Where the Project involves the acquisition of any interest in real property, an agreement by the Tenant to provide the City, at the time the Lease is submitted for review, an Environmental Site Assessment ("ESA") performed by an independent consultant recognized as an expert in the area that documents the environmental condition of the property. Bonds generally will not be issued if the ESA discloses environmental conditions that might lead to monetary liability for owners or operators of the property.

13. If the Project involves new construction, substantial renovation or substantial landscaping, the Tenant shall provide the following:

    a) An agreement to provide the City with documented evidence, prior to the issuance of the Bonds, that the Tenant used procedures that do not exclude qualified Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) from serving as subcontractors, engineers, architects, suppliers and vendors on the Project; and

    b) If the Project has not been completed at the time the Bonds are issued, a performance bond naming the City and the bond trustee as additional insureds in an amount sufficient to secure completion of the Project.

14. In connection with the Public Incentives approved in connection with the Project, the Lease shall include:

a) An agreement by the Tenant or Subtenant to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with the conditions contained in the Resolution of Intent, including any annual reports required of the Tenant or Subtenant and any inspections of the Tenant's or Subtenant's premises or interviews with the Tenant's or Subtenant's staff;

b) A commitment for completion of the capital investment and maintenance of the employment and job creation goals upon which approval of the Public Incentives was based and compliance with the average wage requirements of the Guidelines;

c) An agreement that the Tenant or Subtenant may be required to make a payment to the Kansas Department of Revenue in amount of additional Kansas, County or City sales and use tax which the Tenant or Subtenant would have been required to bear on personal property and services obtained for the Project, if such property and services had been obtained with funds of the Tenant or Subtenant rather than with proceeds of the Bonds or the in the event the Governing Body finds, upon its five-year review of the Project, that the Tenant or Subtenant did not make a good faith effort to achieve its capital investment and employment and job creation goals; and

d) If the Project is an office headquarters facility, an agreement that the Tenant or Subtenant will maintain its headquarters in the City so long as any of the Bonds are outstanding and for the term of any approved *ad valorem* tax abatement.

15. In connection with the *ad valorem* property tax exemption approved in connection with the Project, the Lease shall also include:

a) An understanding between the Tenant or Subtenant and the City that under the existing provisions of K.S.A. 79-201a, as amended, it is their intention that the property constructed or purchased with the proceeds of the Bonds shall be entitled to exemption from all or a portion of ad valorem taxation for a period of ten (10) calendar years after the calendar year in which the Bonds are issued, provided proper application is made therefor; and further provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, Second and Twenty-Fourth; and (c) for real estate on which the Project is located. *Ad valorem* property taxes levied for matters described in (a), (b) and (c) above shall be the responsibility of the owner of the Project. The City will covenant that, so long as any of the Bonds are outstanding and except as otherwise allowed by the Lease, it will not voluntarily take any action intended to cause or induce the levy or assessment of ad valorem taxes on the Project for an initial five (5) year period, and for an additional five (5) year period for a total of ten (10) years, if the additional five (5) year period is approved by the then current Governing Body of the City. Notwithstanding any of the foregoing provisions, if City elects not to approve the additional five (5) year period of abatement, the City may revoke the tax abatement by either imposing payments in lieu of taxes or by declining to make the annual exemption filing with the Sedgwick County Appraiser's Office.

b) An acknowledgement by the Tenant or Subtenant that in the event of the Tenant's or Subtenant's noncompliance with any of its obligations or agreements connected with any *ad valorem* property tax exemption, beyond the notice and cure period provided for in the Lease for non-monetary defaults, the City will not have received the social and economic development benefits expected in connection with its entry into the Lease and related documents and its issuance of the Bonds, and the resulting loss to the City will be difficult

to measure. In such event, the Tenant or Subtenant shall be required to pay to the City, as liquidated damages, an amount equal to the amount of *ad valorem* property taxes which the Tenant or Subtenant would have been required to pay for the period following such noncompliance but for the *ad valorem* property tax exemption, which payment shall be treated and administered by the City as a payment in lieu of taxes;

c) An agreement that the City may revoke any *ad valorem* property tax abatement or impose a payment in lieu of taxes in the amount of any *ad valorem* property taxes abated in the event the City Council finds, upon its five-year review of the project, that the Tenant or Subtenant did not make a good faith effort to achieve its capital investment and employment and job creation goals; and

d) An acknowledgement by the Tenant or Subtenant that in the event that the Tenant or Subtenant moves its Wichita business operations to another city or county or ceases operation in Wichita within five years of the expiration of the *ad valorem* property tax exemptions granted in connection with the issuance of the Bonds, the City will not have received the social and economic development benefits expected in connection with its entry into the Lease and related documents and its issuance of the Bonds, and the resulting loss to the City will be difficult to measure. In such event, the Tenant or Subtenant shall be required to pay to the City, as liquidated damages, a single payment in an amount equal to the aggregate dollar value of the *ad valorem* property taxes abated within the previous ten years; provided, however, that the amount of such liquidated damages shall be reduced by 20% for each year the Subtenant continues operations in Wichita after the expiration of such abatements. Any such liquidated damages payment shall be treated and administered by the City as a payment in lieu of taxes, and the City shall pay to the Sedgwick County Treasurer the amount of such payment for distribution among the appropriate taxing jurisdictions.

16. Legal opinions regarding certain aspects of a Bond issuance that may be required by the City Attorney or Bond Counsel.

As a guide for developing the Lease and Bond Ordinance, your proposal dated June 14, 2021, to the extent not inconsistent herewith, is incorporated as a part of this Letter of Intent.

A copy of this Letter of Intent is enclosed for your records. Please have the appropriate Tenant and Subtenant representative sign and return the original to the City's Economic Development Office, 455 N. Main Street – 13th Floor, Wichita, Kansas 67202, to evidence the Tenant's and Subtenant's acceptance of the terms and conditions hereof.

Sincerely,

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

600809.205291\LOI FORM v.4

ACCEPTED:

AIR CAPITAL FLIGHT LINE, LLC

By:_____
Name: Johnny W. Stevens
Title: Manager

SPIRIT AEROSYSTEMS, INC.

By:_____
Name: Adam M. Pogue
Title: Vice President

cc: Scot Rigby, Assistant City Manager
Brian K. McLeod, Esq., Deputy City Attorney
Joe Norton, Esq., Bond Counsel
Justin Elkouri, Tenant Counsel
Andrew Kovar, Tenant Counsel
Theodore C. Davis, Subtenant Counsel

600809.205291\LOI FORM v.4

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Public Hearing and Resolution of Intent to Issue Industrial Revenue Bonds (MWCB, LLC) (District I)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Close the public hearing and adopt the Resolution.

Background: MWCB, LLC (MWCB) is the developer of several facilities at the Wichita State University Innovation Campus. It has constructed a 53,000 square-foot shell building at 1960 North Innovation Boulevard which will primarily be leased to Deloitte, LLP. MWCB is requesting a Letter of Intent to issue Industrial Revenue Bonds (IRBs) in an amount not to exceed $20,000,000.

Analysis: MWCB has developed facilities such as the Law Enforcement Training Center, Partnership Building 1 (for Airbus) and Partnership Building 2 (for Spirit and Textron) at the Innovation Campus, among others. The LLC is managed by Steve Barrett and Ivan Crossland.

MWCB has constructed a 53,000 square-foot shell building at 1960 North Innovation Boulevard and intends to lease approximately 40,000 square feet to Deloitte to be used as the Smart Factory @ Wichita. MWCB is requesting IRBs for a property tax abatement for the Deloitte space and for a sales tax exemption for construction materials.

The Smart Factory @ Wichita will assist companies in reviewing their existing manufacturing processes and technologies and find ways to incorporate new processes and advanced technologies. The goal is improved asset efficiency, improved product quality, reduced costs and improved safety and sustainability. Each company will receive an individualized plan that could incorporate robots, robotic programs, cyber applications, 3D printing, reverse engineering, high-end data visualization, advanced engineering software and more.

The shell building is currently valued at $4,996,200 by the Sedgwick County Appraiser's office. That valuation will generate ad valorem taxes of $145,638 annually. A Payment-In-Lieu-Of-Taxes (PILOT) will be placed on the property during the abatement period for that amount where each taxing jurisdiction will continue to receive those taxes on a pro-rata basis. Additionally, MWCB will certify to the City each year what percentage of the building is occupied by tenants other than Deloitte. A second PILOT payment will be billed annually to MWCB for the non-Deloitte space, based on the appraised value and mill levy at that time.

Deloitte intends to add at least 15 new employees over the next five years at a minimum annual salary of $100,000.

MWCB is requesting a letter of intent to issue Industrial Revenue Bonds in an amount not to exceed $20,000,000 for a sales tax exemption on construction materials and a 100% property tax abatement on real property improvements on a five-plus-five year basis, subject to the PILOT payments. No land will be abated.

Financial Considerations: Based on the latest available mill levy, the estimated tax value of the 100% exemption for the first full year is approximately $466,396 (not adjusted for the PILOT payment). The

actual value of any abatement will be subject to the valuation by the Sedgwick County Treasurer. The estimated value of the real property tax exemption as applicable to taxing jurisdictions is:

City	$130,996	State	$ 6,000
County	$117,504	USD 259	$211,896

Wichita State University's Center for Economic Development and Business Research performed an analysis, which indicates the following ratio of benefit to costs:

City of Wichita	1.45 to 1.00
City of Wichita – General Fund	1.28 to 1.00
City of Wichita – Debt Serv	1.47 to 1.00
Sedgwick County	1.26 to 1.00
USD 259	1.64 to 1.00
State of Kansas	2.36 to 1.00

Legal Considerations: The Law Department has approved the attached Resolution as to form.

Recommendations/Actions: It is recommended that City Council close the public hearing, adopt the Resolution and authorize the necessary signatures.

Attachments: Application, Resolution

Industrial Revenue Bond Application

MWCB, LLC (Tenant)

Deloitte LLP (Subtenant)

City of Wichita, Kansas

Industrial Revenue Bonds (MWCB, LLC)

In the amount of $20,000,000

June 22, 2021

June 22, 2021

Mayor Whipple and City Council Members
City of Wichita, City Hall
455 N. Main
Wichita, KS, 67202

Re: Request for $20,000,000 of Industrial Revenue Bonds

Dear Mayor Whipple and Members of the Council:

We are writing to request your support for the issuance of a not to exceed amount of $20,000,000 of the City of Wichita, Kansas, Taxable Industrial Revenue Bonds (the "Bonds"). The amount of Bonds requested covers the construction cost of the office building located generally at 1960 North Innovation Blvd. in Wichita, Kansas on the Wichita State University Campus (the "Building") and the cost of constructing the tenant improvements for Deloitte LLP, a Delaware limited liability partnership ("Deloitte LLP") and its affiliates which will lease approximately 40,000 square feet of space in the Building (the "Project"). The Project will be used by Deloitte LLP and its affiliates as a state-of-the-art technology related research and learning facility. The Project will be located on the Wichita State University Innovation Campus as shown on the preliminary site plan along with a rendering of the building which are enclosed herein.

The issuance of Bonds and the receipt of the economic incentives available in connection therewith are critical in order to allow MWCB, LLC (or its affiliated company) and Deloitte LLP to proceed with the construction of the Project. We are excited about the Project and are confident the Project will have a positive economic impact on the City of Wichita and the surrounding area.

We will be available for any questions you may have regarding our request and look forward to working with you. Thank you in advance for your time and consideration. Hopefully you will agree that the Project will be very beneficial to the City of Wichita, Kansas.

Regards,

MWCB, LLC

Steven R. Barrett
Managing Member

REQUEST FOR CITY OF WICHITA, KANSAS, INDUSTRIAL REVENUE BONDS

1. Name and address of Tenant and Sub-Tenant:

   Tenant:
   MWCB, LLC, a Kansas limited liability company
   150 N. Market
   Wichita, KS 67202
   Telephone: (316) 262-6400
   Attention: Ivan Crossland, Jr., Managing Member and Steve Barrett, Managing Member

   Sub-Tenant:
   Deloitte LLP, a Delaware limited liability partnership
   30 Rockefeller Plaza
   41st Floor
   New York, NY 10112
   Telephone: (212) 492-4000
   Attention: [Charles Ruby], [Managing Director, Deloitte Tax LLP]

2. General description of the business of Tenant and Sub-Tenant:

   MWCB, LLC is a Kansas limited liability company that functions primarily as a real estate development company (herein "MWCB" or "Tenant"). MWCB and its affiliated companies have previously constructed several projects located on the Wichita State University Innovation Campus. The prior projects include the Law Enforcement Training Center (59,335 square feet), Partnership Building 1 (Airbus, 90,000 square feet), Partnership Building 2 (Spirit and Textron, 46,775 square feet), The Flats (225,000 square feet plus a 45,000 square foot parking garage), The Suites (96,676 square feet), Braebum Square (21,088 square feet), Hyatt Place (64,290 square feet), Starbucks (2,017 square feet) and newly constructed Partnership 3 Building (54,993 square feet). The managing members of MWCB are Ivan Crossland, Jr. and Steven R. Barrett, both of whom have a successful history of constructing, developing and operating projects such as this one. The Bonds will be purchased by the MWCB or a financial institution that is familiar with MWCB and its members.

   Deloitte LLP is a Delaware limited liability partnership that is privately owned by its partners and principals. Deloitte LLP is headquartered in New York, NY. The affiliates of Deloitte LLP provide industry-leading audit, consulting, tax, and advisory services to many of the world's most admired brands, including 80 percent of the Fortune 500.

3. A general description of the Project and its specific location(s):

   The Smart Factory @ Wichita is expected to offer an opportunity in which the digital, physical, and experimental come together so companies can experience the advanced manufacturing methods and technologies at the heart of digital transformation. The new, cutting-edge facility will help companies better understand how to merge existing technologies with new innovations and create dialogue about how companies can take their first steps to create sustainable investments.

   The Smart Factory @ Wichita will help pinpoint a company's opportunity areas and create a customized experience tailored to its digital transformation goals. The result is an immersive

Industry 4.0 experience that will help companies to spur innovation and growth. With additive manufacturing, collaborative robotics, advanced materials and composites, automation, reverse engineering, and augmented and virtual reality (AR/VR) prototyping simulators, the Smart Factory @ Wichita can help build a personalized road map for a company's future smart factory. Coupled with workshops that help demonstrate the art of the possible, companies will depart with a new vision for smart factory success.

The Project will be located within the Building owned by MWCB and located at 1960 North Innovation Blvd. in Wichita, Kansas on the Wichita State University Innovation Campus. The Building consists of approximately 53,000 square feet of which Deloitte LLP will be leasing a minimum of 40,000 square feet (the "Deloitte Space") with the potential to add additional square footage. The Project will be located in the Deloitte Space and will incorporate modern construction design and materials to accommodate the high technology use of the Project and to increase energy and workplace efficiencies.

Wichita State University owns the land upon which the Building is located (the "Land"). Through a series of ground leases, MWCB will lease the Land and Building, including the Project, to the City of Wichita in connection with the issuance of the Bonds. The City of Wichita will in turn lease the Land, Building and Project back to MWCB and MWCB will then lease the Deloitte Space and Project to Deloitte LLP.

4. A statement of the projected benefits to the City of Wichita:

It is anticipated that Deloitte LLP or its affiliates will hire approximately 15 full time employees as part of this Project. The Project will allow Deloitte LLP and its affiliates to establish its presence in the City of Wichita. The estimated average annual salary and benefit package for the additional employees is estimated to be in excess of $100,000 per employee. A Cost Benefit Analysis prepared by Wichita State University (WSU) Center for Economic Development and Business Research (CEDBR) is enclosed.

In addition to the jobs and investment attributable to the project, Deloitte LLP and its affiliates expect to host clients annually who will be visiting the Smart Factory and the City of Wichita. Deloitte LLP anticipates that there will be up to 3,500 visitors annually which could result in up to 7,000 annual hotel stays should each visitor stay a minimum of two nights. These visitors will generate additional direct economic impact to the City as a result of their visit to the Smart Factory @ Wichita.

The facility will also be incorporating various sustainability investments including solar panels, a solar carport, wind trees, among other renewable energy investments. It is intended that this facility will be a producer of excess electricity and will not likely be utilizing any electricity from the grid.

5. The dollar amount and use of the Bonds requested:

The total amount of the Bonds being requested is an amount not to exceed $20,000,000. The shell of the Building has been completed by the MWCB, LLC. The Bonds, in the amount of not to exceed $20,000,000 will cover the construction cost of the Building and the cost to construct and install the Project. In addition to the Bonds, Deloitte LLP estimates that it will invest an additional $16,000,000 of non-real property investment in the facility for design, machinery, equipment, furniture, fixtures and other tenant related improvements. The total estimated investment by

Deloitte LLP in the new facility is expected to be approximately $30,000,000. This request is the first time that MWCB has requested industrial revenue bond financing from the City in connection with Building and Project.

6. Name and address of Bond Counsel

   Mr. Joe Norton
   Gilmore and Bell
   100 North Main Street
   Suite 800
   Wichita, KS 67202
   Phone: (316) 267-2091
   Email: jnorton@gilmorebell.com

7. Name and address of counsel for MWCB:

   L. Dale Ward
   Hinkle Law Firm LLC
   1617 North Waterfront Parkway
   Suite 400, 67206
   Phone: (316) 631-3120
   Fax: (316) 630-8466
   Email: dward@hinklaw.com

8. Name and Address of Bond Trustee:

   Security Bank of Kansas
   City Corporate Trust Department
   200 W. Douglas, Suite 612
   Wichita, Kansas 67202
   Telephone: (316) 765-2844
   Attention: Bonnie Mosher, Vice President

9. Private Placement Agreement:

   The Bonds will be purchased by MWCB or by a financial institution which is familiar with MWCB and its members.

10. Tax Exemption:

    MWCB is asking for a sales tax exemption for the construction materials used in the Project and a ten (10) year 100% property tax exemption on the Building and any increase in assessed value for tenant improvements in the Deloitte Space. The City and MWCB will enter into a payment-in-lieu of tax agreement with the City whereby MWCB agrees to make a payment-in-lieu of tax each year that the Bonds are outstanding in an amount equal to $145,638, calculated based on the Sedgwick County Appraiser's Office current assessed value of the Building. MWCB will enter into a second payment-in-lieu of tax agreement with the City whereby MWCB agrees to pay all property taxes resulting from an increase in the assessed value of the Building from tenant improvements within the Building, excluding the Deloitte Space.

11. Administration fees of the City and annual compliance:

    The Tenant will agree to make payments of the City's administrative fees of the Bonds for the life of the bond issue, and in addition, the applicant will agree to pay all costs incurred by the City relating to the issuance of Bonds regardless whether the Bonds are ultimately approved or issued. The applicant will also agree and will require its subtenant, Deloitte LLP to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the applicant and any inspections of the applicant's premises or interviews with the applicant's staff.

12. Effects of the Project on the ambient air quality of the City of Wichita and Sedgwick County:

    The Project is not expected to have any negative effect on the ambient air quality of the environmental effects. MWCB will agree and will require its subtenant, Deloitte LLP to comply with the City's policies and requirements relating to environmental matters. The nature of Deloitte LLP and its affiliates' business is such that it does not create any environmental contamination of hazardous materials.

13. Equal Employment Opportunity

    MWCB does not have any employees. Deloitte LLP is an equal opportunity employer. MWCB will require its subtenant, Deloitte LLP to comply with all policies of the City of Wichita regarding equal employment opportunity.

14. Insurance

    The applicant agrees to obtain all insurance the City may require in connection with the construction, maintenance or operation of the project, or liabilities arising out of the operation of the project.

15. Assignment

    MWCB desires the ability to assign its interest in the Letter of Intent and its interest in the Project to an affiliated company. For the purpose of this request, the term "affiliated company" means a company having substantially the same ownership and management as MWCB.

In conclusion, MWCB is requesting that the City Council authorize the execution of the requested Letter of Intent. The applicant is aware that such Letter of Intent is only an indication of intent to issue the proposed Bonds and such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of a Bond Ordinance, Trust Indenture and other related documents. The applicant respectfully requests that such Letter of Intent be valid until December 31, 2022.

Sincerely,

MWCB, LLC

By: SRB Kansas, LLC, Managing Member

By: _____

Name: Steven R. Barrett

Title: Manager

Gilmore & Bell, P.C.
06/23/2021

RESOLUTION NO. 21-277

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION, EQUIPPING AND MAKING FURTHER IMPROVEMENTS TO AN EXISTING FACILITY LOCATED IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, to provide funds to pay the costs of acquisition, construction, equipping and making further improvements to an existing facility (the "Project") located on the Wichita State University Innovation Campus in the City and to be leased by the City to MWCB, LLC, a Kansas limited liability company (the "Tenant") or an affiliated entity; provided that a substantial portion of the Project be subleased by the Tenant to Deloitte LLP, a Delaware limited liability partnership (the "Subtenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed $20,000,000 (collectively, the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's and Subtenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds (the "Letter of Intent") in accordance with the City of Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Tenant and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the City; (c) the receipt of the approving legal

opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Tenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (e) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (f) the execution and delivery by the Tenant of an agreement for payment in lieu of taxes referenced in ***Section 4*** hereof.

Section 4. Property Tax Exemption and Payment in Lieu of Taxes. The Governing Body hereby determines that, pursuant to the provisions of K.S.A. 79-201a, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; and further provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth;* and (c) for real estate on which the Project is located. The Governing Body hereby conditionally approves a 100% ad valorem property tax exemption on the Bond-financed property not excluded in the prior sentence of this section, for a five-year term, with an additional five-year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's and Subtenant's ongoing compliance with the Guidelines. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act. The ad valorem property tax exemption granted is subject to the execution and delivery by the Tenant of an agreement for payment in lieu of taxes to be paid by the Tenant for those portions of the Project not subleased, occupied and operated by the Subtenant, in substantially the form presented to the Governing Body with this Resolution.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefor. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 6. Reliance by Tenant and Subtenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant and Subtenant may incur temporary indebtedness or expend their own funds to pay costs of the Project prior to the issuance of the Bonds; provided that such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant or Subtenant that the Bonds will actually be issued. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant or the Subtenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant and the Subtenant. After compliance with the provisions of the Letter of Intent by the Tenant and Subtenant has been demonstrated, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; and (b) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2022, unless extended by affirmative vote of a majority of the Governing Body.

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ADOPTED by the City Council of the City of Wichita, Kansas, on July 13, 2021.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on July 13, 2021, as the same appears of record in my office.

DATED: July 13, 2021.

_____
Karen Sublett, City Clerk

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Gilmore & Bell, P.C.
06/21/2021

EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON JULY 13, 2021

The City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent: .

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

* * * * * * * * * * * * * *

(Other Proceedings)

Among other business, in accordance with notice published on July 2, 2021, in the ***Wichita Eagle***, a public hearing was held by the Governing Body relating to the proposed issuance of not to exceed $20,000,000 principal amount of Taxable Industrial Revenue Bonds (Smart Factory @ Wichita Project) (the "Bonds"). All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

> **A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION, EQUIPPING AND MAKING FURTHER IMPROVEMENTS TO AN EXISTING FACILITY LOCATED IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.**

Thereupon, [_____] moved that said Resolution be adopted. The motion was seconded by [_____]. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the Governing Body, the vote being as follows:

Aye:

Nay:

Thereupon, the Resolution was then duly numbered Resolution No. 21-277, and was signed by the Mayor and attested by the Clerk.

(Other Proceedings)

* * * * * * * * * * * * * *

CERTIFICATE

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

[SEAL]

_____

Karen Sublett, City Clerk

600809.20587\RESOLUTION OF INTENT

(Signature Page to Excerpt of Minutes)

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Building Facade Improvements Project Close Out – 500 South Topeka (District I)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Approve the statement of cost and place the ordinance on first reading.

Background: On September 17, 2019, the City Council authorized maximum special assessments for façade improvements at 500 S. Topeka in an amount not to exceed $170,000. The façade improvements are now complete. It is now necessary to approve the statement of costs and amend the assessment ordinance to reflect the final assessment amount prior to bonding.

Analysis: The overall project included a $1,000,000 renovation of the Topeka Street Firehouse into a commercial space providing a shared workspace for startups and small businesses. The facade project included include new windows and doors, power washing, awnings, entrance improvements and additional work to restore the building and meet code requirements. The existing fire doors were used as walls/separators inside the building. Final costs of the project include City administrative charges, interim financing costs, estimated costs of issuance related to permanent financing and a one-year debt service reserve based upon permanent financing assumptions. Upon adoption of the ordinance by the governing body, the ordinance will be published and a notice of the final assessment amount will be mailed to the affected property owner.

State statutes provide the City Council authority to use special assessment funding for the projects. Pursuant to K.S.A. 12-6a01 *et seq*., if the final cost of completed improvements is less than the maximum amount of the assessment as set forth in the Original Maximum Assessment Ordinance, it is necessary to reduce the assessment to an amount equal to the final cost of the improvements.

Financial Considerations: The final assessment amount to be paid by special assessments totals $102,813.82. The project is eligible for a $30,000 grant. The grant balance after closing out the 2021 projects will be $61,337. Taxable General Obligation Special Assessment Bonds will be issued in October of 2021, with special assessments levied against the improved property.

Façade improvement costs	$117,166.00
2% City administrative fee	2,343.32
Financing costs	13,304.50
Total Project Costs	$132,813.82
Façade Improvement Grant	(30,000.000)
Maximum Assessment	$102,813.82

Legal Considerations: The authorizing ordinance adjusting the special assessments to reflect the final costs of the project has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.

Attachments: Statement of Cost; Ordinance

Approved /Accepted by City Council

This _____

Wichita, Kansas
July 20, 2021

	Org	47502919
City Clerk	Project#	C9007
Wichita, Kansas	Eng. #	472-2021-085706

Dear City Clerk:

Following is the cost of constructing:
Façade Improvements at 500 S Topeka

Lump Sum Contract Amount	$146,692.45
Change Orders	$0.00
Recording Façade Documents	$0.00
Project Administration	$2,933.85
Publication	$0.00
Abstract	$0.00
Construction Cost	$149,626.30
Idle Fund Interest	$3,097.26
Temporary Finance Cost	$540.66
Finance Administration	$2,393.00
1 Year Debt Service reserve	$8,500.00
TOTAL COST	$164,157.22

Respectfully Submitted,

_____
Scot Rigby, Assistant City Manager

Property: $134,157.22
City: $30,000.00

Fall 2021

Max.Assessment Ordinance: 51-109
Resolution No. 19-234

First Published in the Wichita Eagle on July 30, 2021

ORDINANCE NO. 51-601

AN ORDINANCE ADJUSTING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS – 500 SOUTH TOPEKA IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No. 19-324 (the "Resolution"), the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") has authorized, pursuant to K.S.A. 12-6a01 *et seq*. (the "Act") the creation of an improvement district (the "Improvement District") and the construction of the following improvements therein:

> Construction of improvements to area walls on public ways or land abutting thereto consisting of façade improvements (the "Improvements").

WHEREAS, pursuant to the Act and Ordinance No. 51-109 (the "Original Assessment Ordinance"), the Governing Body has levied special assessments against certain property in the City in connection with the Improvements at the maximum amount deemed necessary by the Governing Body to pay the cost of the Improvements; and

WHEREAS, ***Section 1*** of the Original Assessment Ordinance provides that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth in ***Exhibit A*** to the Original Assessment Ordinance, the Governing Body shall adjust the assessments to reflect the cost of the completed Improvements; and

WHEREAS, the Improvements have been completed and the final costs are less than the amount used to calculate the maximum special assessments levied in the Original Assessment Ordinance; and

WHEREAS, it is necessary to reduce the assessments levied in the Original Assessment Ordinance to an amount equal to the final cost of the Improvements.

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

Section 1. Assessment Adjustments. Pursuant to the Act and ***Section 1*** of the Original Assessment Ordinance, the special assessments to pay the costs of the Improvements are hereby adjusted based on the final cost of the Improvements and are levied in the amounts and assessed against the lots, pieces and parcels of land liable therefor as described in ***Exhibit A*** to this Ordinance, which is incorporated herein by reference. All other terms and provisions of the Original Assessment Ordinance shall remain in full force and effect.

Section 2. Notification. The City Clerk is hereby authorized and directed to: (a) mail a Notice of Adjusted Assessment to the owners of property assessed for the Improvements pursuant to the Original Assessment Ordinance; and (b) return to any property owners that prepaid the special assessments during the prepayment period authorized by the Original Assessment Ordinance, the difference between the assessment paid and the adjusted assessment amount set forth in this Ordinance.

Section 3. **Effective Date**. This Ordinance shall take effect and be in force from and after its passage by the Governing Body and publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the City Council of the City on July 27, 2021 and **SIGNED** by the Mayor.

(SEAL)

_____
Brandon Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on [_____]; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on [_____].

DATED: [_____].

_____
Karen Sublett, City Clerk

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Exhibit A

(FAÇADE IMPROVEMENTS – 500 SOUTH TOPEKA FAÇADE IMPROVEMENT DISTRICT)
RESOLUTION NO. 19-324

Description of Property	Amount of Maximum Assessment
Lot 2, except the South 35 feet thereof, Topeka Avenue, N.A. English's Fifth Addition to the City of Wichita, Sedgwick County, Kansas.	$134,157.22
Commonly known as 500 S. Topeka	

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Building Facade Improvements Project Close Out – 1700 East Douglas (District I)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Approve the statement of cost and place the ordinance on first reading.

Background: On February 4, 2020, the City Council authorized maximum special assessments for façade improvements at 1700 E. Douglas in an amount not to exceed $185,000. The façade improvements are now complete. It is now necessary to approve the statement of costs and amend the assessment ordinance to reflect the final assessment amount prior to bonding.

Analysis: The overall project included a $1,700,000 renovation which included extensive interior and exterior improvements to the building providing more efficient office space as well as making the building more usable. The facade project included exterior brick repair, moving the entrance to allow better interior flow and providing roll-up doors on the west side to provide an indoor/outdoor employee break area on the second floor. Final costs of the project include City administrative charges, interim financing costs, estimated costs of issuance related to permanent financing and a one-year debt service reserve based upon permanent financing assumptions. Upon adoption of the ordinance by the governing body, the ordinance will be published and a notice of the final assessment amount will be mailed to the affected property owner.

State statutes provide the City Council authority to use special assessment funding for the projects. Pursuant to K.S.A. 12-6a01 *et seq*., if the final cost of completed improvements is less than the maximum amount of the assessment as set forth in the Original Maximum Assessment Ordinance, it is necessary to reduce the assessment to an amount equal to the final cost of the improvements.

Financial Considerations: The final assessment amount to be paid by special assessments totals $171,180.46. The project is eligible for a $30,000 grant. The grant balance after closing out the 2021 projects will be $61,337. Taxable General Obligation Special Assessment Bonds will be issued in October of 2021, with special assessments levied against the improved property.

Façade improvement costs	$176,068.00
2% City administrative fee	3,521.36
Financing costs	21,591.10
Total Project Costs	$201,180.46
Façade Improvement Grant	(30,000.000)
Maximum Assessment	$171,180.46

Legal Considerations: The authorizing ordinance adjusting the special assessments to reflect the final costs of the project has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.

Attachments: Statement of Cost; Ordinance

Approved /Accepted by City Council

This _____

Wichita, Kansas
July 20, 2021

	Org#	47502519
City Clerk	Project#	C0002
Wichita, Kansas	Eng. #	472-2021-085707

Dear City Clerk:

Following is the cost of constructing:
Façade Improvements at 1700 E Douglas

Lump Sum Contract Amount		$176,068.00
Change Orders		$0.00
Recording Façade Documents		$140.00
Project Administration		$3,521.36
Publication		$0.00
Abstract		$0.00
Construction Cost		$179,729.36
Idle Fund Interest		$3,720.40
Temporary Finance Cost	$	695.52
Finance Administration		$2,995.00
1 Year Debt Service reserve		$14,200.00
TOTAL COST		$201,340.28

Respectfully Submitted,

_____
Scot Rigby, Assistant City Manager

Property: $171,340.28
City: $30,000.00

Fall 2021

Max.Assessment Ordinance: 51-184
Resolution No. 20-005

First Published in the Wichita Eagle on July 30, 2021

ORDINANCE NO. 51-602

AN ORDINANCE ADJUSTING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS – 1700 EAST DOUGLAS IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No. 20-005 (the "Resolution"), the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") has authorized, pursuant to K.S.A. 12-6a01 *et seq*. (the "Act") the creation of an improvement district (the "Improvement District") and the construction of the following improvements therein:

> Construction of improvements to area walls on public ways or land abutting thereto consisting of façade improvements (the "Improvements").

WHEREAS, pursuant to the Act and Ordinance No. 51-184 (the "Original Assessment Ordinance"), the Governing Body has levied special assessments against certain property in the City in connection with the Improvements at the maximum amount deemed necessary by the Governing Body to pay the cost of the Improvements; and

WHEREAS, ***Section 1*** of the Original Assessment Ordinance provides that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth in ***Exhibit A*** to the Original Assessment Ordinance, the Governing Body shall adjust the assessments to reflect the cost of the completed Improvements; and

WHEREAS, the Improvements have been completed and the final costs are less than the amount used to calculate the maximum special assessments levied in the Original Assessment Ordinance; and

WHEREAS, it is necessary to reduce the assessments levied in the Original Assessment Ordinance to an amount equal to the final cost of the Improvements.

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

Section 1. Assessment Adjustments. Pursuant to the Act and ***Section 1*** of the Original Assessment Ordinance, the special assessments to pay the costs of the Improvements are hereby adjusted based on the final cost of the Improvements and are levied in the amounts and assessed against the lots, pieces and parcels of land liable therefor as described in ***Exhibit A*** to this Ordinance, which is incorporated herein by reference. All other terms and provisions of the Original Assessment Ordinance shall remain in full force and effect.

Section 2. Notification. The City Clerk is hereby authorized and directed to: (a) mail a Notice of Adjusted Assessment to the owners of property assessed for the Improvements pursuant to the Original Assessment Ordinance; and (b) return to any property owners that prepaid the special assessments during the prepayment period authorized by the Original Assessment Ordinance, the difference between the assessment paid and the adjusted assessment amount set forth in this Ordinance.

Section 3. **Effective Date**. This Ordinance shall take effect and be in force from and after its passage by the Governing Body and publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the City Council of the City on July 27, 2021 and **SIGNED** by the Mayor.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on [_____]; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on [_____].

DATED: [_____].

_____
Karen Sublett, City Clerk

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Exhibit A

(FAÇADE IMPROVEMENTS – 1700 East Douglas FAÇADE IMPROVEMENT DISTRICT)
RESOLUTION NO. 20-005

Description of Property	Amount of Maximum Assessment
Odd Lots 1-3, on Douglas Avenue, in Mosbacher's Addition to the City of Wichita, Sedgwick County, Kansas.	$114,226.85
Lot 5, on Douglas Avenue, in Mosbacher's Addition to the City of Wichita, Sedgwick County, Kansas.	$ 57,113.43
Commonly known as 1700 E. Douglas	Total: $171,340.28

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Building Facade Improvements Project Close Out – 1029 West Douglas (District IV)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Approve the statement of cost and place the ordinance on first reading.

Background: On February 19, 2019, the City Council authorized maximum special assessments for façade improvements at 1029 W. Douglas in an amount not to exceed $235,000. The façade improvements are now complete. It is now necessary to approve the statement of costs and amend the assessment ordinance to reflect the final assessment amount prior to bonding.

Analysis: The overall project included a $1,400,000 acquisition and renovation which included extensive interior and exterior improvements to the building to convert the vacant building into renovated commercial space. The facade project included removal of the stucco façade and restoration of the historic brick façade underneath as well as historic preservation and additional work to restore the building and meet code requirements. Final costs of the project include architectural/engineering fees, City administrative charges, interim financing costs, estimated costs of issuance related to permanent financing and a one-year debt service reserve based upon permanent financing assumptions. Upon adoption of the ordinance by the governing body, the ordinance will be published and a notice of the final assessment amount will be mailed to the affected property owner.

State statutes provide the City Council authority to use special assessment funding for the projects. Pursuant to K.S.A. 12-6a01 *et seq*., if the final cost of completed improvements is less than the maximum amount of the assessment as set forth in the Original Maximum Assessment Ordinance, it is necessary to reduce the assessment to an amount equal to the final cost of the improvements.

Financial Considerations: The final assessment amount to be paid by special assessments totals $212,050.56. The project is eligible for a $30,000 grant. The grant balance after closing out the 2021 projects will be $61,337. Taxable General Obligation Special Assessment Bonds will be issued in October of 2021, with special assessments levied against the improved property.

Façade improvement costs	$213,325.00
2% City administrative fee	4,266.50
Financing costs	24,459.06
Total Project Costs	$242,050.56
Façade Improvement Grant	(30,000.000)
Maximum Assessment	$212,050.56

Legal Considerations: The authorizing ordinance adjusting the special assessments to reflect the final costs of the project has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the final statement of cost, place the ordinance on first reading and authorize the necessary signatures.

Attachments: Statement of Cost; Ordinance

Approved /Accepted by City Council

This _____

Wichita, Kansas
July 20, 2021

	ORG	47502519
City Clerk	Project#	C9001
Wichita, Kansas	Eng. #	472-2020-085635

Dear City Clerk:

Following is the cost of constructing:
Façade Improvements at 1029 W Douglas

Lump Sum Contract Amount	$213,000.00
Change Orders	$0.00
Recording Façade Documents	$0.00
Project Administration	$4,260.00
Publication	$0.00
Abstract	$0.00
Construction Cost	$217,260.00
Idle Fund Interest	$4,497.28
Temporary Finance Cost	$1,095.42
Finance Administration	$3,745.00
1 Year Debt Service reserve	$15,000.00
TOTAL COST	$241,597.70

Respectfully Submitted,

_____
Scot Rigby, Assistant City Manager

Property:	$211,597.70
City:	$30,000.00

Fall 2021

Max.Assessment Ordinance:	50-926
Resolution No.	19-051

First Published in the Wichita Eagle on July 30, 2021

ORDINANCE NO. 51-603

AN ORDINANCE ADJUSTING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS – 1029 WEST DOUGLAS IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No. 19-051 (the "Resolution"), the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") has authorized, pursuant to K.S.A. 12-6a01 *et seq*. (the "Act") the creation of an improvement district (the "Improvement District") and the construction of the following improvements therein:

> Construction of improvements to area walls on public ways or land abutting thereto consisting of façade improvements (the "Improvements").

WHEREAS, pursuant to the Act and Ordinance No. 50-926 (the "Original Assessment Ordinance"), the Governing Body has levied special assessments against certain property in the City in connection with the Improvements at the maximum amount deemed necessary by the Governing Body to pay the cost of the Improvements; and

WHEREAS, ***Section 1*** of the Original Assessment Ordinance provides that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth in ***Exhibit A*** to the Original Assessment Ordinance, the Governing Body shall adjust the assessments to reflect the cost of the completed Improvements; and

WHEREAS, the Improvements have been completed and the final costs are less than the amount used to calculate the maximum special assessments levied in the Original Assessment Ordinance; and

WHEREAS, it is necessary to reduce the assessments levied in the Original Assessment Ordinance to an amount equal to the final cost of the Improvements.

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

Section 1. Assessment Adjustments. Pursuant to the Act and ***Section 1*** of the Original Assessment Ordinance, the special assessments to pay the costs of the Improvements are hereby adjusted based on the final cost of the Improvements and are levied in the amounts and assessed against the lots, pieces and parcels of land liable therefor as described in ***Exhibit A*** to this Ordinance, which is incorporated herein by reference. All other terms and provisions of the Original Assessment Ordinance shall remain in full force and effect.

Section 2. Notification. The City Clerk is hereby authorized and directed to: (a) mail a Notice of Adjusted Assessment to the owners of property assessed for the Improvements pursuant to the Original Assessment Ordinance; and (b) return to any property owners that prepaid the special assessments during the prepayment period authorized by the Original Assessment Ordinance, the difference between the assessment paid and the adjusted assessment amount set forth in this Ordinance.

Section 3. **Effective Date**. This Ordinance shall take effect and be in force from and after its passage by the Governing Body and publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the City Council of the City on July 27, 2021 and **SIGNED** by the Mayor.

(SEAL)

_____
Brandon Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on [_____]; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on [_____].

DATED: [_____].

_____
Karen Sublett, City Clerk

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Exhibit A

(FAÇADE IMPROVEMENTS – 1029 WEST DOUGLAS FAÇADE IMPROVEMENT DISTRICT)
RESOLUTION NO. 19-051

Description of Property	Amount of Maximum Assessment
Lot 2, on Chicago Now Douglas Avenue West Wichita Addition to the City of Wichita, Sedgwick County, Kansas.	$105,798.85
Lot 4, on Chicago Now Douglas Avenue West Wichita Addition to the City of Wichita, Sedgwick County, Kansas.	$105,798.85
Commonly known as 1029 West Douglas	Total: $211,597.70

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Capital Improvement Design Agreements for Bridge, Multiple Arterial Streets, Water Main Dead-End Extensions and Water Main Replacements (Districts I, IV, V, and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the design agreements and budgets, and adopt the resolutions.

Background: On April 29, 2021 and May 3, 2021, the Staff Screening and Selection Committee interviewed firms that responded requests for design services on a variety of capital improvement projects, including bridge replacement, street, water main and water main dead-end elimination extensions. Selections were made for these projects as listed below along with the design concept fees.

- **Amidon Avenue Bridge at the Arkansas River Rehabilitation/Replacement**: JEO Consulting Group ($20,540) Selection was based on JEO's project approach, past performance on similar projects, and knowledge/expertise.

- **West Street from I-235 to MacArthur**: WSP ($119,764) Selection was based on WSP's project approach, knowledge/expertise and past performance on similar projects.

- **West Street from MacArthur to 47th Street South**: Professional Engineering Consultants (PEC) ($95,000) Selection was based on PEC's project approach, knowledge/expertise, and past performance on similar projects.

- **21st Street North from I-135 to Mosley**: MKEC Engineering ($143,900) Selection was based on MKEC's project approach, knowledge of the area and past performance on similar projects.

- **29th Street North from I-135 to Ohio**: Garver ($108,800) Selection was based on Garver's project approach, past performance on similar projects, and knowledge/expertise.

- **Water Main Extension to Serve the West Pressure Zone**: Professional Engineering Consultants (PEC) ($10,000) Selection was based on PEC's project approach, knowledge/expertise, and past performance on similar projects.

- **Water Main Extension to Serve Via Christi St. Teresa for a Secondary Feed**: MKEC Engineering ($18,000) Selection was based on MKEC's project approach, knowledge/expertise, and past performance on similar projects.

- **Water Main Extension to Serve South Maize Road for a Secondary Feed**: Professional Engineering Consultants (PEC) ($25,000) Selection was based on PEC's project approach, knowledge/expertise, and past performance on similar projects.

- **29th Street North and Hoover Road Water Main Dead-End Elimination**: Baughman ($33,500) Selection was based on Baughman's project approach, knowledge/expertise, and past performance on similar projects.

- **37th Street North and 119th Street West Water Main Dead-End Elimination**: Garver ($30,080) Selection was based on Garver's project approach, knowledge/expertise, and past performance on similar projects.

- **Countryside Water Main Replacement Phases 1 and 2**: Wood Environmental & Infrastructure ($284,700) Selection was based on Wood's project approach, and knowledge/expertise.

- **North Market Water Main Replacement**: Bartlett & West ($195,000) Selection was based on Bartlett & West's project approach, and knowledge/expertise.

- **Random North Water Main Replacement**: Bartlett & West ($185,000) Selection was based on Bartlett & West's project approach, and knowledge/expertise.

- **Northeast Riverside Water Main Replacement Phases 1 and 2**: MKEC Engineering ($194,000) Selection was based on MKEC's project approach, and knowledge/expertise.

Analysis: The proposed initial agreements between the City and the consultants provide for the development of design concepts for one bridge, four arterial street projects, five dead-end elimination water mains, and the final design for the four water main replacement projects. The one bridge, four-arterial streets, and five dead-end elimination projects will be returned to the City Council at a later date for approval of the design concepts and final design agreements.

Financial Considerations: Funding for design agreements for the 21st Street North from I-135 to Mosley project ($185,000) and the 29th Street North from I-135 to Ohio project ($150,000) is included in the 2022-2031 Proposed Capital Improvement Program (CIP) and is requested at this time. Funding for all other projects is available from previously City Council approved project budgets.

Legal Considerations: The Law Department has reviewed and approved the agreements and resolutions as to form.

Recommendation/Actions: It is recommended that the City Council approve the design agreements and budgets, adopt the resolutions and authorize the necessary signatures.

Attachments: Maps, agreements and resolutions.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

GARVER, LLC

for

119TH, MALLARD EST. TO 37TH & 37TH, 119TH TO 1/2MI EAST OF 119TH

THIS AGREEMENT, made this_____day of_____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and GARVER, LLC, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

119th, Mallard Est. to 37th & 37th, 119th to ½ mi east of 119th Phase 1 Alignment Options Evaluation (W0029-54250220_448-2020-033970).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements to **119th, Mallard Est. to 37th & 37th, 119th to ½ mi east of 119th Phase 1 Alignment Options Evaluation** tasks outlined in the SCOPE OF SERVICES (**Exhibit "A")**

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material, and transportation to perform the tasks as outlined in **Exhibit "A".**
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this Agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for bodily injuries to persons or third party tangible property arising from or caused by negligent errors, omissions or acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Agreement.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all applicable and non-conflicting Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this Agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this Agreement, including any additions, alterations or amendments thereof, shall be performed under the following standard of care: reasonable and sound practices ordinarily used by members of ENGINEER's profession practicing under similar conditions, in the same time and locality.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, and employees in the performance of the professional services rendered under this Agreement. Such policy of insurance shall be in an amount of $2,000,000.00 per claim/aggregate. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an all monopolistic states endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be:

Workman's Compensation – Statutory
Employer's Liability - $1,000,000 each occurrence.

Further, a general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, or employees in the performance of the professional services under this Agreement. The liability limit shall be $1,000,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this Agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is canceled. ENGINEER will provide thirty (30) days' notice in the event of material change.

K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice

to proceed on the work required by this Agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the project now in the CITY'S files at no cost to the ENGINEER. Confidential materials clearly marked as "Confidential" and so furnished will be kept confidential by the ENGINEER unless disclosure is required by statute, law, regulation, or legal process.

B. To provide standards as required for the project; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A".**

C. To pay the ENGINEER for the services in accordance with the requirements of this Agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this Agreement shall be made on the basis of the lump sum fee amount specified below:

Phase 1 Alignment Options Evaluation for 119th, Mallard Est. to 37th & 37th, 119th to ½ mi east of 119th

TOTAL: $ 30,080

Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment made within 30 days of receipt.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the project such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the project.
2. Additional design services not covered by the scope of this Agreement.
3. Construction staking, material testing, inspection and administration related to the project.
4. A major change in the SCOPE OF SERVICES for the project.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

C. Notwithstanding anything to the contrary herein, if, through no fault of ENGINEER, schedule or dates are changed, or the orderly and continuous progress of ENGINEER's services is impaired, or ENGINEER's services are delayed or suspended, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this Agreement at any time, upon written notice, in the event the project is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
   1. Notwithstanding the foregoing, this Agreement will not terminate under paragraph V. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than,60 days after the date of receipt of the notice.
   2. In the event of termination by CITY for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in paragraph IV above, shall be entitled to invoice CITY and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER subcontractors, and other related close-out costs, using methods and rates for additional services as set forth in Exhibit A.

B. That the field notes and other pertinent drawings and documents pertaining to the project shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this Agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that to the extent permitted under applicable law CITY shall indemnify and hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the project. Notwithstanding anything to the contrary herein, any and all underlying intellectual property, if any (unless provided by CITY), shall remain the property of ENGINEER such that ENGINEER may continue to perform its business in the ordinary course. Upon payment in full, ENGINEER shall grant CITY an irrevocable, non-exclusive, royalty-free license to use the same for the purposes contemplated under this Agreement.
C. That the services to be performed by the ENGINEER under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
G. The rights and remedies of the CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.
H. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

I. If the design or construction of the project has Federal or State money involved than the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third-party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City of seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

VI. Mutual Waiver. To the fullest extent permitted by law, and notwithstanding any provision to the contrary, CITY and ENGINEER waive against each other, and the other's employees, officers, directors, agents, insurers, partners, subcontractors, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the services under the Agreement.

VII. Notwithstanding any provision to the contrary herein, ENGINEER'S total aggregate liability under this Agreement, including without limitation those damages and liabilities arising from actions or inactions undertaken by the ENGINEER relative to the Agreement and associated SCOPE OF SERVICES, shall be limited to the greater of one hundred percent (100%) of ENGINEER'S fees under this Agreement (which excludes assignments) or the insurance proceeds received up to the limits stated in Section II.j. plus the ENGINEER'S obligations under the applicable policy for payment of deductibles and co-insurance payments. For purposes of clarity, this limitation shall not be effective if its operation would void or reduce the availability of insurance proceeds payable to CITY. This limitation covers all claims, regardless of whether the claims arise in contract, tort, strict liability or otherwise.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Agreement as of the date first written above.

THE CITY OF WICHITA

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

GARVER, LLC

_____
(Name/Title)
Christopher M. Bohm - Sr. Proj. Manager

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the most cost effective design for the development of the project consistent with the industry standard of care, and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corpsof Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS / IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT in accordance with the industry standard of care. CITY'Sconcurrence in selection of an alternate or preliminary concept will be contingent on the technical accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.
2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts

shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.

3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.

(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engi-neer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the technical accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the technical accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be requiredfor bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such itemswill be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the**

existing right-of-way, including but not limited to structures, fences, planters, walls, etc. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination. ENGINEER shall review each utility company's relocation design.Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design. ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist. ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY. Notwithstanding anything in this Agreement to the contrary, in no event is ENGINEER responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and,

when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

119th, Mallard Est. to 37th & 37th, 119th to ½ mi east of 119th Phase 1 Alignment Options Evaluation

For Professional Engineering Services

City of Wichita

The consultant will perform the following scope of services for the conceptual design phase to determine improvements related to connecting a 16-inch water main loop approximately 1 mile in length in the vicinity of 119th Street West and 37th Street North; more specifically the points of connection are approximately south ½ mile and east ½ mile from the intersection. The basic services include the alignment study, survey, and project management. Future work phases to be negotiated by contract amendment will include the development of field check, office check, and final plans and estimate packages.

1. Project Management

a. Prepare monthly reporting and invoices.

b. Conduct a project kickoff meeting to discuss project design standards and alignment options.

c. Prepare a Garver internal project management plan.

d. Prepare a Phase 2 Supplemental Agreement Following Completion of Concept Alignment

2. Survey and Field Investigation

a. Obtain topographic survey and utility survey as necessary for engineering design on both sides of roadway along project corridor. Utilities within project limits will be requested to be marked in the field by utility companies prior to survey.

3. Preliminary Concept Alignment

a. Prepare plan view concept level drawings for up to 2 conceptual alignments along 119th Street and 2 conceptual alignments along 37th Street, taking into account right-of-way vs easement considerations and all design criteria discussed during the kickoff meeting.

b. Identify permanent right-of-way and temporary construction easements that will be required for each conceptual alignment.

c. Conduct one Conceptual Alignment meeting with City staff to present conceptual alignments.

d. Perform independent QA/QC on concept alignment drawings.

4. Extra Work

The following items are not included under this agreement but will be considered as extra work:

a. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.

b. Opinion of Probable Construction Cost

c. Construction plans

d. Preparation of Right-of-Way/easement tract maps and descriptions

e. Submittals or deliverables in addition to those listed herein.

f. Hydroexcavation to expose/survey existing utilities.

g. Coordination or design of any utility's relocation

h. Geotechnical services

i. Environmental Handling and Documentation

j. Future work phases to be negotiated by contract amendment will include the development of field check, off

check, and final plans and estimate packages. A revised set of plans depicting the selected alignment will be part of the field check plans.

Extra Work will be as directed by the Owner in writing for an addition fee as agreed upon by the Owner and Garver.

Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Phase Description	Calendar Days
Kickoff Meeting	15 days from NTP
Survey and Field Investigation	45 days from NTP
Conceptual Design	105 days from NTP

Fee Summary

Title I Service	Estimated Fees	
Project Management	$	5,280.00
Survey and Field Investigation	$	10,104.00
Preliminary Concept Alignment	$	14,696.00
Subtotal for Title I Service	**$**	**30,080.00**

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this Agreement, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this Agreement, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City

in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or Agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, sub purchase order or sub agreement so that such provisions will be binding upon each subcontractor, sub vendor or sub supplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data

collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. City and Contractor shall consider: (i) all information provided by the other party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 11 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Contractor's performance of services to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a "need to know basis" with equal or greater confidentially protection or written consent of the disclosing party. Confidential Information shall not include and nothing herein shall limit either party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving party or its personnel; (ii) was or becomes available to the receiving party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the services. Nothing herein shall be interpreted as prohibiting Contractor from disclosing general information regarding the project for future marketing. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose not permitted herein. Notwithstanding anything herein to the contrary, the Contractor may retain back-up copies of the Confidential Information in its computer systems to the extent that routine computer back-up procedures create copies in the associated back-up or archival computer storage system, and as required to ensure compliance with applicable state or Federal statutes, laws or regulations; provided however, such information shall remain subject to the obligations of this Agreement. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to initiate negotiations with Contractor to modify, or terminate this Agreement at any time if, in the opinion of itslegal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations effective as of the date of this Agreement, in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes related to Contractor net income or Contractor employment taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site. The City hereby authorizes Contractor to bring employees and subcontractors onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING, INC.

for

21ST STREET NORTH FROM I-135 TO MOSLEY

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

21st Street North from I-135 to Mosley (472-2021-085733_448-2021-002927)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **21st Street North from I-135 to Mosley** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement.

The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$143,900**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party

beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

MKEC ENGINEERING, INC.

_____
(Name & Title)
Jay Anglemyer, P.E., Principal

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

Phase 1 (East Section – bridge to west of I-135)

a) Design Concept Due: **November 15, 2021**
b) Field Check Plans and Estimate Due: **April 29, 2022**
c) Office Check Plans and Estimate Due: **September 30, 2022**
d) Final Plans and Estimate Due: **January 6, 2023**

Phase 2 (West Section – Mosley to bridge)

a) Design Concept Due: **November 15, 2021**
b) Field Check Plans and Estimate Due: **April 29, 2022**
c) Office Check Plans and Estimate Due: **January 6, 2022**
d) Final Plans and Estimate Due: **June 1, 2023**

June 27, 2021

Mr. Shawn Mellies
Chief Design Engineer, City of Wichita
455 N. Main, 7th Floor
Wichita, KS 67202

Reference: Concept Phase Scope and Fee Proposal
21st Street North from Mosley to I-135 - Project 3 RFP No. 210061

Dear Mr. Mellies:

MKEC is pleased to present this proposal for Concept Phase services associated with the improvements to 21st Street North between Mosley and I-135. The improvements will generally consist of replacing the current street with an improved roadway, storm sewer system, 8" water line and other infrastructure that will support the proposed ICT 21 Redevelopment District to be located on both sides of 21st Street west of I-135.

The scope of services proposed at this time will be for Concept Phase services only. MKEC understands the City's desire to complete conceptual designs prior to entering into negotiations for a design and plan production agreement. At the conclusion of the Concept Phase, MKEC will be prepared to negotiate a design agreement based on the approved concept designs.

This proposal acknowledges that our design will be in compliance with the City of Wichita design standards and construction specifications. MKEC understands the requirements of this project based on our understanding of the typical scope of services required by the City and on the information presented in this Request for Proposal and subsequent information provided by City of Wichita staff. MKEC's proposed scope of services for the Concept Phase is outlined below.

Concept Phase Scope of Services:

1. Gather pertinent information related to the project. Information gathered will include plan record drawings of past improvements in the corridor, public and private utility maps, current right-of-way and easement documentation, and soil and groundwater contamination information from The City of Wichita Department of Environmental Services and the Kansas Department of Health and Environment.
2. Meet with the City to develop a scope, schedule and target design parameters for the concept designs.
3. Prepare an initial Engineering Report. The report will include the following information:
    - Design parameters
    - Design decisions made during the conceptual design phase with the basis for those decisions
    - Key information utilized during the design and the source of the information
    - Discuss elements of all conceptual design including advantages, disadvantages, and challenges present to complete the final design
    - Input needed from the City to complete a final design
    - Recommendations and cost estimates

4. Perform design surveys necessary for proposed improvements. A complete design survey will be provided at this time to ensure all existing site information is available for accurate conceptual designs. The survey will provide horizontal and vertical control with ties to existing control information. The survey will include public right-of-way, existing easements and key property line information along 21st Street and the BNSF and UP Railroads. Hydroexcavation will not be included as part of the concept phase scope; however, at the end of the concept phase we will prepare a document identifying all locations requiring utility hydroexcavation to determine conflicts with proposed improvements.
5. Prepare a traffic study and report to determine anticipated traffic volumes due to the proposed ICT 21 Redevelopment District improvements. The study will be used a basis for improvements to 21st Street and will not serve as the official traffic study for the development. The traffic study will include the following:
    - Determination of weekday AM and PM peak-hour volumes of current traffic volumes on 21st Street and Mosley Street within the project corridor. Volumes will be determined using traffic counting equipment and tools
    - Projection base traffic volumes to future-year volumes, accounting for anticipated growth in the vicinity.
    - Estimation of trip generation and distributions created by the proposed ICT 21 development based on the most-current plan for development available at the time of the study preparation.
    - Analysis of future capacity of 21st Street within the project corridor. This will include recommendations for intersection geometrics and auxiliary lanes at Mosley and at the future Cleveland intersection.
    - Signal warrant analyses at 21st and Mosley and at 21st and Cleveland including a discussion on when signal warrants are anticipated to be met.
6. Develop multiple conceptual roadway geometric designs for 21st Street, the 21st and Mosley intersection and the 21st and Cleveland intersection. At minimum, the following concept designs will be prepared:
    - A continuous five-lane street section throughout the project corridor. The east extent will be the existing five-lane section near the I-135 interchange. The west extent may vary depending on interaction with the UP Railroad.
    - A combination four-lane/five-lane concept that minimizes impacts to railroads, bridges and right-of-way but provides an additional lane to increase capacity where feasible.
    - Concept designs will be prepared at the 21st and Mosley intersection. All concepts will provide left turn lanes for westbound and northbound vehicles. We will evaluate turn lane and taper lengths to provide the greatest intersection capacity for the least construction cost. Slight adjustments to the intersection location may be considered to maximize improvement benefits.
    - Concept designs will be prepared at the 21st and Cleveland intersection. All concepts will provide left turn lanes on all approaches. Additional auxiliary lanes will be included based on traffic study recommendations.
7. Determine surface drainage characteristics and review existing storm sewer systems within and in the vicinity of the project corridor. Prepare a preliminary storm sewer design and estimate based on the drainage review. Concept designs will include proposed storm sewer depths.

8. Prepare a concept water line plan and estimate for the proposed 8" water main replacement between Topeka and the east limits of the proposed improvements. The concept water line will be designed to avoid railroad crossings and minimize encroachments onto railroad right-of-way. The proposed water line will cross a minimum of two drainage channels and will tie into an existing water line on Mosley. Concept designs will include proposed water line depths.
9. Coordinate with private and public utility companies to determine the location of existing facilities within the project corridor and to obtain an understanding of conflicts created with the proposed project improvements. Work with utility companies to develop a preliminary relocation plan for all conflicting utilities.
10. Review existing information related to groundwater and soil contamination within the project corridor and research requirements for soil and groundwater remediation based on anticipated contamination levels and the conceptual proposed improvements. The scope will include the following:
    - Work with City staff to map the depth and anticipated groundwater contaminate levels and the extent of concentrations of soil contaminates within the project corridor. Based on this information, define anticipated contamination zones within the corridor.
    - Document the locations, depths and volumes of excavation anticipated throughout the corridor based on the conceptual designs and planned private utility relocations. Prepare a summary document that categorizes estimated excavation based on expected contamination zones.
    - Coordinate efforts with the City and the Kansas Department of Health and Environment (KDHE). Prepare a preliminary report and submit to KDHE outlining the proposed site activities, the anticipated contamination encountered and a plan to handle, store and mitigate the excavated material and groundwater. This will be a preliminary submittal with the final submission to occur in the design phase.
11. The concept design will include means to accommodate future bicycle and shared-use facilities that are shown to cross or pass near 21st Street within the project corridor. The Wichita Bicycle Master Plan indicates three separate future facilities crossing 21st Street near or within the project. Concept designs will account for these future crossings in the design. An example would be to provide for a safe bicycle and pedestrian crossing at the proposed Cleveland intersection that would accommodate all three paths. The design would consider means to continue the paths along 21st Street if a single safe crossing is provided to serve all.
12. Prepare a document outlining the existing Middle Fork Chisholm Creek Bridge structure and the costs and efforts to widen the bridge to accommodate five lanes of traffic and/or add sidewalk/shared-use paths on one or both sides of the bridge.
13. Prepare preliminary traffic control plans that outline the construction sequencing and how traffic will be maintained throughout all phases of construction.

14. Assist the City with public involvement related to the proposed conceptual designs. We will meet with City staff to review and modify concepts. Prepare concept displays suitable for presentation at public meetings. Attend meetings and assist City staff in addressing public concerns and questions.
15. Prepare a final Engineering Report summarizing the City-accepted concept deign and noting information developed during the concept phase that will be necessary for the final design phase. The report will contain updates information presented in the initial Engineering Report and will include additional information generated during the concept design.

MKEC proposes a lump sum fee of $143,900.00 to perform the concept phase services outlined above and in conformance with the standard Agreement for Professional services between The City of Wichita and Consultant Engineer. A task-specific hour and fee worksheet can be provided for your review upon request.

We propose to complete the concept phase design by November 15, 2021. Based on this completion date, the project design schedule is proposed as follows:

East Section
Concept Phase – July 15, 2021 to November 15, 2021
Field Check Phase – November 16, 2021 to April 29, 2022
Office Check Phase – May 2, 2022 to September 30, 2022
Final Design Submittal – October 3, 2022 to January 6, 2023

West Section
Concept Phase – July 15, 2021 to November 15, 2021
Field Check Phase – November 16, 2021 to April 29, 2022
Office Check Phase – May 2, 2022 to January 6, 2023
Final Design Submittal – January 9, 2023 to June 1, 2023

Thank you for this opportunity to serve the City of Wichita. Please contact me if you wish to discuss this proposal in greater detail.

Sincerely,

MKEC ENGINEERING, INC.

Jay Anglemyer, P.E.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

29TH, WEST TO HOOVER & HOOVER, 29TH TO 1/4MI SOUTH OF 29TH

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

29th, West to Hoover & Hoover, 29th to 1/4mi south of 29th Phase 1 Alignment Options Evaluation (W0028-54250220_448-2020-033968).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing water improvements for **29th, West to Hoover & Hoover, 29th to 1/4mi south of 29th, Phase 1 Alignment Options Evaluation** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

B. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

C. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

D. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

E. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

F. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

G. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

H. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

I. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

J. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

L. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement.

F. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

G. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the not to exceed fee amount of **$33,500** for Phase 1 Alignment Options Evaluation. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party

beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

THE CITY OF WICHITA

_____
Robert Layton, City Manager

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

BAUGHMAN COMPANY, P.A.

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts

as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)
2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:
   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.
   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.
   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating

the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility reloca-tion construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be reported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.
6. Post Letting.

   (a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

   (b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

   (c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

   (d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

   (e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.
7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

   a) Design Concept Due: **September 17, 2021**
   b) Field Check Plans and Estimate Due: **December 29, 2021**
   c) Office Check Plans and Estimate Due: **June 22, 2022**
   d) Final Plans and Estimate Due: **December 14, 2022**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW **(IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports

to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101

et seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall

be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

GARVER, LLC

for

29TH STREET NORTH FROM I-135 TO OHIO

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and GARVER, LLC, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

29th Street North from I-135 to Ohio (472-2021-085732)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **29th Street North from I-135 to Ohio** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$108,800**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

GARVER, LLC

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Concept Due: **September 15, 2021**
b) Field Check Plans and Estimate Due: **February 1, 2022**
c) Office Check Plans and Estimate Due: **April 1, 2022**
d) Final Plans and Estimate Due: **August 1, 2022**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING, INC.

for

NORTHEAST RIVERSIDE WATER MAIN REPLACEMENT, PHASE 1 & 2

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

Northeast Riverside Water Main Replacement, Phase 1 & 2 (W0032-54250020_448-2021-017906)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **Northeast Riverside Water Main Replacement, Phase 1 & 2** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$194,000**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

MKEC ENGINEERING, INC.

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

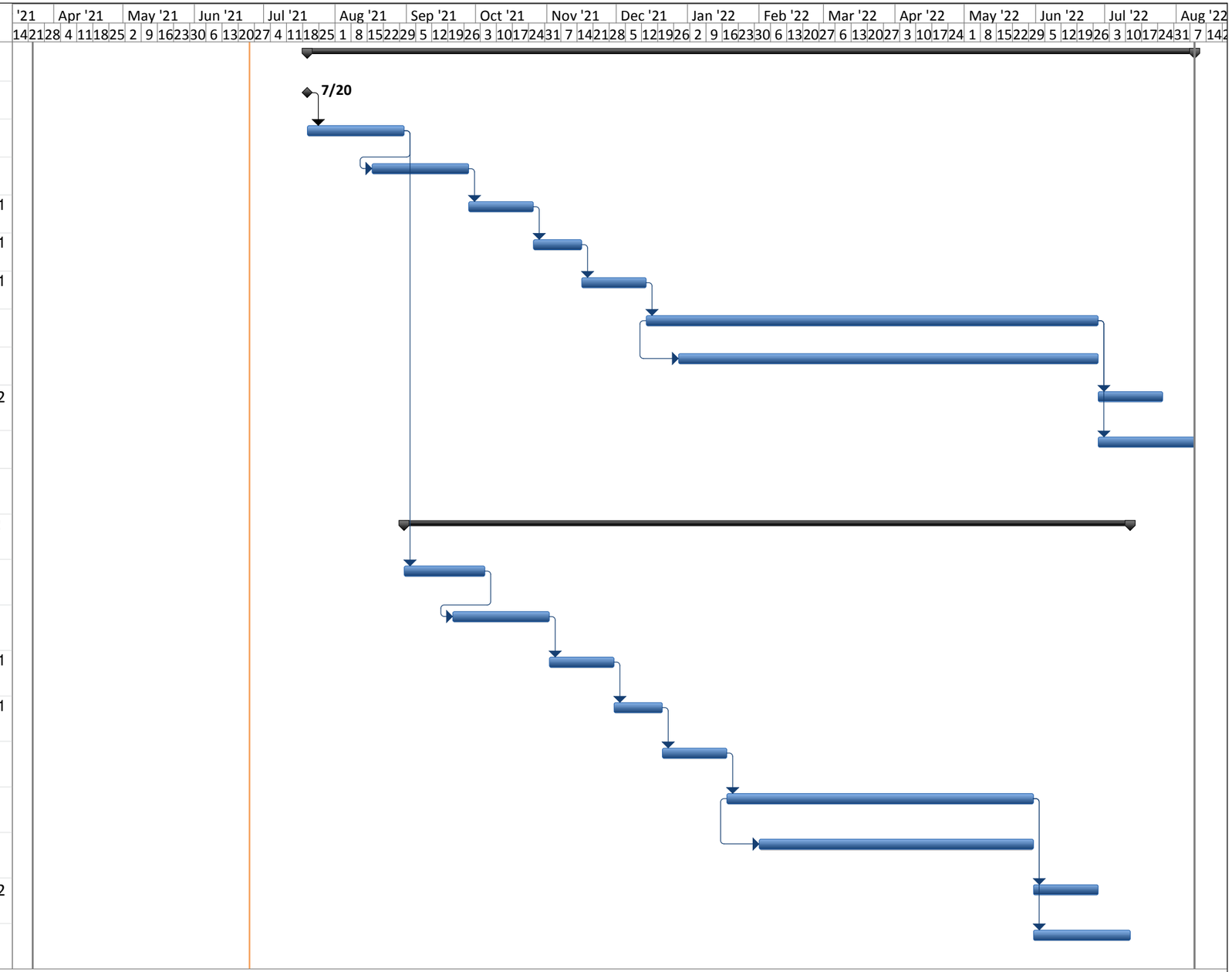
7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Build Plans Due: **August 1, 2021**

b) Alignment Plans Due: **3 weeks after alignment is decided on by the consultant and contractor**

c) Final As-Built Plans Due: **30 days after the project is substantially complete**

ID	Task Name	Duration	Start	Finish
1	**NE Riverside WMR Phase 1 (13,700 LF)**	**275 days**	**Tue 7/20/21**	**Mon 8/8/22**
2	Notice to Proceed	0 days	Tue 7/20/21	Tue 7/20/21
3	Initial Survey (Utilities and Crossings)	30 days	Tue 7/20/21	Mon 8/30/21
4	Design Build Plans	30 days	Tue 8/17/21	Mon 9/27/21
5	Contractor Selection	20 days	Tue 9/28/21	Mon 10/25/21
6	Finalize alignments with Contractor	15 days	Tue 10/26/21	Mon 11/15/21
7	Alignment Plans	20 days	Tue 11/16/21	Mon 12/13/21
8	Construction	140 days	Tue 12/14/21	Mon 6/27/22
9	As-Built Data Collection (10 hrs/week)	130 days	Tue 12/28/21	Mon 6/27/22
10	As-built Survey	20 days	Tue 6/28/22	Mon 7/25/22
11	As-Built Plans	30 days	Tue 6/28/22	Mon 8/8/22
12				
13	**NE Riverside WMR Phase 2 (9,100 LF)**	**225 days**	**Tue 8/31/21**	**Mon 7/11/22**
14	Initial Survey (Utilities and Crossings)	25 days	Tue 8/31/21	Mon 10/4/21
15	Design Build Plans	30 days	Tue 9/21/21	Mon 11/1/21
16	Contractor Selection	20 days	Tue 11/2/21	Mon 11/29/21
17	Finalize alignments with Contractor	15 days	Tue 11/30/21	Mon 12/20/21
18	Alignment Plans	20 days	Tue 12/21/21	Mon 1/17/22
19	Construction	95 days	Tue 1/18/22	Mon 5/30/22
20	As-Built Data Collection (10 hrs/week)	85 days	Tue 2/1/22	Mon 5/30/22
21	As-built Survey	20 days	Tue 5/31/22	Mon 6/27/22
22	As-Built Plans	30 days	Tue 5/31/22	Mon 7/11/22



Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase “equal opportunity employer;” (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

WSP USA

for

WEST STREET FROM I-235 TO MAC ARTHUR

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and WSP USA, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

West Street from I-235 to MacArthur (E1008-40105921_472-2020-085682)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **West Street from I-235 to MacArthur** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$119,764**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

WSP USA

_____
(Name & Title)
JERROLD F. BRADLEY, JR.
WICHITA OFFICE LEADER

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Concept Due: **December 10, 2021**
b) Field Check Plans and Estimate Due: **May 1, 2022**
c) Office Check Plans and Estimate Due: **January 1, 2023**
d) Final Plans and Estimate Due: **September 1, 2023**

West Street – I-235 to MacArthur

Design Concept Scope of Services

General Description

This project will improve West Street from I-235 to MacArthur Road with a 3–5 lane urban concrete section with 6' sidewalks on both sides and will also include the intersection of West Street and MacArthur. A stormwater sewer system will be designed to replace the existing open ditches. This project was awarded federal funds and will be submitted to KDOT for plan review.

The Design Concept Phase is anticipated to consist of:

- Perform Topographic Survey
    - A ground survey shall be used for alignment, benchmarks, utilities, topography, contours and cross sections utilizing project coordinates with a conversion to Stat Plane coordinates. Sedgwick County aerials shall be used to augment the ground survey.
    - Survey scope shall include topography, land use, contours, buried structures (drainage and culverts), right of way, easements and utilities.
    - All surveys shall be done in US Customary (English) units. The limits of coverage will be in accordance with the project general description above.
    - USGS datum shall be used for all elevations.
    - Horizontal alignments will be established using Section Corners and POT's.
- Develop Alternative Design Concepts
    - Perform Traffic Study using City provided traffic counts to determine the number of lanes required based on current and future traffic demands, including right turn lanes into certain businesses.
    - Provide concepts for the West Street & MacArthur intersection improvements
        - Adding additional lanes as necessary
        - Single Lane Roundabout option
        - Preliminary Signal Improvements
    - Evaluate the associated issues of extending the sidewalks north through the I-235 interchange
    - Meet with City staff to review alternative design concepts
- Review Preliminary Design Concepts with City of Wichita
    - Provide up to four (4) preliminary strip maps showing design concept options for discussion with the City
    - Provide recommendations on design concept options
    - Strip Map to be suitable for the City to use in presentations at public meetings
- Perform Drainage Study
    - Determine feasibility of a dry detention system along the west side of West Street

    - Review the option of extending the stormwater sewer system north through the I-235 interchange to utilize the Big Drainage Slough
    - Provide findings in writing recommending the preferred course of action
    - Develop preliminary construction cost estimates for the drainage options
- Develop Preliminary Street and Storm water Sewer Alignments and Profiles
- Identify Future Right of Way and Temporary Construction Easements Necessary
    - Provide City with Strip Map showing the required acquisitions
- Assist City of Wichita in Preparing for up to two (2) Public Hearings
    - Assist City in preparing and compiling information on the proposed improvements
    - Provide hard copies and electronic formats of visual displays for the meetings

Submittals

- Traffic Study Report (pdf format)
- Drainage Study Report (pdf format)
- Design Concept Options Strip Maps (up to 4) (Hard Copy and pdf formats)
- R/W & Easement Acquisition Strip Map (Hard Copy & pdf format)
- Visual Displays for Public Hearings (Hard Copies & electronic formats)

Schedule

- Notice to Proceed on or before July 15, 2021.
- The survey will be completed on or before August 30, 2021.
- Traffic Study will be submitted on or before November 1, 2021.
- Drainage Study will be submitted on or before November 20, 2021.
- 30% (Concept) Plans will be submitted on or before December 10, 2021.
- Concept Review Meeting on or before January 14, 2022.

Fee Summary

West Street – I-235 to MacArthur Road	
Total Person-Hours	639 Hours
Labor Fee	$27,471
Fee with 1.377 Overhead	$37,836
Fixed Fee (12%)	$7,837
Sub Consultants & Expenses	
Survey (Schwab Eaton)	$46,000
Expenses	$620
Total	$119,764

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

WEST STREET FROM MAC ARTHUR TO 47TH STREET SOUTH
PHASE 1 PRELIMINARY CONCEPT DEVELOPMENT

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

West Street from MacArthur to 47th Street South Phase 1 Preliminary Concept Development (E1009-40106021_472-2020-085683)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **West Street from MacArthur to 47th Street South Phase 1 Preliminary Concept Development** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$95,000**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

_____
Benjamin M. Mabry, P.E.
Municipal Transportation Division Manager

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Concept Due: **December 1, 2021**
b) Field Check Plans and Estimate Due: **June 1, 2022**
c) Office Check Plans and Estimate Due: **July 1, 2023**
d) Final Plans and Estimate Due: **May 1, 2024**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, INC.

for

WATER MAIN LOOPS (WEST PRESSURE ZONE)

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

Water Main Loops (West Pressure Zone), Phase 1 Alignment Options Evaluation (W0025-54250220_448-2020-033962).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for the **Water Main Loops (West Pressure Zone), Phase 1 Alignment Options Evaluation**, and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

B. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

C. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

D. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

E. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

F. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

G. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

H. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

I. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

J. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

L. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement.

F. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

G. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the not to exceed fee amount of **$10,000** for Phase 1, Alignment Options Evaluation. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party

beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

THE CITY OF WICHITA

_____
Robert Layton, City Manager

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

PROFESSIONAL ENGINEERING CONSULTANTS, INC.

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts

as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)
2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:
   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.
   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.
   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating

the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility reloca-tion construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be reported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.
6. Post Letting.

   (a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

   (b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

   (c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

   (d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

   (e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.
7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

   a) Design Concept Due: **October 1, 2021**
   b) Field Check Plans and Estimate Due: **January 1, 2022**
   c) Office Check Plans and Estimate Due: **May 1, 2022**
   d) Final Plans and Estimate Due: **August 1, 2022**

Waterline Loop to serve the West Pressure Zone
EXHIBIT A

A. **Project Description**.

1. The Project shall consist of evaluating and designing a waterline loop to serve the west pressure zone along 151st Street West and Central Avenue.
2. The Project delivery method is design-bid-build.

B. **Anticipated Project Schedule.**

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. PEC and CLIENT anticipate that the design duration to complete construction documents will be approximately 13 months after receiving Notice to Proceed.
3. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services.

C. **Project Deliverables.**

1. This Project Deliverables shall consist of the following sealed by an Engineer licensed in the State of Kansas where applicable:
   a) 60% Construction Documents, Plans and Specifications (Field Check)
   b) 90% Construction Document, Plans and Specifications (Office Check)
   c) Permit/100% Final Construction Document Plans and Specifications

D. **Scope of Services.**

1. Alignment Options Evaluation:
   a) Identify critical alignment factors and review the impact of those factors on the project's design, constructability, permitting, and cost.
   b) Obtain record information of all utilities along the alignments to review potential utility conflicts.
   c) Evaluate availability of existing right-of-way and easements that can be utilized by the proposed alignments. Determine the need for additional permanent waterline and temporary construction easements.
   d) Provide recommendation for the alignment option to be selected.

2. Topographic Field Survey:
   a) Prepare a one-foot contour interval on-the-ground topographic survey, locating both horizontally and vertically all visible improvements that may impact the site work design.
   b) Set inter-visible control points in area of construction. Obtain reference ties.
   c) Set benchmark within building area for construction in accordance with City of Wichita spacing requirements.
   d) Recover sufficient section and property monumentation as required to enable drafting of boundary lines, right of way lines, and/or foreign easements.
   e) Collect topographic survey data, including surface locations sufficient to provide 1' contours.

f) Locate all above and below grade utility improvements. PEC will not be responsible for searching for utilities beyond utilizing the One Call system.

g) Waterlines are not expected to be located using the One Call system. Top Nut elevations of water valves will be collected and any above grade appurtenances will be located to assist in drafting of water lines from record information.

h) Locate all sanitary and storm sewer structures, such as area inlets, curb inlets, junction boxes, manholes, etc., the top of structure information will be collected as well as all flowlines in and out, and pipe size/material.

i) Locate all buildings and substantial features, including parking stripes, sidewalks, paving limits/type, playground areas/equipment, landscape areas, etc.

j) Any trees four (4) caliper inches and larger shall be identified/shown.

k) Survey limits that extend into the adjacent street right of way shall include all improvements/utilities within the half width of right of way.

l) Compare record information received from utility providers to actual utilities flagged in the field. Notify locating service of any discrepancies and make a reasonable effort to resolve in the field. Utilities identified in record information that cannot be resolved in the field will be drafted in the general alignment shown in the record information and will be specifically identified as "RECORD" on the deliverable drawing.

m) The coordinate base will be Kansas State Plane NAD 83(2011) – South Zone and the elevations will be referenced to the NAVD 88 datum.

n) Acquire last Deed of Record for all adjacent non-platted parcels.

3. General Scope Items for Civil Services:

a) Conduct one pre-design site visit to assess existing conditions.

b) Participate in a kickoff meeting to discuss project improvements, scope, and schedule.

c) Attend up to three progress design meetings with CLIENT.

d) Provide bidding assistance including response to Contractor's questions and preparation of items for inclusion in Addenda.

e) Respond to RFIs generated by the contracting team. Response will be provided in 7 working days after received by PEC office unless other terms are agreed to by PEC and CLIENT.

4. Civil Engineering Design Services including:

a) Produce alternative alignment design concept plans for review with City Staff.

b) Provide a complete set of construction drawings and details, including Cover Sheet, plan/profiles, coordinate geometry data, erosion control plans, traffic control plans, and associated details. Submit as Field Check, Office Check, and Final plans.

c) Identify all utilities within the project limits and coordinate resolution of potential conflicts with each company. Conduct up to three utility coordination meetings with the utility companies and determine potholing and relocation needs. The City of Wichita's ULCC process will be utilized in conjunction with this effort.

d) Identify all permitting requirements for project design/construction.

e) Assist the CLIENT with preparation and submittal of the permit application for any required permits.

f) Summarize project quantities and estimate probable construction costs.

g) Attend pre-bid meeting conducted by City of Wichita.
h) Attend pre-construction conference conducted by City of Wichita.

E. **Additional Responsibilities of CLIENT:**

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Drawings, studies, reports, and other information available pertaining to the existing site.

F. **Additional Services:**

The following services can be provided by PEC at an additional cost by Supplemental Agreement:

1. Vacuum Excavation:

   a) Perform vacuum excavation at the locations determined following survey and alignment design.
   b) Excavation shall be sand filled.
   c) Set-up traffic control as required for vacuum excavation operations.

2. Prepare legal descriptions and exhibits for necessary property acquisition associated with the project.
3. As-Builts survey of any utility relocations that relocate as part of the utility coordination process.
4. Geotechnical investigation.
5. Community Engagement such as in-person presentations, social media interaction, surveys, stakeholder engagement meetings, and workshops.
6. Construction Testing and Inspection, Construction Staking.

G. **Exclusions:**

The following shall be specifically excluded from the Scope of Services to be provided by PEC.

1. Analysis of the existing water system.

H. **PEC's Fees & Reimbursable Expenses.**

1. PEC will invoice CLIENT one time per month for services rendered and Reimbursable Expenses incurred in the previous month.
2. PEC's Fee for its Scope of Services will be a lump sum for the cumulative total shown below:

Discipline	**Fee**
Alignment Options Evaluation	$10,000
Survey	$23,700
Civil Design	$51,300
Total	**$85,000**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW **(IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports

to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101

et seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall

be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, INC.

for

WM DEADEND 2ND FEED SERVING S. MAIZE NEAR K-42

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

WM Deadend 2nd Feed serving S. Maize near K-42, Phase 1 Alignment Options Evaluation (W0027-54250220_448-2020-033966).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for the **WM Deadend 2nd Feed serving S. Maize near K-42, Phase 1 Alignment Options Evaluation,** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

B. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

C. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

D. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

E. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

F. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

G. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

H. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

I. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

J. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

L. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement.

F. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

G. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the not to exceed fee amount of **$25,000** for Phase 1, Alignment Options Evaluation. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party

beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

THE CITY OF WICHITA

_____
Robert Layton, City Manager

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

PROFESSIONAL ENGINEERING CONSULTANTS, INC.

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts

as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)
2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:
   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.
   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.
   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating

the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility reloca-tion construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be reported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.
6. Post Letting.

   (a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

   (b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

   (c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

   (d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

   (e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.
7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

   a) Design Concept Due: **November 1, 2021**
   b) Field Check Plans and Estimate Due: **June 1, 2022**
   c) Office Check Plans and Estimate Due: **October 1, 2022**
   d) Final Plans and Estimate Due: **January 1, 2023**

Secondary Feed for South Maize Road Commercial Area
EXHIBIT A

A. **Project Description**.

1. The Project shall consist of evaluating and designing a secondary waterline feed for the South Maize Road commercial area. An alignment and system evaluation shall be completed first to evaluate three different waterline alignment options to determine the most beneficial option. Design will then be completed for the selected alignment option.
2. The Project delivery method is design-bid-build.

B. **Anticipated Project Schedule.**

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. PEC and CLIENT anticipate that the alignment evaluation duration will be approximately 8 weeks after receiving Notice to Proceed and the design duration to complete construction documents will be approximately 18 months after receiving Notice to Proceed.
3. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services.

C. **Project Deliverables.**

1. This Project Deliverables shall consist of the following sealed by an Engineer licensed in the State of Kansas where applicable:

   a) Waterline Alignment Options Evaluation Memorandum
   b) 60% Construction Documents, Plans and Specifications (Field Check)
   c) 90% Construction Document, Plans and Specifications (Office Check)
   d) Permit/100% Final Construction Document Plans and Specifications

D. **Scope of Services.**

1. Alignment Options Evaluation:

   a) The following three alignment options will be evaluated:
      1. Along Tyler Road from K-42 to the existing 12" waterline at Yosemite.
      2. Along K-42 from Tyler Road to the existing 16" waterline locates west of Ridge Road.
      3. Along McArthur Road from Norman Street to Ridge Road to tie into an existing 12" waterline.
   b) Review each alignment to determine the potential service area associated with the alignment option. Prepare mapping depicting the potential service areas.
   c) Evaluate each alignment for the hydraulic benefit to the system. Provide criteria to be evaluated under each option and work with City of Wichita staff to utilize the City's existing hydraulic model to evaluate system impact.
   d) Identify critical alignment factors and review the impact of those factors on the project's design, constructability, permitting, and cost.
   e) Obtain record information of all utilities along the alignments to review potential

utility conflicts.

f) Evaluate availability of existing right-of-way and easements that can be utilized by the proposed alignments. Determine the need for additional permanent waterline and temporary construction easements. Prepare mapping depicting the potential proposed easements.

g) Develop concept cost estimates for each alignment option.

h) Provide recommendation for the alignment option to be selected.

i) Prepare a memorandum summarizing the alignment options evaluation.

2. Topographic Field Survey:

a) Prepare a one-foot contour interval on-the-ground topographic survey, locating both horizontally and vertically all visible improvements that may impact the site work design.

b) Set inter-visible control points in area of construction. Obtain reference ties.

c) Set benchmark within building area for construction in accordance with City of Wichita spacing requirements.

d) Recover sufficient section and property monumentation as required to enable drafting of boundary lines, right of way lines, and/or foreign easements.

e) Collect topographic survey data, including surface locations sufficient to provide 1' contours.

f) Locate all above and below grade utility improvements. PEC will not be responsible for searching for utilities beyond utilizing the One Call system.

g) Waterlines are not expected to be located using the One Call system. Top Nut elevations of water valves will be collected and any above grade appurtenances will be located to assist in drafting of water lines from record information.

h) Locate all sanitary and storm sewer structures, such as area inlets, curb inlets, junction boxes, manholes, etc., the top of structure information will be collected as well as all flowlines in and out, and pipe size/material.

i) Locate all buildings and substantial features, including parking stripes, sidewalks, paving limits/type, playground areas/equipment, landscape areas, etc.

j) Any trees four (4) caliper inches and larger shall be identified/shown.

k) Survey limits that extend into the adjacent street right of way shall include all improvements/utilities within the half width of right of way.

l) Compare record information received from utility providers to actual utilities flagged in the field. Notify locating service of any discrepancies and make a reasonable effort to resolve in the field. Utilities identified in record information that cannot be resolved in the field will be drafted in the general alignment shown in the record information and will be specifically identified as "RECORD" on the deliverable drawing.

m) The coordinate base will be Kansas State Plane NAD 83(2011) – South Zone and the elevations will be referenced to the NAVD 88 datum.

n) Acquire last Deed of Record for all adjacent non-platted parcels.

3. General Scope Items for Civil Services:

a) Conduct one pre-design site visit to assess existing conditions.

b) Participate in a kickoff meeting to discuss project improvements, scope, and schedule.

c) Attend up to three progress design meetings with CLIENT.

d) Provide bidding assistance including response to Contractor's questions and

preparation of items for inclusion in Addenda.

e) Respond to RFIs generated by the contracting team. Response will be provided in 7 working days after received by PEC office unless other terms are agreed to by PEC and CLIENT.

4. Civil Engineering Design Services including:

a) Produce alternative alignment design concept plans for review with City Staff.
b) Provide a complete set of construction drawings and details, including Cover Sheet, plan/profiles, coordinate geometry data, erosion control plans, traffic control plans, and associated details. Submit as Field Check, Office Check, and Final plans.
c) Identify all utilities within the project limits and coordinate resolution of potential conflicts with each company. Conduct up to three utility coordination meetings with the utility companies and determine potholing and relocation needs. The City of Wichita's ULCC process will be utilized in conjunction with this effort.
d) Identify all permitting requirements for project design/construction.
e) Assist the CLIENT with preparation and submittal of the permit application for any required permits.
f) Summarize project quantities and estimate probable construction costs.
g) Attend pre-bid meeting conducted by City of Wichita.
h) Attend pre-construction conference conducted by City of Wichita.

E. **Additional Responsibilities of CLIENT:**

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Drawings, studies, reports, and other information available pertaining to the existing site.

F. **Additional Services:**

The following services can be provided by PEC at an additional cost by Supplemental Agreement:

1. Vacuum Excavation:

a) Perform vacuum excavation at the locations determined following survey and alignment design.
b) Excavation shall be sand filled.
c) Set-up traffic control as required for vacuum excavation operations.

2. Prepare legal descriptions and exhibits for necessary property acquisition associated with the project.
3. As-Builts survey of any utility relocations that relocate as part of the utility coordination process.
4. Geotechnical investigation.
5. Community Engagement such as in-person presentations, social media interaction, surveys, stakeholder engagement meetings, and workshops.

6. Construction Testing and Inspection, Construction Staking.

G. **Exclusions:**

The following shall be specifically excluded from the Scope of Services to be provided by PEC.

1. Analysis of the existing water system except as specifically noted in the scope.

H. **PEC's Fees & Reimbursable Expenses.**

1. PEC will invoice CLIENT one time per month for services rendered and Reimbursable Expenses incurred in the previous month.

2. PEC's Fee for its Scope of Services will be a lump sum for the cumulative total shown below:

Discipline	**Fee**
Alignment Options Evaluation	$25,000
Survey	$28,500
Civil Design	$41,500
Total	**$95,000**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW **(IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports

to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101

et seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall

be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING, INC.

for

WM DEADEND 2ND FEED SERVING VIA CHRISTI ST. THERESA

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

WM Deadend 2nd Feed serving Via Christi St. Theresa, Phase 1 Alignment Option Evaluation (W0026-54250220_448-2020-033964)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **WM Deadend 2nd Feed serving Via Christi St. Theresa, Phase 1 Alignment Option Evaluation** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$18,000** for Phase 1, Alignment Options Evaluation.

Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

THE CITY OF WICHITA

_____
Robert Layton, City Manager

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

MKEC ENGINEERING, INC.

_____
(Name & Title)

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

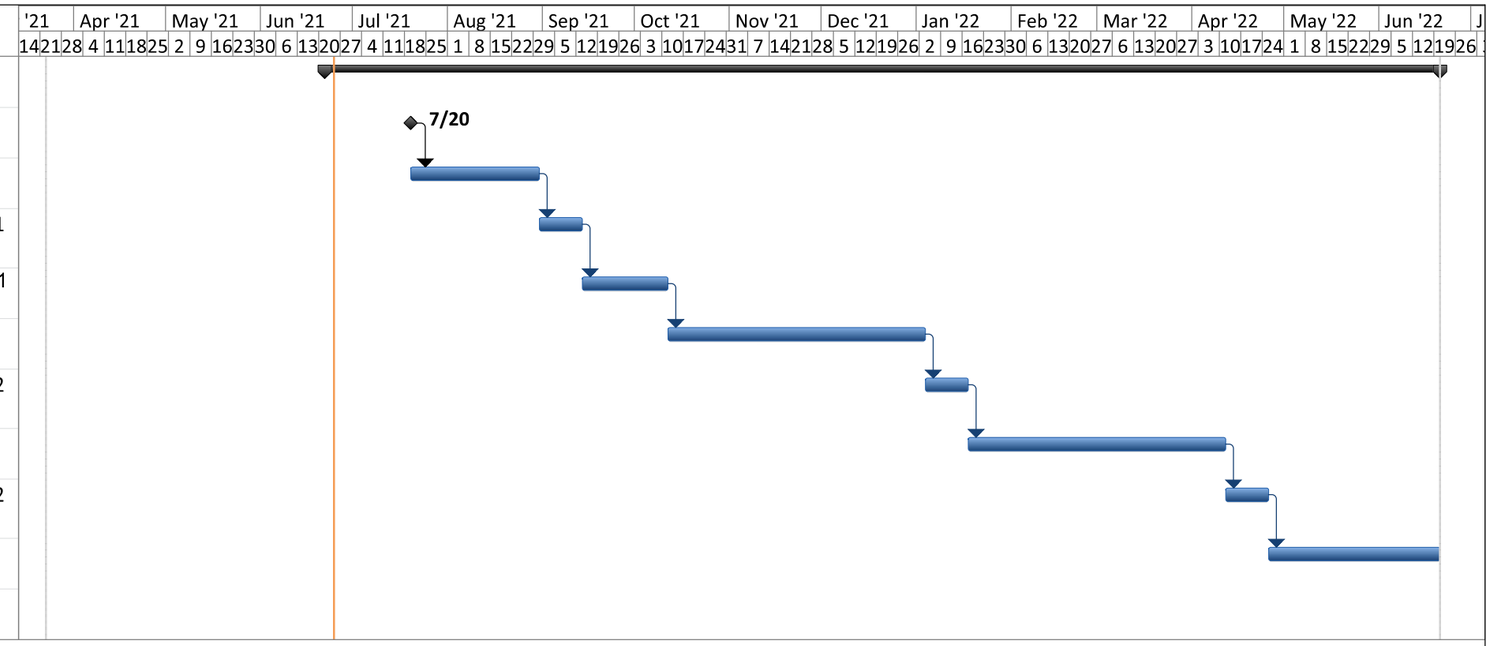
(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Concept Due: **August 1, 2021**
b) Field Check Plans and Estimate Due: **December 1, 2021**
c) Office Check Plans and Estimate Due: **April 1, 2022**
d) Final Plans and Estimate Due: **July 1, 2022**

ID	Task Name	Duration	Start	Finish
1	**11. Secondary Feed for Via Christi St. Teresa**	**260 days?**	**Tue 6/22/21**	**Mon 6/20/22**
2	Notice to Proceed	0 days	Tue 7/20/21	Tue 7/20/21
3	Alignment Study	30 days	Tue 7/20/21	Mon 8/30/21
4	City Review and Approval	10 days	Tue 8/31/21	Mon 9/13/21
5	Survey Selected Alignment	20 days	Tue 9/14/21	Mon 10/11/21
6	Field Check Plans w/City Review	60 days	Tue 10/12/21	Mon 1/3/22
7	City Review and Approval	10 days	Tue 1/4/22	Mon 1/17/22
8	Office Check Plans w/City Review	60 days	Tue 1/18/22	Mon 4/11/22
9	City Review and Approval	10 days	Tue 4/12/22	Mon 4/25/22
10	Final Plans and Estimate	40 days	Tue 4/26/22	Mon 6/20/22
11				



Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:	Project Engineer Consultant Company Contact Information	cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BARTLETT & WEST

for

NORTH MARKET WATER MAIN REPLACEMENT

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BARTLETT & WEST, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

North Market Water Main Replacement (W0033-54250020_448-2020-035006)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **North Market Water Main Replacement** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$195,000**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

BARTLETT & WEST

_____
Louis Funk, P.E.
Project Manager

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Build Plans Due: **June 1, 2021**
b) Alignment Plans Due: **3 weeks after the alignment is decided on by the consultant and contractor**
c) Final As-Built Plans Due: **30 days after the project is substantially complete**

CITY OF WICHITA, KANSAS
NORTH MARKET WATER MAIN REPLACEMENT PROJECT
SCOPE OF SERVICES, COMPENSATION, AND SCHEDULE

BASIC SERVICES

The project is specifically defined below.

Furnish a design build set of plans and estimated quantities for the North Market Water Main Replacement Project, as described in the Request for Proposal No 210061. Final deliverables will consist of an as-built set of plans developed from as-built survey data from the project. The project consists of replacing approximately 12,000 feet of 2-inch water main, approximately 200 feet of 2.5-inch water main, and approximately 700 feet of 8-inch water main with new 8-inch PVC water line.

The Engineer agrees to provide the following services.

Prepare Bid Package. The Engineer shall perform the following services during the bid package preparation phase of the Project.

- Meet with Owner's staff at critical stages during the bid package preparation phase. A total of two (2) meetings is anticipated.
- Prepare preliminary bid package plans showing work limits on an aerial map, new valve locations, new fire hydrant locations, proposed connection details, abandonments, size, location, and depth of sanitary and storm water sewer crossings and water service lines.
- Coordinate and collect existing utility plans from the utility companies located within the project work limits.
- Collect location information for all utilities flagged by the KS One-Call System
- Collect flow line information on all city sanitary sewer manholes and storm sewer structures.
- Prepare bid form using City's standard bid items with preliminary bid package plan quantities.

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

- Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this control. This includes as-built plans for City owned utilities located in the work limits, and a list of water services located in the work limits.
- Examine bid package and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.

Post Letting. The Engineer shall perform the following services during the post letting phase of the Project.

- Meet with Owner's staff and Contractor's staff to determine final water line alignment. A total of one (1) meeting is anticipated.
- Prepare alignment schematic for use during construction.
- Survey will be performed to pick up property corners and set control points.

Construction Phase Services. The Engineer shall provide the following survey services during the construction phase:

- Coordinate survey sub-consultant and review collected as-built survey data.
- Survey an adequate number of property monument to determine the existing right-of-way.
- Set horizontal and vertical control points throughout the project.
- As-built survey will consist of surveying all water meters, valves, fire hydrants, fittings, and PC/PTs during construction.
- Profile points will be collected along directional drilling paths to support the drill profiles supplies from the Contractor.

Post Construction Services. The Engineer shall perform the following services during the post construction phase of the Project.

- Prepare and provide stamped as-built plan and profile drawings. Plans will be prepared at a scale of 1"=20' horizontal and 1"=5' vertical.
- Plan and profile drawings will be prepared at 1"=20' scale. Drawings will include water meter and fire hydrant tables, northing and easting data of the water line at adequate intervals, and secondary ties to all valves, meters, fire hydrants, and fittings.

SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

Construction Phase Services

- Attend and preside at a pre-construction conference with the Owner, contractors, utility companies, sub-consultants, and other project participants. Prepare agenda and send invitations to attendees. Prepare minutes from the meeting and distribute to all attendees.
- Attend and preside at progress meetings with the Owner, contractors, utility companies, sub-consultants, and other project participants. Prepare agenda and send invitations to attendees. Prepare minutes from the meeting and distribute to all attendees.
- Review submittal data and shop drawings. Make comments and accept or reject the submittals in accordance with the responsibilities defined in the construction Contract Documents. Provide three (3) copies of all submittals and shop drawings to Owner.
- Review contractor's payment requests and make recommendations for processing by the Owner.
- Interpret the design documents and render opinions concerning acceptance or rejection of the contractor's work and administer the provisions of the construction Contract Documents applicable to the role of the Engineer, as defined in the Owner's General Conditions.
- Perform periodic visits to the project site as required to assess the progress of the work and general conformance with the plans and specifications.
- Prepare, issue, and process contract change orders as necessary.
- Attend a substantial complete and final inspection of the project and prepare a punch-list of deficient items. Make recommendations for acceptance of the work by the Owner.

Other Supplemental Services

- Bidding phase services.
- Preparation of any permanent or temporary easements required for construction of the water lines.
- Any services associated with condemnation actions such as staking of easements, testifying in hearings or providing professional opinions.
- Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, Owner's schedule, character of construction or method of financing; and revising previously accepted design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such design documents or due to any other causes beyond the Engineer's control.
- Resident project observation services.
- Respond to queries and questions from Owner on submittals.

COMPENSATION

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

- For the Basic Services described above, $195,000.00 lump sum. Payments shall be made in monthly amounts with are consistent with the amount of engineering services provided, as determined by the Engineer.

- Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional services shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

  Hourly rates for each classification as defined by the Engineer's rate schedule. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.35 times the rates listed (non-engineer time only).

  Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charge rates, mileage, toll telephone calls, reproduction and similar project related expenses.

SCHEDULE

Engineer will make plan submittals to Owner based on the following schedule:

- Bid Package Submittal – Engineer will submit bid package within 75 calendar days of receiving Notice to Proceed and existing as-built utility information (water, sanitary, storm) from the City. *(Early October is anticipated)*
- Alignment Plan Submittal – Engineer will submit alignment plans within 30 calendar days of agreement with Owner and Contractor on final alignment.
- Final As-Built Plans – Engineer will submit final as-built plans within 60 calendar days of the project's substantial completion.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BARTLETT & WEST

for

RANDOM NORTH WATER MAIN REPLACEMENTS

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BARTLETT & WEST, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to improve;

Random North Water Main Replacements (W0034-54250020_448-2020-035007)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for **Random North Water Main Replacements** and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$185,000**.
Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.
B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

BARTLETT & WEST

_____
Louis Funk, P.E.
Project Manager

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS **IS NOT** A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative

for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Build Plans Due: **August 1, 2021**

b) Alignment Plans Due: **3 weeks after alignment is decided on by the consultant and contractor**

c) Final As-Built Plans Due: **30 days after the project is substantially complete**

CITY OF WICHITA, KANSAS
RANDOM WATER MAIN REPLACEMENT PROJECT
SCOPE OF SERVICES, COMPENSATION, AND SCHEDULE

BASIC SERVICES

The project is specifically defined below.

Furnish a design build set of plans and estimated quantities for the Random Water Main Replacement project, as described in the Request for Proposal No 210061. Final deliverables will consist of an as-built set of plans developed from as-built survey data from the project. The project consists of replacing approximately 10,300 feet of 2-inch water main, and approximately 1,700 feet of 6-inch water main with new 8-inch PVC water line.

The Engineer agrees to provide the following services.

Prepare Bid Package. The Engineer shall perform the following services during the bid package preparation phase of the Project.

- Meet with Owner's staff at critical stages during the bid package preparation phase. A total of two (2) meetings is anticipated.
- Prepare preliminary bid package plans showing work limits on an aerial map, new valve locations, new fire hydrant locations, proposed connection details, abandonments, size, location, and depth of sanitary and storm water sewer crossings and water service lines.
- Coordinate and collect existing utility plans from the utility companies located within the project work limits.
- Collect location information for all utilities flagged by the KS One-Call System
- Collect flow line information on all city sanitary sewer manholes and storm sewer structures.
- Prepare bid form using City's standard bid items with preliminary bid package plan quantities.

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

- Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this control. This includes as-built plans for City owned utilities located in the work limits, and a list of water services located in the work limits.
- Examine bid package and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.

Post Letting. The Engineer shall perform the following services during the post letting phase of the Project.

- Meet with Owner's staff and Contractor's staff to determine final water line alignment. A total of one (1) meeting is anticipated.
- Prepare alignment schematic for use during construction.
- Survey will be performed to pick up property corners and set control points.

Construction Phase Services. The Engineer shall provide the following survey services during the construction phase:

- Coordinate survey sub-consultant and review collected as-built survey data.
- Survey an adequate number of property monument to determine the existing right-of-way.
- Set horizontal and vertical control points throughout the project.
- As-built survey will consist of surveying all water meters, valves, fire hydrants, fittings, and PC/PTs during construction.
- Profile points will be collected along directional drilling paths to support the drill profiles supplies from the Contractor.

Post Construction Services. The Engineer shall perform the following services during the post construction phase of the Project.

- Prepare and provide stamped as-built plan and profile drawings. Plans will be prepared at a scale of 1"=20' horizontal and 1"=5' vertical.
- Plan and profile drawings will be prepared at 1"=20' scale. Drawings will include water meter and fire hydrant tables, northing and easting data of the water line at adequate intervals, and secondary ties to all valves, meters, fire hydrants, and fittings.

SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

Construction Phase Services

- Attend and preside at a pre-construction conference with the Owner, contractors, utility companies, sub-consultants, and other project participants. Prepare agenda and send invitations to attendees. Prepare minutes from the meeting and distribute to all attendees.
- Attend and preside at progress meetings with the Owner, contractors, utility companies, sub-consultants, and other project participants. Prepare agenda and send invitations to attendees. Prepare minutes from the meeting and distribute to all attendees.
- Review submittal data and shop drawings. Make comments and accept or reject the submittals in accordance with the responsibilities defined in the construction Contract Documents. Provide three (3) copies of all submittals and shop drawings to Owner.
- Review contractor's payment requests and make recommendations for processing by the Owner.
- Interpret the design documents and render opinions concerning acceptance or rejection of the contractor's work and administer the provisions of the construction Contract Documents applicable to the role of the Engineer, as defined in the Owner's General Conditions.
- Perform periodic visits to the project site as required to assess the progress of the work and general conformance with the plans and specifications.
- Prepare, issue, and process contract change orders as necessary.
- Attend a substantial complete and final inspection of the project and prepare a punch-list of deficient items. Make recommendations for acceptance of the work by the Owner.

Other Supplemental Services

- Bidding phase services.
- Preparation of any permanent or temporary easements required for construction of the water lines.
- Any services associated with condemnation actions such as staking of easements, testifying in hearings or providing professional opinions.
- Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, Owner's schedule, character of construction or method of financing; and revising previously accepted design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such design documents or due to any other causes beyond the Engineer's control.
- Resident project observation services.
- Respond to queries and questions from Owner on submittals.

COMPENSATION

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

- For the Basic Services described above, $185,000.00 lump sum. Payments shall be made in monthly amounts with are consistent with the amount of engineering services provided, as determined by the Engineer.

- Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional services shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

  Hourly rates for each classification as defined by the Engineer's rate schedule. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.35 times the rates listed (non-engineer time only).

  Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charge rates, mileage, toll telephone calls, reproduction and similar project related expenses.

SCHEDULE

Engineer will make plan submittals to Owner based on the following schedule:

- Bid Package Submittal – Engineer will submit bid package within 45 calendar days of receiving Notice to Proceed and existing as-built utility information (water, sanitary, storm) from the City. *(Early September is anticipated)*
- Alignment Plan Submittal – Engineer will submit alignment plans within 30 calendar days of agreement with Owner and Contractor on final alignment.
- Final As-Built Plans – Engineer will submit final as-built plans within 60 calendar days of the project's substantial completion.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

JEO CONSULTING GROUP, INC.

for

AMIDON AVENUE BRIDGE AT ARKANSAS RIVER, PHASE 1

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and JEO CONSULTING GROUP, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

Amidon Avenue Bridge at Arkansas River, Phase 1 (E1010-40250621_472-2020-085684).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing mprovements for the **Amidon Avenue Bridge at Arkansas River**, and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

B. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

C. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

D. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

E. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

F. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

G. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

H. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

I. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

J. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

L. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement.

F. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

G. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the not to exceed fee amount of **$20,540**. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party

beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

THE CITY OF WICHITA

_____
Robert Layton, City Manager

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, Director of Law and
City Attorney

JEO CONSULTING GROUP, INC.

_____
Brad Shores, P.E., Project Manager

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts

as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
   (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)
2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:
   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.
   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.
   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from

the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility reloca-tion construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be reported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist.

ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding documents) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.
6. Post Letting.

   (a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

   (b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

   (c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

   (d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

   (e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.
7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

   a) Bridge Evaluation Report Due: **September 29, 2021**
   b) Field Check Plans and Estimate Due: **February 16, 2022**
   c) Office Check Plans and Estimate Due: **May 18, 2022**
   d) Final Plans and Estimate Due: **July 6, 2022**

ATTACHMENT A
Scope of Services
Amidon Avenue Bridge over Arkansas River

This project includes bridge design and plans for the repair or replacement of the following structure: Amidon Avenue over the Arkansas River in the City of Wichita. The project is divided into two phases: a Design Concept Phase and a Final Design Phase. The final design scope will be negotiated once the Design Concept has been approved by the City Council. The scope of the Design Concept Phase includes:

- Evaluation and recommendation to replace or repair the bridge based upon a life cycle cost analysis.
- One meeting with each utility owner directly connected to the bridge.
- Evaluation of traffic phasing of bridge construction.
- Evaluation of detouring traffic during bridge construction.
- Roadway and sidewalk configuration (recommendation for shoulder, lane and sidewalk widths).

The anticipated project schedule is:

Design Concept Phase:

Anticipated Notice to Proceed: ..... July 28th, 2021
Design Concept Report Submittal (Draft): ..... September 8th, 2021
Design Concept Report Submittal (Final): ..... September 29th, 2021

Final Design Phase:

Anticipated Notice to Proceed: ..... November 17th, 2021
Field Check: ..... February 16th, 2022
Right-Of-Way Plans: ..... March 9th, 2022
Utility Plans: ..... March 16th, 2022
Geotech: ..... March 23rd, 2022
Permits: ..... March 30th, 2022
Office Check: ..... May 18th, 2022
Final Plans, Bid Documents, and Cost Estimates: ..... July 6th, 2022

Final Design Phase dates above are provided to demonstrate how a July, 2022 letting date can be achieved.

The scope of services for the Design Concept Phase includes the following major tasks: project management, bridge evaluation study, traffic control study and initial utility coordination.

<u>Task 1.00: Project Management:</u>

- The Consultant will provide project management services, including monthly progress reports, budget management, invoices, meetings & phone conferences, internal QA/QC, and project related documentation/coordination.
- Anticipated meetings include:
  - Project Startup Meeting.
  - Pre-design Site Visit.
  - Client Coordination Meetings including life-cycle approach and findings.
  - DAB Meetings (2).

Task 2.00: Bridge Evaluation Study

- Site visit conducted by structural engineering team.
- Development of construction alternatives:
    - Bridge Repair
    - Total Replacement
- Development of anticipated construction costs for various options.
- Development of scenarios including maintenance costs.
- Life-cycle cost evaluation of alternatives.
- Recommendation of alternative.
- Sketches for communication of selected alternative to District Advisory Board (DAB).

Task 3.00: Traffic Control Study

- Development of two detour alternates.
    - Obtaining traffic control counts for these two detours.
    - Evaluation of route capacity to handle traffic increase.
    - Sketches suitable for communication to DAB.
- Development of traffic phasing concept.
    - High level evaluation using aerial imagery.
    - Sketches for communication to DAB.
- Comparison of traffic control alternatives including impacts to schedule and cost.
- Recommendation of traffic control alternative.

Task 4.00: Initial Utility Coordination

- Initial meetings will be held with all utility owners present on the bridge due to the accelerated nature of the design schedule.
- It is anticipated that all utilities connected to the superstructure will be relocated under the channel regardless of the bridge scenario selected.

The following assumptions are applicable to this scope of services:

- City will provide existing as-built bridge plans if available.

Deliverables include:

- PDF Design Concept Report
    - Report will include the results of the life cycle cost analysis.
    - Report will include estimated initial construction cost estimates.
    - Draft will be provided first for review and comments by City.
    - Final report will include a recommendation from the consultant team.

The following major tasks are not included in the Design Concept Phase scope but will be negotiated after the Design Concept has been approved by City Council:

- Survey
- Public Involvement

- Permitting
- Hydrology and Hydraulics (if applicable)
- Geotechnical Engineering (if applicable)
- Roadway Plans
- Sidewalk Improvements off Bridge
- Bridge Repair/Replacement Plans
- Art
- Traffic Control Plans
- Design Construction Services
- Construction Inspection (if requested)

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW **(IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports

to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101

et seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall

be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC.

for

COUNTRYSIDE WATER MAIN REPLACEMENT, PHASES 1 & 2

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

Countryside Water Main Replacement, Phases 1 & 2, (472-2021-017904_448-2021-017905)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing water improvements for the Countryside Water Main Replacement, Phases 1 & 2, and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. <u>THE CITY AGREES:</u>

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount not to exceed **$284,700**. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the City or both incurred or will incur because the Engineer failed to comply with its contractual obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Brandon J. Whipple, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

Wood Environment & Infrastructure Solutions, Inc.

_____
Eric J. Broce, Sr. Assoc. Engineer

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A"**.

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.
2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise.
(It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of the Testing Laboratory's work. If required the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the ENGINEER. This may be required for bridges, structures, retaining walls and other locations.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners

for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified)**. When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain

construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

(k) Utility Coordination ENGINEER shall review each utility company's relocation design. Upon completion of the review and review of any potential conflicts or issues with City Staff, the ENGINEER shall provide comments to the respective utility company relative to constructability and spacing from other utilities/utility relocation designs and PROJECT improvements design.

ENGINEER shall schedule and facilitate a Utility Relocation Pre-Construction Meeting with each utility company that requires relocation construction of their facilities before said utility relocation construction begins.

The ENGINEER shall reiterate that deviations from approved relocation plans shall be re-ported to the consultant. ENGINEER shall meet with utility company/ies at the PROJECT site during said utility company/ies relocation construction. ENGINEER shall report their findings to the CITY along with recommendations for any additional measures to resolve differences if they still exist. ENGINEER shall provide field staking, potholing/vacuum excavation (by subconsultant) and field

survey of relocated or existing utilities deemed to be critical conflict points with proposed PROJECT improvements as mutually agreed by the CITY.

ENGINEER shall provide updated field survey upon completion of utility relocations to verify actual location of relocated utilities. Utility companies shall be requested to flag or other-wise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT.

The FINAL plans shall reflect (or otherwise incorporate into bidding docu-ments) the location of each utility company's relocated facilities based upon the information as obtained in the items outlined above.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments**.** The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form and completing the Item 113 Justification Form for the new bridges if applicable for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

7. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the City with the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a) Design Build Plans Due: **September 17, 2021**
b) Alignment Plans Due: **3 weeks after the alignment is decided by the consultant and contractor**
b) Final As-Built Plans Due: **30 days after the project is substantially complete**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (**IF** applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant Company Contact Information

cc: Right-of-Way and Utility Coordinator, Project Manager & Chief Design Engineer

Revised 3/1/2021

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit C
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq*.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

EXHIBIT D
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

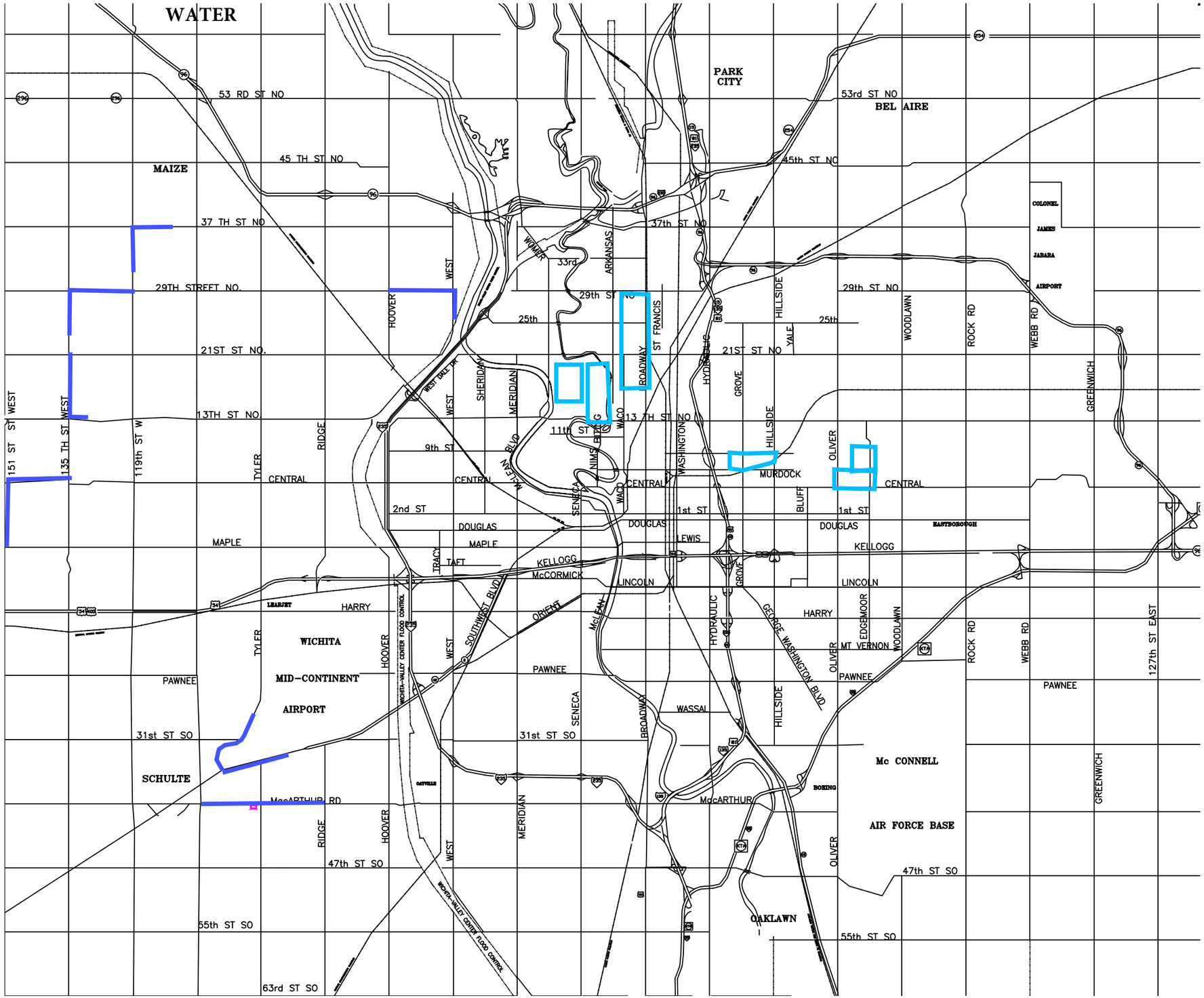
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.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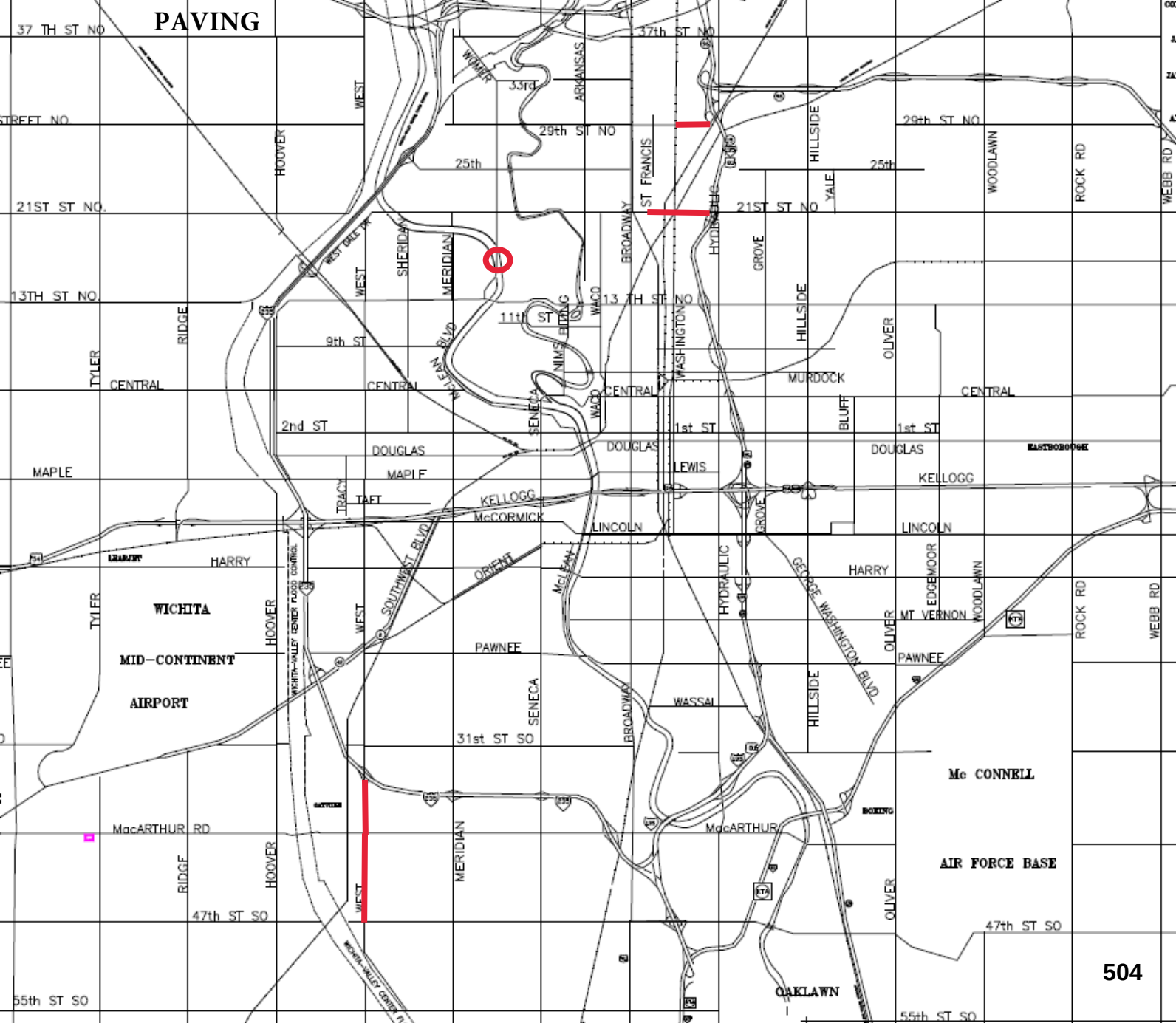
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McLEAN BLVD
SOUTHWEST BLVD
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RIDGE
WEST DALE DR
WICHITA-VALLEY CENTER FLOOD CONTROL

RESOLUTION NO. 21-273

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

29th Street North from I-135 to Ohio (472-2021-085732)

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Project Authorization**. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$150,000** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. **Project Financing**. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 20, 2021.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

RESOLUTION NO. 21-274

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

21st Street North from I-135 to Mosley (472-2021-085733 and 448-2021-002927)

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Project Authorization**. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$185,000** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. **Project Financing**. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 20, 2021.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Chester I. Lewis Reflection Park Project - Public Art (District I)

INITIATED BY: Department of Park & Recreation

AGENDA: New Business

Recommendation: Approve the donor agreement, the increased project budget and the bonding resolution.

Background: Chester I. Lewis Reflection Square Park, named for the late prominent local civil rights leader, is being redesigned and expanded to increase the park's offerings as a vibrant public outdoor space in the heart of downtown. The park will also serve as an entry plaza for the Kansas Health Science Center - Kansas College of Osteopathic Medicine. On November 12, 2019 the City Council approved the development agreement and the project budget of $1,300,000 in Tax Increment Financing (TIF). The project budget included $100,000 for public art.

Analysis: On June 7, 2021 the Design Council recommended the Chester I. Lewis Park Project be designated a special considerations project. The Design Council recommended allocating $150,000 from the 2021 Capital Improvement Program (CIP) Art Fund budget. On June 28, 2021, the Wichita Parks Foundation pledged a $250,000 donation to the Chester I. Lewis project through private donors. These public art funds will help to complete the vision for the park.

Financial Considerations: The 2021-2030 Adopted Capital Improvement Program (CIP) includes $11,669,609 in GO at-large funding for Public Art associated with CIP projects, consistent with City ordinance 51-165. This funding is allocated annually through-out the 10-year CIP planning period and includes amounts that are either allocated for specific projects based on Design Council recommendations, or are unallocated and available to fund public art for additional projects as recommended by the Design Council. The 2021-2030 Adopted CIP contains $345,638 in unallocated public art funds.

Staff recommend allocating $150,000 to the Chester I. Lewis Reflection Park project, consistent with Design Council recommendations. In addition, the Wichita Parks Foundation pledge totals $250,000. This will increase the project bonding resolution from $1,300,000 to $1,700,000.

Legal Considerations: The Law Department has reviewed and approved the agreement and amended bonding resolution as to form.

Recommendation/Action: It is recommended that the City Council approve the donor agreement, increase the project budget, approve the revised bonding resolution and authorize the necessary signatures.

Attachments: Donor agreement, bonding resolution.

AGREEMENT

By and Between

THE CITY OF WICHITA, KANSAS
DEPARTMENT OF PARK AND RECREATION

and

THE WICHITA PARKS FOUNDATION

THIS AGREEMENT, made and entered into this ____ day of July, 2021 by and between the City of Wichita, Kansas, a municipal corporation of the State of Kansas (hereinafter "City"), and the Wichita Parks Foundation, a 501 (c)(3) charitable organization (hereinafter "WPF").

WITNESSETH:

WHEREAS, Chester I. Lewis Reflection Square Park (hereinafter "Park") is owned by the Wichita Park Board located on East Douglas between Broadway and Market and will serve as an entry plaza for the Kansas Health Science Center - Kansas College of Osteopathic Medicine; and

WHEREAS, redesign of the Park will allow for an open, porous, urban space event park that allows the free flow of event goers as well as open space for events before and after events or throughout the week; and

WHEREAS, City plans to finance the improvements for the Park through Tax Increment Financing: and

WHEREAS, WPF desires to assist in funding the public art of special enhancements to the Park redesign plan and has offered to assist in accepting donations for this purpose; and

WHEREAS,

NOW, THEREFORE, the parties agree as follows:

Section 1. Role and Duties of City. City agrees to perform this agreement as follows:

a. City will create a fund and accept donations from WPF for funding the public art component of the special enhancements for the Park.

b. City will accept $250,000 for the public art and any other funds raised beyond this amount will be held in the project fund for additional upgrades to the project.
c. The public art's construction, materials, content, design and colors shall be approved by City prior to its development and installation.
d. City, shall, at its sole expense, maintain the art and be responsible for all repairs or replacement required by vandalism, theft, or reasonable wear and tear.
e. Upon completion of the improvement project, the Park shall remain open to the public except for reasonable closures for special events, rentals or maintenance. The Park will be maintained in a fashion that attracts visitors, including removal of litter and trash, repair of features and amenities, and other routine maintenance as required.

Section 2. Role and Duties of WPF:

a. WPF has the authority to accept donations for the funding of the public art component of the special enhancements for the Park.
b. WPF will accept and keep track of donations for funding of the public art
c. WPF shall transfer donations received to City's fund created for funding the public art within ninety (90) days of the execution of this agreement.
d. It is anticipated that donations in the amount of $250,000 will be received by WPF, and any donations in excess of that amount shall also be transferred to City's fund created for this project as set forth in paragraph (c) to be held for additional upgrades to the project.
e. It is understood that WPF shall have no responsibility to perform additional duties or services in addition to those set forth in this Section.

Section 3. Term. The term of this contract shall be for ninety (90) days and will commence upon the execution of the Agreement. The parties further agree that the right is reserved by either party to terminate this Agreement at any time, upon thirty (30) days written notice. Upon termination of this Agreement by either party donations shall be non-refundable.

Section 4. Assignment. This agreement may not be assigned or otherwise transferred by either party.

Section 5. Modification. No change, alteration, modification or amendment to this agreement will be effective unless it is in writing and properly signed by both parties.

Section 6. Representative. Each party shall designate a person to serve as the contact for administering this agreement. All notices regarding the performance or interpretation of this agreement shall be served on such person at the following addresses:

City: Troy Houtman, Director
Park and Recreation Dept.
11th Floor, City Hall
455 N. Main,
Wichita, KS 67202

WPF: Brent Thomas, Chairman
Wichita Parks Foundation
PO Box 3439
Wichita, KS 67201

Section 7. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 8. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. Electronic signatures shall have the same effect as original signatures.

IN WITNESS WHEREOF, City and Sponsor have executed this Agreement as of the day and year first written above.

THE CITY OF WICHITA, KANSAS	WICHITA PARKS FOUNDATION
_____	_____
Brandon Whipple, Mayor	Brent Thomas, Chairman

Approved as to Form:

_____
Jennifer Magaña, City Attorney and
Director of Law

RESOLUTION NO. 21-278

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF PUBLIC PARK IMPROVEMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City Council (the "Governing Body") of the City has heretofore, pursuant to K.S.A. 13-1346, created the Wichita Board of Park Commissioners (the "Board"); and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Creation and installation of public art for Chester I. Lewis Reflection Square Park (the "Project").

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Project Authorization**. It is hereby authorized, ordered and directed that the Project be designed, acquired and/or constructed at an estimated cost of $400,000 in accordance with specifications prepared or approved by the City of Wichita.

Section 2. **Project Financing**. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 20, 2021.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magana, City Attorney and
Director of Law

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Chester I. Lewis Reflection Park Project – Artist Contracts (District I)

INITIATED BY: Department of Park & Recreation

AGENDA: New Business

Recommendation: Approve the artist contracts and the exception to City Code section 2.15.080.

Background: Chester I. Lewis Reflection Square Park, named for the late prominent local civil rights leader, is being redesigned and expanded to increase the park's offerings as a vibrant public outdoor space in the heart of downtown. The park will also serve as an entry plaza for the Kansas Health Science Center - Kansas College of Osteopathic Medicine.

Analysis: On June 7, 2021 the Design Council recommended the Chester I. Lewis Park Project be designated a special considerations project. An Art Consultant and two artists have been selected to create and install public art in the space. The primary focus of the art is to honor the legacy of Chester I. Lewis. The artists were selected after a national request for proposal (RFP) with a focus on art integration into the park's infrastructure.

Two artists were selected: One local artist, Ellamonique Baccus and one national artist, Matthew Mazzotta. The local artist's scope of work is for the floor plan of the park which includes features such as decorative tiles at the ground level. The national artist's scope is for the overhead plane which includes features such as lighting. The contract with Matthew Mazzotta is for $350,000 and the contract with Ellamonique Baccus is for $120,000. The remaining $30,000 will be used as contingency in the case of unanticipated costs.

Financial Considerations: The amount allocated within the project for art totals $500,000, based on staff recommendations and anticipated City Council approval of a revised bonding ordinance.

Legal Considerations: The Law Department has reviewed the agreement and approved it as to form. Based on the procedure outlined in City Code section 2.15.080, artists are hired either by the project architect or the project art consultant. Contracting directly with artists is an exception to City Code. The Park Department recommends approval of this exception, since the art process was in progress prior to the City Council's approval of City Code section 2.15.080 on January 7, 2020.

Recommendation/Action: It is recommended that the City Council approve the exception to City Code section 2.15.080 for directly hiring of artists, approve the contracts and authorize the necessary signatures.

Attachments: Artist's contracts,

CONTRACT

For
WisdomTree Arts, Inc.
CHESTER I. LEWIS PARK PUBLIC ART
205 E. Douglas Ave, Wichita, KS 67202

THIS CONTRACT entered into this 15th day of July, 2021, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and WisdomTree Arts, Inc., (Vendor Code Number: 833348), PO Box 48743, Wichita, KS 67201; ella.baccus@gmail.com hereinafter called "**ARTIST**".

NOW, THEREFORE, the parties hereto agree as follows:

ARTIST shall provide to the **CITY** (hereinafter called "City" or "Owner") planning and design services, preparation and completion of the Artwork to be located at 205 E. Douglas Ave., Wichita, KS (hereinafter called the "Site"), as further described in and as per quotes attached as **Exhibit A.** Art Consultants, Anthony Joiner and Elizabeth Stevenson, retained under separate contract.

1. **Scope of Services**
   1.1. ARTIST's Obligations
   a) ARTIST shall perform all services and furnish all supplies, materials and/or work equipment as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
   b) ARTIST shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Art Consultant, the City's Design Council and the Oversight Committee. The ARTIST will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by Art Consultant prior to the development of a design by the ARTIST.
   c) ARTIST will receive from the Art Consultant available project documents, and shall prepare for the Art Consultant a descriptive list of all site plans, drawings, list of required permits and other relevant documents and data needed by the ARTIST in order to complete the Artwork. If such documents and data do not exist, the ARTIST shall be responsible for obtaining these at its own Expense. The ARTIST shall prepare the design concept described in Section 1.3 of this Agreement.
   d) ARTIST shall complete the fabrication, transportation and installation of the Artwork by thescheduled dates as provided in Section 1.5 of this Agreement.
   e) ARTIST shall secure any and all required licenses, permits and similar legal authorizations at the ARTIST's expense as may be necessary for the installation of the Artwork at the Site.
   f) ARTIST shall arrange for the transportation and installation of the Artwork in

coordination with Art Consultant. If the ARTIST does not install the Artwork himself or herself, ARTIST shall supervise and approve the installation. Prior to the installation of the Artwork, ARTIST shall inspect Site to ensure that it is ready to accept the artwork and compliant with the specifications provided by the ARTIST. ARTIST shall notify Art Consultant of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.

g) ARTIST shall provide required insurance in amounts and limits specified in Article 5 and Exhibit C.

h) ARTIST shall provide a list of all subcontractors along with a copy of the agreement between the ARTIST and each subcontractor.

i) ARTIST shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.

j) ARTIST shall provide a set of "as built" drawings with sufficient detail to demonstrate final construction in conformity with the approved and permitted construction documents.

k) ARTIST shall provide photographic documentation of the Artwork in a format acceptable to ARTIST and Art Consultant.

l) ARTIST shall be available for monthly scheduled progress meetings, and with reasonable advance notice for a reasonable number of additional in-person (where feasible), telephonic, or videoconference meetings required to coordinate design and project implementation and Artwork installation, ceremonies and the like, as necessary.

1.2. **City's Obligations**

a) The City shall appoint an Art Consultant as its agent for the performance of its agreed duties.

b) The City shall be responsible for providing the ARTIST, at no expense to the ARTIST, copies of the documents identified by ARTIST described above at 1.1c. The ARTIST shall not be liable for any delay in performance due to any action or inaction of the Art Consultant in connection with the foregoing.

c) The City requires that the Artwork comply with the approved design of the Site, and will communicate with the Artist through the Art Consultant any error, omission, or inconsistency in the ARTIST's contracted service. The ARTIST bears ultimate responsibility for Project conformity.

d) The Art Consultant shall confirm that the Site has been prepared in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement by the scheduled installation date as provided in Section 1.4 of this Agreement or shall contact the ARTIST in writing informing him or her of any delays. The ARTIST shall not be liable for any delay in performance due to any action or inaction of the Art Consultant in connection with the foregoing.This does not relieve ARTIST of its obligation at Section 1.1 to approve the installation site.

1.3. **Design**

a) Conceptual Design Documents

i. The ARTIST shall visit, examine, research and consider the Site and surrounding area. If applicable, the ARTIST shall also consult with representatives of the Oversight Committee and the community, and collaborate with the project design team to consider their input and concerns.

ii. On September 3, 2021 the ARTIST shall submit to the Art Consultant the design concept(the "Design") in the form of detailed color drawings, models, and/or other documents, as appropriate. The Artist's Proposal at Conceptual Design shall include:

- Drawings (in plan and elevation) and/or 3-dimensional models, proposed materials and samples, colors, finishes, textures and patinas, the specific location and orientation of the Artwork relative to the Site and a written description of the Artwork in sufficient detail that ARTIST's design intent is clearly expressed. The Proposal at Conceptual Design shall include an assessment of the Artwork's constructability on the Site.
- BUDGET for the cost of design, fabrication, insurance, transportation and installation of the Artwork with documentation of the sources and/or assumptions upon which the BUDGET figures are based regardless of whether these services are provided by ARTIST or ARTIST's subcontractors. BUDGET shall also reflect the costs associated with any on-site project manager or staff to ensure that Artwork operates properly as installed at the Site. Design Development Documents.
- A preliminary maintenance plan as is required to fairly present a meaningful representation of the future maintenance requirements and costs for the intended Design.

iii. The Artist's Design Development Materials and Documents shall incorporate the further developmentand refinement of the Proposal and BUDGET developed under Conceptual Design.

iv. The Artist's Design Development shall include presentation quality materials, which may include, but are not limited to, colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mockups, final color and materials samples, proposed fabrication methods, feasibility studies and final written cost estimates from fabricators, suppliers and other sub-contractors at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

v. ARTIST and ARTIST's structural engineer and fabricator shall review all Design Development drawings, materials and documents for

consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the Art Consultant. ARTIST shall make all necessary modifications to the design necessitated by this review at ARTIST'S EXPENSE as needed to ensure constructability within the defined BUDGET. Any modification which the Art Consultant deems material shall be submitted and reviewed for approval by the Design Council prior to beginning the production of Construction Documents.

b) The Artist shall deliver Final/Construction Documents, which shall include:

i. Construction Documents for construction and/or installation of the Artwork as approved, which must be signed and stamped by design professionals licensed in the State of Kansas. If the design contains lighting, media and/or or purchased forms of hardware, computers or software programs that are an intrinsic aspect of the artwork, each must be identified. These drawings and supplementary documents shall indicate any issues or coordination involved in the construction, integration and operation of the artwork as well as any third-party subcontractors needed to work on the project."

ii. ARTIST shall deliver mockups and samples, as required by Art Consultant. Mockup andsample requirements shall be addressed on a case-by-case basis and resolved to mutual agreement, in that the Art Consultant shall not request mockups or samples that are unreasonably onerous to the ARTIST.

1.4. **Design Scheduling**

a) ARTIST shall provide the City with its written review of the Architect's Design Development and/or Construction Documents to confirm their adherence to the design approved by Design Council, and to coordinate installation of the Artwork into the Site. The Architect shall be responsible for providing a site for installation meeting the approved design specifications approved by Design Council, to the extent they exist. If ARTIST's site preparation specifications are not timely available, or if they are silent on any given issue, the adjustments needed for successful installation shall be at the ARTIST's expense.

b) ARTIST, Art Consultant and Project Manager shall work together to develop a schedule describing ARTIST's specific timelines for completing the Artwork to coordinate with the critical path method project schedule generated by the General Contractor. ARTIST is responsible for notifying Art Consultant in a reasonable amount of time if it appears that ARTIST will be able to deliver the work prior to the timeline as set. If ARTIST fails to meet the established schedule, ARTIST will bear the financial ramifications of such delay.

1.5. **City Approval**

a) Within fifteen (15) days after the ARTIST submits the Proposal at Conceptual Design, the Art Consultant shall notify the ARTIST whether it approves or disapproves of the Design. The Art Consultant shall have discretion in approving outright or with conditions or rejecting the Proposal. The Parties agree that approval by the Design

Council must be obtained for the Artwork and that the time elapsed in that approval process shall not be charged to either Party. The Art Consultantshall notify the ARTIST of any revisions to the Design as are necessary for the Artwork to comply with any applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork, its installation at the Site, or Design Council objection to the artistic expression. ARTIST will modify the Proposal at Conceptual Design to meet the stated objections.

b) If the ARTIST refuses to revise the Design pursuant to Section 1.3, or if the ARTIST fails to adequately revise the Design in the judgment of the City, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the City submits its written disapproval of the Revised Design to the ARTIST. The City shall submit to the ARTIST a written termination notice with the disapproval. The termination notice shall advise the ARTIST that this Agreement has been terminated pursuant to this Article. The parties hereby acknowledge and agree that the termination notice shall notify the ARTIST that the ARTIST is entitled to retain the compensation paid prior to the termination date. Thereafter, the Parties are under no further obligation to each other. The parties hereby acknowledge and agree, and the termination notice shall confirm that the ARTIST shall retain Ownership of all right, title, and interest in and to the Designs, Revised Designs and renderings thereof submitted hereunder.

c) Design Revision or Modification:

i. Prior to the execution of any change in the approved design, ARTIST shall present proposed changes in writing to the Art Consultant for further review and approval. The ARTIST must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design and as determined by ARTIST in consultation with the Art Consultant.

ii. If the Art Consultant approves the changes, the Art Consultant shall promptly notify the ARTIST in writing; however, the Art Consultant has no authority to increase the BUDGET, and any changes approved must not incur costs exceeding the BUDGET.

iii. If the Art Consultant disapproves of the changes, the Art Consultant shall promptly notify the ARTIST in writing and the ARTIST and Art Consultant shall discuss in good faith what changes can be made to modify the Design to conform to the BUDGET. The Art Consultant will promote to the Design Council in good faith any agreed modification to the Design.

1.6. **Budget, Payment and Deliverables Schedule**

a) Budget

i. The ARTIST shall be assigned a not-to-exceed budget (as per Exhibit B) at the time of contract execution. Throughout the conceptual design and design development phases, ARTIST shall prepare a detailed BUDGET which shall include all goods, services and materials with such costs itemized. The BUDGET shall be submitted to the Art Consultant at the end of the Design Phase, the receipt and approval of which will be a condition precedent to the ARTIST receiving approval to move forward into the fabrication phase.

ii. BUDGET shall mean a specific and detailed document identifying the cost of each phase to complete all work under this Agreement, including all modifications. This BUDGET shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including ARTIST and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits and licenses and required insurance.

iii. The responsibility for construction costs necessitated by a design shall fall upon the budget for the Art Component. To the extent that City requires specific structural elements to be incorporated into the design that cannot be incorporated into the budget for the Art Component, the City will provide the required additional funding or expressly withdraw the design element requirement.

iv. If the ARTIST incurs costs in excess of the amount listed in the NOT-TO-EXCEED BUDGET, the ARTIST shall pay such excess from the ARTIST's own funds unless the ARTIST obtains approval in writing for such additional costs through a change order approved by City Council.

b) Payment Schedule - ARTIST's completion milestones and payment schedule are set forth in Exhibit B, Payment Schedule, which is incorporated herein for reference. City shall pay ARTIST according to the Payment Schedule within thirty (30) days of receiving milestone attainment approval by the Art Consultant.

c) Schedule and Progress Reports

i. The ARTIST shall notify the Art Consultant of the anticipated schedule for the fabrication, transportation and installation of the Artwork. The Art Consultant shall establish the schedule for the submission of progress reports and inspections for the Artwork installation. The Schedule may be amended by written agreement, which agreement shall not be unreasonably withheld, conditioned or delayed. The Schedule of Deliverables must identify a specific date or timeframe for the completion of the Artwork. As soon as available, the Schedule of Deliverables shall be included as an addendum to Exhibit B. ARTIST bears the Project's financial risk created by the inability to deliver the Artwork for installation as scheduled.

ii. The ARTIST shall reasonably inform the Art Consultant of the progress of each phase of work completed under the Agreement.

iii. All work to be completed by April 15, 2022. The ARTIST shall closely work with the Art Consultant and in coordination with the design and construction teams for installation.

1.7. **Fabrication Stage**

a) The ARTIST shall fabricate and install the Artwork in substantial conformity with the Design. The ARTIST may not deviate from the approved design without review by the Design Council and written approval of the City Manager's Office.

b) If the Artwork is being constructed on Site, the ARTIST shall avoid creating nuisance conditions out of the ARTIST's operations.

c) The Art Consultant shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. The ARTIST will accommodate and participate in fabrication review by video communication to the extent possible.

d) If the Art Consultant, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, the Art Consultant reserves the right to notify the ARTIST in writing of the deficiencies and that the Art Consultant intends to withhold the next budget installment.

e) The ARTIST will have fifteen (15) days to cure the Art Consultant's objections and will notify the Art Consultant in writing of completion of the cure. The Art Consultant shall promptly review the Artwork, and upon approval shall release the hold against the next budget installment. If the ARTIST disputes the Art Consultant's determination that the Artwork does not conform, the ARTIST shall promptly submit reasons in writing to the Art Consultant within three (3) days of the Art Consultant's prior notification to the contrary. The Art Consultant shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether the ARTIST has complied with the terms of this Agreement shall remain with the Art Consultant.

f) The ARTIST shall notify the Art Consultant in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.

g) Prior to the transportation and installation of the Artwork, the Art Consultant shall inspect the Artwork within three (3) days after receiving notification pursuant to paragraph (f) to determine that the Artwork conforms to the Final Design, give final approval of the fabricated Artwork and authorize the installation of the Artwork at the Site. The Art Consultant shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the Art Consultant does withhold final approval, the Art Consultant shall submit the reasons for such disapproval in writing within three (3) days of examining the fabricated Artwork. The ARTIST shall then have fifteen (15) days from the date of the Art Consultant's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. This time for adjustments can be extended by the consent of the parties. Any such extension of the schedule for delivery and installation shall not

alter the obligation of the ARTIST to be responsible for any expenses incurred in correcting such deviation as set out in Section 1.3(c)(iii), unless that obligation is modified by an approved change order as set out in Section 1.5(a)(iii).

h) The ARTIST shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the Art Consultant of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction. Failure to do so by the ARTIST shall be deemed as an acceptance of the Site conditions. Financial responsibility for alteration of the Site for installation shall be allocated as presented in Section 1.3(c)(iii).

i) The ARTIST shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless the Art Consultant specifically disapproves of such.

1.8. **Installation**

a) Upon the Art Consultant's final approval of the fabricated Artwork as being in conformity with the Design, the ARTIST shall deliver and install the completed Artwork to the Site in accordance with the schedule provided for in Section 1.5.

b) The ARTIST will coordinate closely with the Art Consultant to ascertain that the Site is prepared to receive the Artwork. ARTIST must notify Art Consultant of any adverse conditions at the Site that would affect or impede the installation of the Artwork.

c) The ARTIST shall be present to supervise the installation of the Artwork.

d) Upon completion of the installation of the Artwork, the ARTIST shall provide the Art Consultant with written instructions for the future maintenance and preservation of the Artwork. The CITY is responsible for the care and maintenance of the Artwork.

1.9. **Approval and Acceptance**

a) The ARTIST shall notify the Art Consultant in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design and contract documents.

b) After gaining approval from the City the Art Consultant shall promptly notify the ARTIST in writing of its final acceptance of the Artwork. The effective date of final acceptance shall be the date the Art Consultant submits written notice to the ARTIST of the CITY's final acceptance of the Artwork. The final acceptance acknowledges completion of the Artwork in substantial conformity with the Design, and that, except with respect to the CITY's payment obligations as set forth hereunder, the Art Consultant confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to the CITY passes upon final acceptance of the Artwork and final payment to ARTIST. If a regulatory agency must approve the completed artwork, the Art Consultant should move promptly to gain such approval as it will be a precondition to the Art Consultant's ability to accept and approve the finished artwork from the ARTIST.

c) If the Art Consultant disputes that all the services have been performed, the Art Consultantshall notify the ARTIST in writing of those services the ARTIST has failed to perform within three (3) days after the ARTIST submitted written notice pursuant

to paragraph (a) above. The ARTIST shall promptly perform those services indicated by the Art Consultant.

d) If the ARTIST disputes the Art Consultant's determination that not all services have been performed, the ARTIST shall submit reasons in writing to the Art Consultant within three (3) days of the Art Consultant's prior notification to the contrary. The Art Consultant shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether all services have been performed shall remain with the Art Consultant.

e) Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, the Art Consultant shall notify the ARTIST of the CITY's final acceptance of the Artwork pursuant to paragraph (b).

2. **Terms of Agreement**

2.1. Duration

a) This Agreement shall be effective on the date that this Agreement has been signed by both parties,and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.8 b, or submission of final payment to the ARTIST under Exhibit B, whichever is later. Extension of time of performance hereunder may be granted upon therequest of one party and the consent of the other thereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.4 a.

2.2. Force Majeure

a) The City shall grant to the ARTIST a reasonable extension of time in the event that conditions beyond the ARTIST's control prevent timely performance of the ARTIST's services. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations to the extent possible, and to assure full performance when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions. If such conditions do not affect construction on the Site otherwise, ARTIST is responsible for coordination with the Architect to preserve or prepare the Site for installation when that is available.

b) To the extent that ARTIST declares a Force Majeure event and the Art Consultant agrees, the financial impact of installation modifications needed may be paid from the available contingency. If the budgeted contingency has been exhausted, the BUDGET shall be adjusted accordingly, and if that is not possible, the Artist shall be responsible. ARTIST will bear the financial ramifications of a non-Force Majeure delay.

3. **Risk of Loss**

3.1. The ARTIST shall bear the risk of loss or damage to the Artwork until final acceptance of the Artwork. The ARTIST shall take such measures as are reasonably necessary to protect the Artwork from loss or damage.

4. **ARTIST's Representations and Warranties**

4.1. Warranties of Title

The ARTIST represents and warrants that:

a) the Artwork is solely the result of the artistic effort of the ARTIST;

b) the Artwork is unique and original and does not infringe upon any copyright or other intellectual property rights of any person except to the extent that the intellectual property of others has been incorporated and fully licensed for its use in the Artwork;

c) the Artwork (or a replica or alternate version thereof) has not and will not be offered for sale or donation elsewhere;

d) the ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto in a manner which may affect or impair the rights granted pursuant to this Agreement;

e) the Artwork is free and clear of any liens from any source whatsoever;

f) all Artwork created by the ARTIST under this Agreement, whether created by the ARTIST alone or in collaboration with others shall be wholly original with the ARTIST and shall not infringe upon or violate the intellectual property rights of any third party;

g) the ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;

h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence; and

i) These representations and warranties shall survive the termination or other extinction of this Agreement.

4.2. Warranties of Quality and Condition

a) The ARTIST represents and warrants that all work will be performed in accordance with professional standards and will be free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two (2) years after the date of final acceptance by the Art Consultant under Section 1.8b.

b) The ARTIST represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

c) The ARTIST represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those approved for the Project at Conceptual Design.

d) If within two (2) years the Art Consultant or CITY observes any breach of warranty described in this Section 4.2, the ARTIST shall cure the breach promptly, satisfactorily and in a consistent manner with professional conservation standards, at no expense to the CITY. The Art Consultant or CITY shall give notice to the ARTIST of such breach with reasonable promptness. However, if ARTIST did not disclose this risk of breach in the Proposal at Conceptual Design and in the Maintenance manual and preservation recommendations pursuant to Section 1.7e, and if breach is not curable by ARTIST, the ARTIST is responsible for reimbursing the CITY for

damages, expenses and losses incurred by the CITY as a result of the breach of warranty. However, if the ARTIST disclosed the risk of this breach in the Proposal at Conceptual Design and in the maintenance manual and preservation recommendations pursuant to Section 1.7e, and the Design Council and the CITY accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.

e) If after two (2) years the Art Consultant or CITY observes any breach of warranty described in this Section 4.2 that is curable by the ARTIST, the Art Consultant shall contact the ARTIST to make or supervise repairs or restorations at a reasonable fee during the calendar year following the notice of breach. The ARTIST shall have the right of first refusal to make or supervise repairs or restorations which fall outside of warranty claims. Should the ARTIST be unavailable or unwilling to accept the agreed compensation contractually available to the City the CITY may use the services of a qualified restorative conservator and maintenance expert.

f) The foregoing warranties are conditional, and shall be voided by the failure of the CITY to maintain the Artwork in accordance with the ARTIST's specifications and the applicable conservation standards established in the Proposal at Conceptual Design. If the CITY fails to maintain the Artwork in this manner, the ARTIST, in addition to other rights or remedies the ARTISTmay have in equity or at law, shall have the right to disown the Artwork as the ARTIST's creation andrequest that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

g) If at any time, either within our beyond the warranty period, the Artwork is damaged by an act of God, vandalism, action or inaction of the CITY or any of its representatives or agents, the ARTIST shall have the right of first refusal to make or supervise repairs or restorations. Should the ARTIST be unavailable or unwilling to accept agreed compensation contractually available to the City, the CITY may use the services of a qualified restorative conservator and maintenance expert.

h) For all instances of repair, the City shall be allowed reasonable discretion in when determiningthe required qualifications of conservators or maintenance experts to be contracted.

5. **Indemnification and Insurance**

5.1. ARTIST shall indemnify, defend, and hold the Art Consultant and CITY harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of ARTIST, its officers, agents, servants, or employees, occurring in the performance of this Agreement provided such is not a result of the failure of the CITY to handle or maintain the Artwork in good condition or is not the result of any action or inaction of the CITY or Art Consultant not in accordance with this Agreement including the associated specifications) ARTIST will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows in Exhibit C expressly including completed operations coverage that survives this Agreement.

5.2. To the extent allowed by law, the CITY shall indemnify, defend, and hold the ARTIST harmless against all suits, claims, damages and losses for injuries to persons, property or other

liability loss arising from or caused by errors, omissions or negligent acts of the CITY, its officers, agents, servants, oremployees, or the Art Consultant, its officers, agents, servants, or employees occurring in the performance of this Agreement or in the handling or maintenance of the Site or Artwork. Neither the Architect nor the General Contractor for the Project shall be considered the City's agent for purposes ofthis indemnification obligation.

6. **Ownership and Intellectual Property Rights**

6.1. Title

a) Title to the Artwork shall pass to the CITY upon the CITY's written final acceptance and payment for the Artwork pursuant to Section 1.8 b.

6.2. Ownership of Documents

a) One set of presentation materials prepared by ARTIST and submitted to Art Consultant underthis Agreement shall be retained by the City.

6.3. Copyright Ownership

a) Subject to the provisions of this Agreement, the ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 *et seq*., as the sole author of the Artwork for the duration of the copyright.

6.4. Reproduction Rights

a) In view of the intention that the final Artwork shall be unique, the ARTIST shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the ARTIST grant permission to others to do so except with the written permission of the CITY, provided that the ARTIST may make reproductions of the Artwork to promote the work and services of the ARTIST. However, nothing shall prevent the ARTIST from creating works in the ARTIST's manner and style of artistic expression.

b) The ARTIST grants to the CITY and its assignees a non-exclusive irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.

c) The CITY will use its best efforts to include with all reproductions a credit to the ARTIST and a copyright notice in substantially the following form: © [ARTIST's name, date of publication].

d) The ARTIST shall use his best efforts in any public showing or resume use of reproductions to give acknowledgment to the CITY in substantially the following form: "An original artwork owned and commissioned by the City of Wichita, KS."

e) If the CITY wishes to make reproductions of the Artwork for commercial purposes including, but not limited to, t-shirts, postcards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

7. **ARTIST's Rights**

7.1. General

a) Subject to the provisions of this Agreement, the ARTIST retains all rights under state and federal laws including §106A of the Copyright Act of 1976.

b) The CITY agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the ARTIST. The CITY further agrees to take reasonable measures to avoid these from occurring from the gross negligence of the Art Consultant, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.

7.2. If any alteration or damage to the Artwork occurs, the ARTIST shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. No provision of this Agreement shall obligate the CITY to alter or remove any such attributive reference printed or published prior to the CITY's receipt of such notice. The ARTIST may take such other action as the ARTIST may choose in order to disavow the Artwork.

7.3. Alteration of Site or Removal of Artwork

a) The CITY shall notify the ARTIST in writing upon adoption of a plan of construction or alteration of the Site, including changes in building codes, zoning laws or regulations, which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The ARTIST shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the CITY, the ARTIST may disavow the Artwork.

b) The Artwork may be removed or relocated or destroyed by the CITY should the ARTIST and the CITY not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed [90] days after written notice to the ARTIST. During the ninety (90) day period, the parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

c) If the CITY reasonably determines that the Artwork presents an imminent hazard to the public, other than as a result of the CITY's failure to maintain the Artwork as required under this Agreement, the CITY may authorize the removal of the Artwork without the prior approval of the ARTIST.

d) This Article 7 is intended to replace and substitute for the rights of the ARTIST under the Visual Artist's Rights Act to the extent that any portion of this Agreement is in conflict with those rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in conflict therewith, and that the ARTIST's agreement to this term is critical to its selection for this commission. The ARTIST's actions to disavow the Artwork are the sole remedy available under this Agreement.

8. **ARTIST as an Independent Contractor**

8.1. The ARTIST agrees to perform all work under this Agreement as an independent contractor and not as an employee of the City or the Art Consultant. The ARTIST acknowledges and agrees that the ARTIST shall not hold himself out as an authorized agent of the Art Consultant or the City with the power to bind in any manner.

8.2. The ARTIST shall provide the City with the ARTIST's Tax Identification Number and any proof of such number as requested by the Art Consultant.

8.3. The relationship of the ARTIST to the CITY will be that of an independent contractor. No employee or agent of the ARTIST shall be considered an employee of the CITY.

9. **Assignment of Artwork**

9.1. The work and services required of the ARTIST are personal and shall not be assigned, sublet or transferred without the specific written consent of the CITY. Any attempt by the ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the CITY. The CITY shall have the right to assign or transfer any and all of the CITY's rights and obligations under this Agreement, subject to the ARTIST's consent, if property ownership of the Site is transferred and/or if the ARTIST refuses to give consent, this Agreement shall terminate.

10. **Termination**

10.1. The CITY may for any reason terminate this Agreement or any portion or phase of this Agreement upon thirty (30) days written notice to ARTIST according to the notice provisions of this Agreement. However, in such case the ARTIST shall be paid all amounts due hereunder as of the date of termination by the CITY and, with respect to any payments set forth in Exhibit B not yet due as of the termination date, the payment due for the milestones completed. Upon receipt of notice of termination, ARTIST shall immediately discontinue services (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, be delivered to the CITY and become the property of the CITY.

10.2. Any violation or breach of the terms of this Agreement on the part of the ARTIST may result in suspension or termination of this Agreement by the CITY. In such case, the CITY may take possession of all materials as may have been accumulated in performing this Agreement, whether completed or in progress, and take over the work and prosecute the same to completion by separate Agreement or otherwise, for the account and at the expense of ARTIST, and the ARTIST shall be liable to the CITY for those costs associated with the remedy of the ARTIST'S breach of terms.

10.3. Any violation or breach of the terms of this Agreement on the part of the CITY may result in suspension or termination of this Agreement by the ARTIST. The CITY shall be liable to the ARTIST for those costs associated with the remedy of the CITY'S breach of terms.

11. **Notices and Documents**

11.1. Whenever notice is required or otherwise given pursuant to this Agreement, it shall be given in writing, and either hand-delivered or emailed and sent by registered or certified U.S. Mail, postage prepaid, return receipt requested. For purposes of notices or other written communications, the following address shall be used and may be changed from time to time upon written notice in accordance with this Section:

a) For the CITY: Troy Houtman, Director of Parks and Recreation, City of Wichita, 455 N. Main, Wichita, KS 67202, thoutman@wichita.gov.

b) For the ARTIST: Artist address, as listed at commencement of contract.

12. **Incorporated Exhibits**

12.1. ARTIST shall comply with the terms of the incorporated Exhibits A through E, attached to this Agreement.

13. **No Third Party Rights**

13.1 No person or entity not a party to this contract has any right to enforce its terms or seek any remedy resulting from its provisions.

14. **No Arbitration**

14.1. The Artist and the City shall not be obligated to resolve any claim or dispute related to the Agreement by arbitration. Any reference to arbitration in proposal documents is deemed void.

15. **Amendments**

15.1. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

16. **Governing Law**

16.1. This Agreement shall be interpreted according to the laws of the State of Kansas. The parties agree that this Agreement has been created in Kansas. All disputes and litigation under this Agreement shall be held in the District Court of Sedgwick County, Kansas.

17. **Representative's Authority to Contract**

17.1. By signing this Agreement, the ARTIST represents that he or she is duly authorized to execute this Agreement, and that the ARTIST has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY OF WICHITA, KANSAS

_____

Brandon J. Whipple, Mayor

ARTIST

Printed Name: Ellamonique Baccus

Ellamonique _____

Ellamonique Baccus

APPROVED AS TO FORM:

_____

Jennifer Magaña
City Attorney and Director of Law

EXHIBIT A

Description of Project

Location:

Approximate dimensions:

Type of work (sculpture, metal screen, mural, etc.): Main materials:

Infrastructural requirements (footings, electricity, etc.): Other relevant details, unique to project:

EXHIBIT B

Budget and Payment Schedule

The CITY shall pay the ARTIST a fixed fee, not to exceed their assigned project budget of $120,000 (hereafter called NOT-TO-EXCEED BUDGET), which will be determined by the budget assigned to the ARTIST at Conceptual Design Phase. This fee shall constitute full and complete compensation for all the services performed and material furnished by the ARTIST under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all servicesand material provided prior to payment thereof:

a. 5% of NOT-TO-EXCEED BUDGET: $6,000 upon the execution of this Agreement;

b. 25% of NOT-TO-EXCEED BUDGET: $30,000 upon the Art Consultant's notification to the ARTISTof its approval of the Conceptual Design as set forth under Section 1.3a;

c. 35% of NOT-TO-EXCEED BUDGET: $42,000 upon Art Consultant's notification to the ARTIST of its approval of the Design as set forth under Section 1.4, this approval releasing the ARTIST to begin fabrication;

d. 15% of NOT-TO-EXCEED BUDGET: $18,000 upon completion of the fabrication and when the Artwork is ready for delivery and installation at the Site as set forth under Section 1.6g; and

e. 20% of NOT-TO-EXCEED BUDGET: $24,000 upon final acceptance of the Artwork by the Art Consultant as set forth under Section 1.8 b and approval by the CITY, and submission of Maintenance Manual as set forth under Section 1.7e.

EXHIBIT C

Insurance

1. Commercial General Liability
   Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$1,000,000 Each Occurrence $1,000,000 Each Aggregate
Property Damage Liability	$1,000,000 Each Occurrence $1,000,000 Each Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$1,000,000 Each Occurrence $1,000,000 Each Aggregate

2. Comprehensive Automobile Liability
   All Owned, Non-Owned and Hire vehicles with minimum limits as follows:

Bodily Injury Liability	$1,000,000 Each Accident
Property Damage Liability	$1,000,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$1,000,000 Each Accident

3. Workers' Compensation Statutory

4. Employers Liability $500,000 Each Incident
   $500,000 Aggregate
   $500,000 Occupational Disease

The **CITY** shall be named as a non-contributory additional insured on the above insurance coverages obtained by **ARTIST**. The **CITY** shall receive the benefit of the above-listed coverages and limits, or the **ARTIST's** existing commercial policies, whichever is greater. No self-insurance or large deductible policies shall be allowed. The insurance carriers shall be subject to reasonable approval by the City.

EXHIBIT D

CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties

accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

(Rev. 8/28/2019)

EXHIBIT E

CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

CONTRACT

For
Social Space, LLC.
CHESTER I. LEWIS PARK PUBLIC ART
205 E. Douglas Ave, Wichita, KS 67202

THIS CONTRACT entered into this 15th day of July, 2021, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and Social Space, LLC (Vendor Code Number: TBD), 41 East Main, Canton, NY 13617; triangle@mit.edu hereinafter called "**ARTIST**".

NOW, THEREFORE, the parties hereto agree as follows:

ARTIST shall provide to the **CITY** (hereinafter called "City" or "Owner") planning and design services, preparation and completion of the Artwork to be located at 205 E. Douglas Ave., Wichita, KS (hereinafter called the "Site"), as further described in and as per quotes attached as **Exhibit A.** Art Consultants, Anthony Joiner and Elizabeth Stevenson, retained under separate contract.

1. **Scope of Services**

1.1. ARTIST's Obligations

a) ARTIST shall perform all services and furnish all supplies, materials and/or work equipment as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

b) ARTIST shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Art Consultant, the City's Design Council and the Oversight Committee. The ARTIST will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by Art Consultant prior to the development of a design by the ARTIST.

c) ARTIST will receive from the Art Consultant available project documents, and shall prepare for the Art Consultant a descriptive list of all site plans, drawings, list of required permits and other relevant documents and data needed by the ARTIST in order to complete the Artwork. If such documents and data do not exist, the ARTIST shall be responsible for obtaining these at its own Expense. The ARTIST shall prepare the design concept described in Section 1.3 of this Agreement.

d) ARTIST shall complete the fabrication, transportation and installation of the Artwork by thescheduled dates as provided in Section 1.5 of this Agreement.

e) ARTIST shall secure any and all required licenses, permits and similar legal authorizations at the ARTIST's expense as may be necessary for the installation of the Artwork at the Site.

f) ARTIST shall arrange for the transportation and installation of the Artwork in coordination with Art Consultant. If the ARTIST does not install the Artwork himself or herself, ARTIST shall supervise and approve the installation. Prior to the installation of the Artwork, ARTIST shall inspect Site to ensure that it is ready

to accept the artwork and compliant with the specifications provided by the ARTIST. ARTIST shall notify Art Consultant of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.

g) ARTIST shall provide required insurance in amounts and limits specified in Article 5 and Exhibit C.

h) ARTIST shall provide a list of all subcontractors along with a copy of the agreement between the ARTIST and each subcontractor.

i) ARTIST shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.

j) ARTIST shall provide a set of "as built" drawings with sufficient detail to demonstrate final construction in conformity with the approved and permitted construction documents.

k) ARTIST shall provide photographic documentation of the Artwork in a format acceptable to ARTIST and Art Consultant.

l) ARTIST shall be available for monthly scheduled progress meetings, and with reasonable advance notice for a reasonable number of additional in-person (where feasible), telephonic, or videoconference meetings required to coordinate design and project implementation and Artwork installation, ceremonies and the like, as necessary.

1.2. **City's Obligations**

a) The City shall appoint an Art Consultant as its agent for the performance of its agreed duties.

b) The City shall be responsible for providing the ARTIST, at no expense to the ARTIST, copies of the documents identified by ARTIST described above at 1.1c. The ARTIST shall not be liable for any delay in performance due to any action or inaction of the Art Consultant in connection with the foregoing.

c) The City requires that the Artwork comply with the approved design of the Site, and will communicate with the Artist through the Art Consultant any error, omission, or inconsistency in the ARTIST's contracted service. The ARTIST bears ultimate responsibility for Project conformity.

d) The Art Consultant shall confirm that the Site has been prepared in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement by the scheduled installation date as provided in Section 1.4 of this Agreement or shall contact the ARTIST in writing informing him or her of any delays. The ARTIST shall not be liable for any delay in performance due to any action or inaction of the Art Consultant in connection with the foregoing.This does not relieve ARTIST of its obligation at Section 1.1 to approve the installation site.

1.3. **Design**

a) Conceptual Design Documents

i. The ARTIST shall visit, examine, research and consider the Site and surrounding area. If applicable, the ARTIST shall also consult with representatives of the Oversight Committee and the community, and collaborate with the project design team to consider their input and concerns.

ii. On September 3, 2021 the ARTIST shall submit to the Art Consultant the

design concept(the "Design") in the form of detailed color drawings, models, and/or other documents, as appropriate. The Artist's Proposal at Conceptual Design shall include:

- Drawings (in plan and elevation) and/or 3-dimensional models, proposed materials and samples, colors, finishes, textures and patinas, the specific location and orientation of the Artwork relative to the Site and a written description of the Artwork in sufficient detail that ARTIST's design intent is clearly expressed. The Proposal at Conceptual Design shall include an assessment of the Artwork's constructability on the Site.
- BUDGET for the cost of design, fabrication, insurance, transportation and installation of the Artwork with documentation of the sources and/or assumptions upon which the BUDGET figures are based regardless of whether these services are provided by ARTIST or ARTIST's subcontractors. BUDGET shall also reflect the costs associated with any on-site project manager or staff to ensure that Artwork operates properly as installed at the Site. Design Development Documents.
- A preliminary maintenance plan as is required to fairly present a meaningful representation of the future maintenance requirements and costs for the intended Design.

iii. The Artist's Design Development Materials and Documents shall incorporate the further developmentand refinement of the Proposal and BUDGET developed under Conceptual Design.

iv. The Artist's Design Development shall include presentation quality materials, which may include, but are not limited to, colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mockups, final color and materials samples, proposed fabrication methods, feasibility studies and final written cost estimates from fabricators, suppliers and other sub-contractors at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

v. ARTIST and ARTIST's structural engineer and fabricator shall review all Design Development drawings, materials and documents for consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the Art Consultant. ARTIST shall make all necessary modifications to the design necessitated by this review at ARTIST'S EXPENSE as needed to ensure constructability within the defined BUDGET. Any modification which the Art Consultant deems material shall be submitted and reviewed for approval by the Design Council prior to beginning the production of Construction Documents.

b) The Artist shall deliver Final/Construction Documents, which shall include:

i. Construction Documents for construction and/or installation of the

Artwork as approved, which must be signed and stamped by design professionals licensed in the State of Kansas. If the design contains lighting, media and/or or purchased forms of hardware, computers or software programs that are an intrinsic aspect of the artwork, each must be identified. These drawings and supplementary documents shall indicate any issues or coordination involved in the construction, integration and operation of the artwork as well as any third-party subcontractors needed to work on the project."

ii. ARTIST shall deliver mockups and samples, as required by Art Consultant. Mockup andsample requirements shall be addressed on a case-by-case basis and resolved to mutual agreement, in that the Art Consultant shall not request mockups or samples that are unreasonably onerous to the ARTIST.

1.4. **Design Scheduling**

a) ARTIST shall provide the City with its written review of the Architect's Design Development and/or Construction Documents to confirm their adherence to the design approved by Design Council, and to coordinate installation of the Artwork into the Site. The Architect shall be responsible for providing a site for installation meeting the approved design specifications approved by Design Council, to the extent they exist. If ARTIST's site preparation specifications are not timely available, or if they are silent on any given issue, the adjustments needed for successful installation shall be at the ARTIST's expense.

b) ARTIST, Art Consultant and Project Manager shall work together to develop a schedule describing ARTIST's specific timelines for completing the Artwork to coordinate with the critical path method project schedule generated by the General Contractor. ARTIST is responsible for notifying Art Consultant in a reasonable amount of time if it appears that ARTIST will be able to deliver the work prior to the timeline as set. If ARTIST fails to meet the established schedule, ARTIST will bear the financial ramifications of such delay.

1.5. **City Approval**

a) Within fifteen (15) days after the ARTIST submits the Proposal at Conceptual Design, the Art Consultant shall notify the ARTIST whether it approves or disapproves of the Design. The Art Consultant shall have discretion in approving outright or with conditions or rejecting the Proposal. The Parties agree that approval by the Design Council must be obtained for the Artwork and that the time elapsed in that approval process shall not be charged to either Party. The Art Consultantshall notify the ARTIST of any revisions to the Design as are necessary for the Artwork to comply with any applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork, its installation at the Site, or Design Council objection to the artistic expression. ARTIST will modify the Proposal at Conceptual Design to meet the stated objections.

b) If the ARTIST refuses to revise the Design pursuant to Section 1.3, or if the ARTIST fails to adequately revise the Design in the judgment of the City, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date

the City submits its written disapproval of the Revised Design to the ARTIST. The City shall submit to the ARTIST a written termination notice with the disapproval. The termination notice shall advise the ARTIST that this Agreement has been terminated pursuant to this Article. The parties hereby acknowledge and agree that the termination notice shall notify the ARTIST that the ARTIST is entitled to retain the compensation paid prior to the termination date, and to be compensated for all costs incurred prior to the termination date, as evidenced by an invoice to be provided to the City within fifteen (15) days of the termination date. If the City disputes any item on the invoice, it may present the ARTIST with a notice specifying such dispute within fifteen (15) days following the date of the invoice. The Art Consultant and the ARTIST shall make reasonable efforts to resolve the dispute in good faith. Thereafter, the Parties are under no further obligation to each other, except with respect to any payment obligations remaining under this agreement. The parties hereby acknowledge and agree, and the termination notice shall confirm that the ARTIST or Matthew Mazzotta, as applicable shall retain Ownership of all right, title, and interest in and to the Designs, Revised Designs and renderings thereof submitted hereunder.

c) Design Revision or Modification:

i. Prior to the execution of any change in the approved design, ARTIST shall present proposed changes in writing to the Art Consultant for further review and approval. The ARTIST must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design and as determined by ARTIST in consultation with the Art Consultant.

ii. If the Art Consultant approves the changes, the Art Consultant shall promptly notify the ARTIST in writing; however, the Art Consultant has no authority to increase the BUDGET, and any changes approved must not incur costs exceeding the BUDGET.

iii. If the Art Consultant disapproves of the changes, the Art Consultant shall promptly notify the ARTIST in writing and the ARTIST and Art Consultant shall discuss in good faith what changes can be made to modify the Design to conform to the BUDGET. The Art Consultant will promote to the Design Council in good faith any agreed modification to the Design.

1.6. **Budget, Payment and Deliverables Schedule**

a) Budget

i. The ARTIST shall be assigned a not-to-exceed budget (as per Exhibit B) at the time of contract execution. Throughout the conceptual design and design development phases, ARTIST shall prepare a detailed BUDGET which shall include all goods, services and materials with such

costs itemized. The BUDGET shall be submitted to the Art Consultant at the end of the Design Phase, the receipt and approval of which will be a condition precedent to the ARTIST receiving approval to move forward into the fabrication phase.

ii. BUDGET shall mean a specific and detailed document identifying the cost of each phase to complete all work under this Agreement, including all modifications. This BUDGET shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including ARTIST and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits and licenses and required insurance.

iii. The responsibility for construction costs necessitated by a design shall fall upon the budget for the Art Component. To the extent that City requires specific structural elements to be incorporated into the design that cannot be incorporated into the budget for the Art Component, the City will provide the required additional funding or expressly withdraw the design element requirement.

iv. If the ARTIST incurs costs in excess of the amount listed in the NOT-TO-EXCEED BUDGET, the ARTIST shall pay such excess from the ARTIST's own funds unless the ARTIST obtains approval in writing for such additional costs through a change order approved by City Council, unless such costs are incurred as a result of any action or inaction by the Art Consultant.

b) Payment Schedule - ARTIST's completion milestones and payment schedule are set forth in Exhibit B, Payment Schedule, which is incorporated herein for reference. City shall pay ARTIST according to the Payment Schedule within thirty (30) days of receiving milestone attainment approval by the Art Consultant.

c) Schedule and Progress Reports

i. The ARTIST shall notify the Art Consultant of the anticipated schedule for the fabrication, transportation and installation of the Artwork. The Art Consultant shall establish the schedule for the submission of progress reports and inspections for the Artwork installation. The Schedule may be amended by written agreement, which agreement shall not be unreasonably withheld, conditioned or delayed. The Schedule of Deliverables must identify a specific date or timeframe for the completion of the Artwork. As soon as available, the Schedule of Deliverables shall be included as an addendum to Exhibit B. ARTIST bears the Project's financial risk created by the inability to deliver the Artwork for installation as scheduled.

ii. The ARTIST shall reasonably inform the Art Consultant of the progress of each phase of work completed under the Agreement.

iii. All work to be completed by April 15, 2022. The ARTIST shall closely work with the Art Consultant and in coordination with the design and construction teams for installation.

1.7. **Fabrication Stage**

a) The ARTIST shall fabricate and install the Artwork in substantial conformity with the Design. The ARTIST may not deviate from the approved design without review by the Design Council and written approval of the City Manager's Office.

b) If the Artwork is being constructed on Site, the ARTIST shall avoid creating nuisance conditions out of the ARTIST's operations.

c) The Art Consultant shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. The ARTIST will accommodate and participate in fabrication review by video communication to the extent possible.

d) If the Art Consultant, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, the Art Consultant reserves the right to notify the ARTIST in writing of the deficiencies and that the Art Consultant intends to withhold the next budget installment.

e) The ARTIST will have fifteen (15) days to cure the Art Consultant's objections and will notify the Art Consultant in writing of completion of the cure. The Art Consultant shall promptly review the Artwork, and upon approval shall release the hold against the next budget installment. If the ARTIST disputes the Art Consultant's determination that the Artwork does not conform, the ARTIST shall promptly submit reasons in writing to the Art Consultant within three (3) days of the Art Consultant's prior notification to the contrary. The Art Consultant shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether the ARTIST has complied with the terms of this Agreement shall remain with the Art Consultant.

f) The ARTIST shall notify the Art Consultant in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.

g) Prior to the transportation and installation of the Artwork, the Art Consultant shall inspect the Artwork within three (3) days after receiving notification pursuant to paragraph (f) to determine that the Artwork conforms to the Final Design, give final approval of the fabricated Artwork and authorize the installation of the Artwork at the Site. The Art Consultant shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the Art Consultant does withhold final approval, the Art Consultant shall submit the reasons for such disapproval in writing within three (3) days of examining the fabricated Artwork. The ARTIST shall then have fifteen (15) days from the date of the Art Consultant's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. This time for adjustments can be extended by the consent of the parties. Any such extension of the schedule for delivery and installation shall not alter the obligation of the ARTIST to be responsible for any expenses incurred in correcting such deviation as set out in Section 1.3(c)(iii), unless that obligation is modified by an approved change order as set out in Section 1.5(a)(iii).

h) The ARTIST shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the Art Consultant of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction. Failure to do so by the ARTIST shall be deemed as an acceptance of the Site conditions. Financial responsibility for alteration of the Site for installation shall be allocated as presented in Section 1.3(c)(iii).

i) The ARTIST shall take reasonable measures to protect or preserve the integrity of

the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless the Art Consultant specifically disapproves of such.

1.8. **Installation**

a) Upon the Art Consultant's final approval of the fabricated Artwork as being in conformity with the Design, the ARTIST shall deliver and install the completed Artwork to the Site in accordance with the schedule provided for in Section 1.5.

b) The ARTIST will coordinate closely with the Art Consultant to ascertain that the Site is prepared to receive the Artwork. ARTIST must notify Art Consultant of any adverse conditions at the Site that would affect or impede the installation of the Artwork.

c) The ARTIST shall be present to supervise the installation of the Artwork.

d) Upon completion of the installation of the Artwork, the ARTIST shall provide the Art Consultant with written instructions for the future maintenance and preservation of the Artwork. The CITY is responsible for the care and maintenance of the Artwork.

1.9. **Approval and Acceptance**

a) The ARTIST shall notify the Art Consultant in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design and contract documents.

b) After gaining approval from the City the Art Consultant shall promptly notify the ARTIST in writing of its final acceptance of the Artwork. The effective date of final acceptance shall be the date the Art Consultant submits written notice to the ARTIST of the CITY's final acceptance of the Artwork. The final acceptance acknowledges completion of the Artwork in substantial conformity with the Design, and that, except with respect to the CITY's payment obligations as set forth hereunder, the Art Consultant confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to the CITY passes upon final acceptance of the Artwork and final payment to ARTIST. If a regulatory agency must approve the completed artwork, the Art Consultant should move promptly to gain such approval as it will be a precondition to the Art Consultant's ability to accept and approve the finished artwork from the ARTIST.

c) If the Art Consultant disputes that all the services have been performed, the Art Consultantshall notify the ARTIST in writing of those services the ARTIST has failed to perform within three (3) days after the ARTIST submitted written notice pursuant to paragraph (a) above. The ARTIST shall promptly perform those services indicated by the Art Consultant.

d) If the ARTIST disputes the Art Consultant's determination that not all services have been performed, the ARTIST shall submit reasons in writing to the Art Consultant within three (3) days of the Art Consultant's prior notification to the contrary. The Art Consultant shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether all services have been performed shall remain with the Art Consultant.

e) Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, the Art Consultant shall notify the ARTIST of the CITY's final acceptance of the Artwork pursuant to paragraph (b).

2. **Terms of Agreement**

2.1. Duration

a) This Agreement shall be effective on the date that this Agreement has been signed by both parties,and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.8 b, or submission of final payment to the ARTIST under Exhibit B, whichever is later. Extension of time of performance hereunder may be granted upon therequest of one party and the consent of the other thereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.4 a.

2.2. Force Majeure

a) The City shall grant to the ARTIST a reasonable extension of time in the event that conditions beyond the ARTIST's control make timely performance of the ARTIST's services impossible, or unduly burdensome. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations to the extent possible, and to assure full performance when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions. If such conditions do not affect construction on the Site otherwise, ARTIST is responsible for coordination with the Architect to preserve or prepare the Site for installation when that is available.

b) To the extent that ARTIST declares a Force Majeure event and the Art Consultant agrees, the financial impact of installation modifications needed may be paid from the available contingency. If the budgeted contingency has been exhausted, the BUDGET shall be adjusted accordingly, and if that is not possible, the Artist shall be responsible. ARTIST will bear the financial ramifications of a non-Force Majeure delay.

3. **Risk of Loss**

3.1. The ARTIST shall bear the risk of loss or damage to the Artwork until final acceptance of the Artwork. The ARTIST shall take such measures as are reasonably necessary to protect the Artwork from loss or damage.

4. **ARTIST's Representations and Warranties**

4.1. Warranties of Title

The ARTIST represents and warrants that:

a) the Artwork is solely the result of the artistic effort of the ARTIST;

b) the Artwork is unique and original and does not infringe upon any copyright or other intellectual property rights of any person except to the extent that the intellectual property of others has been incorporated and fully licensed for its use in the Artwork;

c) the Artwork (or a replica or alternate version thereof) has not and will not be offered for sale or donation elsewhere;

d) the ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto in a manner which may affect or impair the rights granted pursuant to this Agreement;

e) the Artwork is free and clear of any liens from any source whatsoever;

f) all Artwork created by the ARTIST under this Agreement, whether created by the ARTIST alone or in collaboration with others shall be wholly original with the ARTIST and shall not infringe upon or violate the intellectual property rights of any third party;

g) the ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;

h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence; and

i) These representations and warranties shall survive the termination or other extinction of this Agreement.

4.2. Warranties of Quality and Condition

a) The ARTIST represents and warrants that all work will be performed in accordance with professional standards and will be free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two (2) years after the date of final acceptance by the Art Consultant under Section 1.8b.

b) The ARTIST represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

c) The ARTIST represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those approved for the Project at Conceptual Design.

d) If within two (2) years the Art Consultant or CITY observes any breach of warranty described in this Section 4.2, the ARTIST shall cure the breach promptly, satisfactorily and in a consistent manner with professional conservation standards, at no expense to the CITY. The Art Consultant or CITY shall give notice to the ARTIST of such breach with reasonable promptness. However, if ARTIST did not disclose this risk of breach in the Proposal at Conceptual Design and in the Maintenance manual and preservation recommendations pursuant to Section 1.7e, and if breach is not curable by ARTIST, the ARTIST is responsible for reimbursing the CITY for damages, expenses and losses incurred by the CITY as a result of the breach of warranty. However, if the ARTIST disclosed the risk of this breach in the Proposal at Conceptual Design and in the maintenance manual and preservation

recommendations pursuant to Section 1.7e, and the Design Council and the CITY accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.

e) If after two (2) years the Art Consultant or CITY observes any breach of warranty described in this Section 4.2 that is curable by the ARTIST, the Art Consultant shall contact the ARTIST to make or supervise repairs or restorations at a reasonable fee during the calendar year following the notice of breach. The ARTIST shall have the right of first refusal to make or supervise repairs or restorations which fall outside of warranty claims. Should the ARTIST be unavailable or unwilling to accept the agreed compensation contractually available to the City the CITY may use the services of a qualified restorative conservator and maintenance expert.

f) The foregoing warranties are conditional, and shall be voided by the failure of the CITY to maintain the Artwork in accordance with the ARTIST's specifications and the applicable conservation standards established in the Proposal at Conceptual Design. If the CITY fails to maintain the Artwork in this manner, the ARTIST, in addition to other rights or remedies the ARTISTmay have in equity or at law, shall have the right to disown the Artwork as the ARTIST's creation andrequest that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

g) If at any time, either within our beyond the warranty period, the Artwork is damaged by an act of God, vandalism, action or inaction of the CITY or any of its representatives or agents, the ARTIST shall have the right of first refusal to make or supervise repairs or restorations. Should the ARTIST be unavailable or unwilling to accept agreed compensation contractually available to the City, the CITY may use the services of a qualified restorative conservator and maintenance expert.

h) For all instances of repair, the City shall be allowed reasonable discretion in when determiningthe required qualifications of conservators or maintenance experts to be contracted.

5. **Indemnification and Insurance**

5.1. ARTIST shall indemnify, defend, and hold the Art Consultant and CITY harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of ARTIST, its officers, agents, servants, or employees, occurring in the performance of this Agreement provided such is not a result of the failure of the CITY to handle or maintain the Artwork in good condition or is not the result of any action or inaction of the CITY or Art Consultant not in accordance with this Agreement including the associated specifications) ARTIST will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows in Exhibit C expressly including completed operations coverage that survives this Agreement.

5.2. To the extent allowed by law, the CITY shall indemnify, defend, and hold the ARTIST harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of the CITY, its officers, agents, servants, oremployees, or the Art Consultant, its officers, agents, servants, or employees occurring in the performance of this Agreement or in the handling or maintenance of the Site or Artwork. Neither the Architect nor the General Contractor for the Project shall be considered the City's agent for purposes ofthis indemnification obligation.

6. **Ownership and Intellectual Property Rights**

6.1. Title

a) Title to the Artwork shall pass to the CITY upon the CITY's written final acceptance and payment for the Artwork pursuant to Section 1.8 b.

6.2. Ownership of Documents

a) One set of presentation materials prepared by ARTIST and submitted to Art Consultant underthis Agreement shall be retained by the City.

6.3. Copyright Ownership

a) Subject to the provisions of this Agreement, the Matthew Mazzotta retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 *et seq*., as the sole author of the Artwork for the duration of the copyright.

6.4. Reproduction Rights

a) In view of the intention that the final Artwork shall be unique, the ARTIST shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the ARTIST grant permission to others to do so except with the written permission of the CITY, provided that the ARTIST may make reproductions of the Artwork to promote the work and services of the ARTIST. However, nothing shall prevent the ARTIST from creating works in the ARTIST's manner and style of artistic expression.

b) The ARTIST grants to the CITY and its assignees a non-exclusive irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.

c) The CITY will use its best efforts to include with all reproductions a credit to Matthew Mazzotta and a copyright notice in substantially the following form: © [Matthew Mazzotta, date of publication].

d) The ARTIST shall use his best efforts in any public showing or resume use of reproductions to give acknowledgment to the CITY in substantially the following form: "An original artwork owned and commissioned by the City of Wichita, KS."

e) If the CITY wishes to make reproductions of the Artwork for commercial purposes including, but not limited to, t-shirts, postcards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

7. **ARTIST's Rights**

7.1. General

a) Subject to the provisions of this Agreement, the Matthew Mazzotta retains all rights under state and federal laws including §106A of the Copyright Act of 1976.

b) The CITY agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the ARTIST. The CITY further agrees to take reasonable measures to avoid these from occurring from the gross negligence of the Art Consultant, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.

7.2. If any alteration or damage to the Artwork occurs, the ARTIST shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. No provision of this Agreement shall obligate the CITY to alter or remove any such attributive reference printed or published prior to the CITY's receipt of such

notice. The ARTIST may take such other action as the ARTIST may choose in order to disavow the Artwork.

7.3. Alteration of Site or Removal of Artwork

a) The CITY shall notify the ARTIST in writing upon adoption of a plan of construction or alteration of the Site, including changes in building codes, zoning laws or regulations, which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The ARTIST shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the CITY, the ARTIST may disavow the Artwork.

b) The Artwork may be removed or relocated or destroyed by the CITY should the ARTIST and the CITY not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed [90] days after written notice to the ARTIST. During the ninety (90) day period, the parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

c) If the CITY reasonably determines that the Artwork presents an imminent hazard to the public, other than as a result of the CITY's failure to maintain the Artwork as required under this Agreement, the CITY may authorize the removal of the Artwork without the prior approval of the ARTIST.

d) This Article 7 is intended to replace and substitute for the rights of the ARTIST under the Visual Artist's Rights Act to the extent that any portion of this Agreement is in conflict with those rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in conflict therewith, and that the ARTIST's agreement to this term is critical to its selection for this commission. The ARTIST's actions to disavow the Artwork are the sole remedy available under this Agreement.

8. **ARTIST as an Independent Contractor**

8.1. The ARTIST agrees to perform all work under this Agreement as an independent contractor and not as an employee of the City or the Art Consultant. The ARTIST acknowledges and agrees that the ARTIST shall not hold himself out as an authorized agent of the Art Consultant or the City with the power to bind in any manner.

8.2. The ARTIST shall provide the City with the ARTIST's Tax Identification Number and any proof of such number as requested by the Art Consultant.

8.3. The relationship of the ARTIST to the CITY will be that of an independent contractor. No employee or agent of the ARTIST shall be considered an employee of the CITY.

9. **Assignment of Artwork**

9.1. The work and services required of the ARTIST are personal and shall not be assigned, sublet or transferred without the specific written consent of the CITY. Any attempt by the ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the CITY. The CITY shall have the right to assign or transfer any and all of the CITY's rights and obligations under this Agreement, subject to the ARTIST's consent, if property ownership of the Site is transferred and/or if the ARTIST refuses to give consent, this Agreement shall terminate.

10. **Termination**

10.1. The CITY may for any reason terminate this Agreement or any portion or phase of this Agreement upon thirty (30) days written notice to ARTIST according to the notice provisions of this Agreement. However, in such case the ARTIST shall be paid all amounts due hereunder as of the date of termination by the CITY and all costs incurred prior to the termination date, as evidenced by an invoice to be provided to the City within fifteen (15) days of the termination date. If the City disputes any item on the invoice, it may present the ARTIST with a notice specifying such dispute within fifteen (15) days following the date of the invoice. The Art Consultant and the ARTIST shall make reasonable efforts to resolve the dispute in good faith.. Upon receipt of notice of termination, ARTIST shall immediately discontinue services (unless the notice directs otherwise) and all materials as may have been fabricated in performing this Agreement, whether completed or in progress, be delivered to the CITY and become the property of the CITY.

10.2. Any violation or breach of the terms of this Agreement on the part of the ARTIST may result in suspension or termination of this Agreement by the CITY. In such case, the CITY may take possession of all materials as may have been accumulated in performing this Agreement, whether completed or in progress, and take over the work and prosecute the same to completion by separate Agreement or otherwise, for the account and at the expense of ARTIST, and the ARTIST shall be liable to the CITY for those costs associated with the remedy of the ARTIST'S breach of terms.

10.3. Any violation or breach of the terms of this Agreement on the part of the CITY may result in suspension or termination of this Agreement by the ARTIST. The CITY shall be liable to the ARTIST for those costs associated with the remedy of the CITY'S breach of terms.

11. **Notices and Documents**

11.1. Whenever notice is required or otherwise given pursuant to this Agreement, it shall be given in writing, and either hand-delivered or emailed and sent by registered or certified U.S. Mail, postage prepaid, return receipt requested. For purposes of notices or other written communications, the following address shall be used and may be changed from time to time upon written notice in accordance with this Section:

a) For the CITY: Troy Houtman, Director of Parks and Recreation, City of Wichita, 455 N. Main, Wichita, KS 67202, thoutman@wichita.gov.

b) For the ARTIST: Artist address, as listed at commencement of contract.

12. **Incorporated Exhibits**

12.1. ARTIST shall comply with the terms of the incorporated Exhibits A through E, attached to this Agreement.

13. **No Third Party Rights**

13.1 No person or entity not a party to this contract has any right to enforce its terms or seek any remedy resulting from its provisions.

14. **No Arbitration**

14.1. The Artist and the City shall not be obligated to resolve any claim or dispute related to the Agreement by arbitration. Any reference to arbitration in proposal documents is deemed void.

15. **Amendments**

15.1. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

16. **Governing Law**

16.1. This Agreement shall be interpreted according to the laws of the State of Kansas. The parties agree that this Agreement has been created in Kansas. All disputes and litigation under this Agreement shall be held in the District Court of Sedgwick County, Kansas.

17. **Representative's Authority to Contract**

17.1. By signing this Agreement, the ARTIST represents that he or she is duly authorized to execute this Agreement, and that the ARTIST has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY OF WICHITA, KANSAS

_____

Brandon J. Whipple, Mayor

ARTIST

Printed Name: Matthew Mazzotta

_____

Matthew Mazzotta

APPROVED AS TO FORM:

_____

Jennifer Magaña
City Attorney and Director of Law

EXHIBIT A

Description of Project

Location:

Approximate dimensions:

Type of work (sculpture, metal screen, mural, etc.): Main materials:

Infrastructural requirements (footings, electricity, etc.): Other relevant details, unique to project:

EXHIBIT B

Budget and Payment Schedule

The CITY shall pay the ARTIST a fixed fee, not to exceed their assigned project budget of $350,000 (hereafter called NOT-TO-EXCEED BUDGET), which will be determined by the budget assigned to the ARTIST at Conceptual Design Phase. This fee shall constitute full and complete compensation for all the services performed and material furnished by the ARTIST under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all servicesand material provided prior to payment thereof:

a. 5% of NOT-TO-EXCEED BUDGET: $17,500 upon the execution of this Agreement;

b. 25% of NOT-TO-EXCEED BUDGET: $87,500 upon the Art Consultant's notification to the ARTISTof its approval of the Conceptual Design as set forth under Section 1.3a;

c. 35% of NOT-TO-EXCEED BUDGET: $122,500 upon Art Consultant's notification to the ARTIST of its approval of the Design as set forth under Section 1.4, this approval releasing the ARTIST to begin fabrication;

d. 15% of NOT-TO-EXCEED BUDGET: $52,500 upon completion of the fabrication and when the Artwork is ready for delivery and installation at the Site as set forth under Section 1.6g; and

e. 20% of NOT-TO-EXCEED BUDGET: $70,000 upon final acceptance of the Artwork by the Art Consultant as set forth under Section 1.8 b and approval by the CITY, and submission of Maintenance Manual as set forth under Section 1.7e.

EXHIBIT C

Insurance

1. Commercial General Liability
   Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$1,000,000 Each Occurrence $1,000,000 Each Aggregate
Property Damage Liability	$1,000,000 Each Occurrence $1,000,000 Each Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$1,000,000 Each Occurrence $1,000,000 Each Aggregate

2. Comprehensive Automobile Liability
   All Owned, Non-Owned and Hire vehicles with minimum limits as follows:

Bodily Injury Liability	$1,000,000 Each Accident
Property Damage Liability	$1,000,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$1,000,000 Each Accident

3. Workers' Compensation Statutory

4. Employers Liability $500,000 Each Incident
   $500,000 Aggregate
   $500,000 Occupational Disease

The **CITY** shall be named as a non-contributory additional insured on the above insurance coverages obtained by **ARTIST**. The **CITY** shall receive the benefit of the above-listed coverages and limits, or the **ARTIST's** existing commercial policies, whichever is greater. No self-insurance or large deductible policies shall be allowed. The insurance carriers shall be subject to reasonable approval by the City.

EXHIBIT D

CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions**: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. **Termination Due To Lack of Funding Appropriation**: If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. **Disclaimer of Liability**: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

5. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. **Arbitration, Damages, Jury Trial and Warranties**: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. **Representative's Authority to Contract**: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. **Federal, State and Local Taxes**: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

   City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties

accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq*.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq*.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

    Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

(Rev. 8/28/2019)

EXHIBIT E

CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

Agenda Item No. VII-1

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: PUD2021-00010 – City Zone Change from SF-5 Single-Family Residential to PUD Planned Unit Development for the Nguyen Senior Village Development Located Approximately 370 Feet West of North Oliver Avenue on East 15th Street North at 4640 East 15th Street North. (District I)

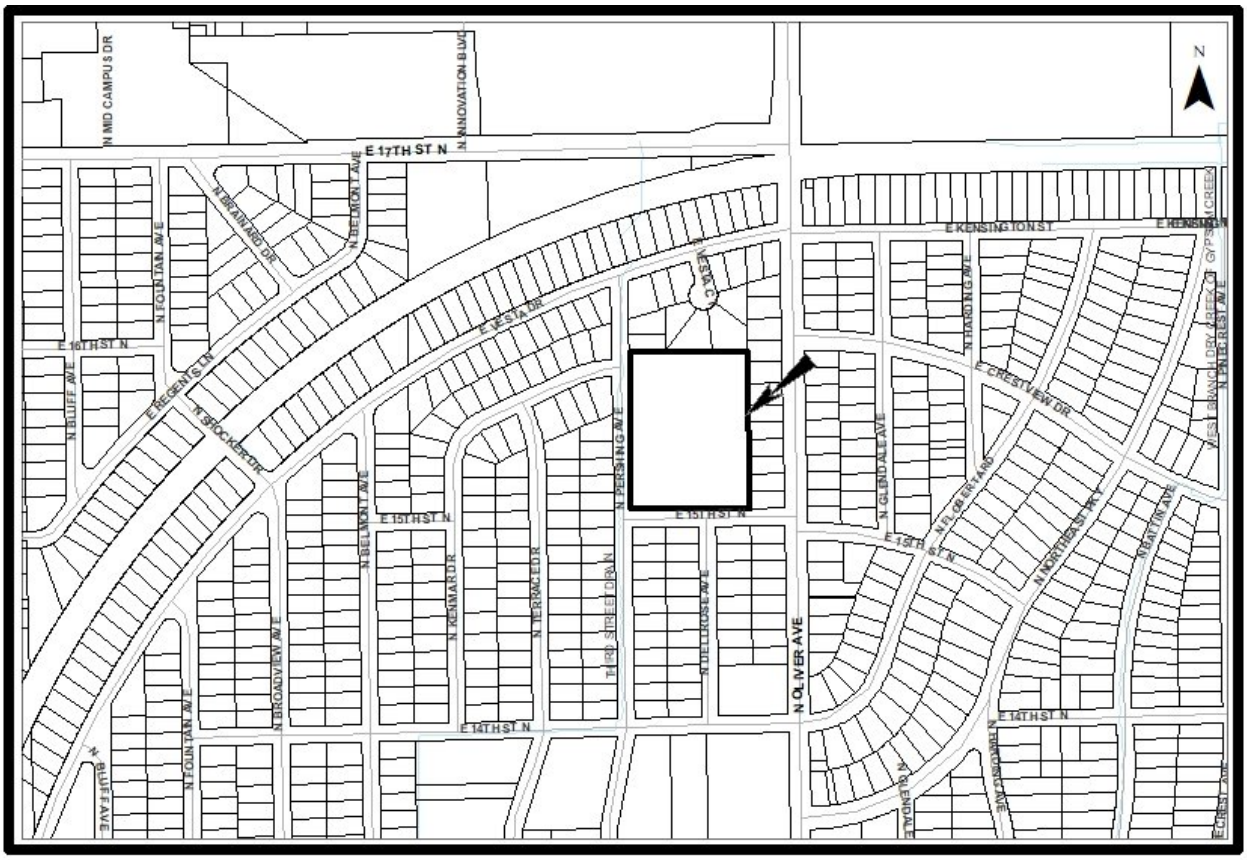
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: The MAPC recommended approval of the request (11-0) subject to staff recommendations.

DAB Recommendation: District Advisory Board (DAB) I reviewed the application at its meeting of July 12, 2021, and recommended denial by a 6-0 vote.

MAPD Staff Recommendation: Metropolitan Area Planning Department staff recommended approval of the request.



Background: The applicant is seeking to establish the Nguyen Senior Village Planned Unit Development (PUD #76) to permit multi-family development on a property generally located one block west of North Oliver Avenue and two block south of East 17th Street North. The property is addressed as 4640 East 15th Street North and is zoned SF-5 Single-Family Residential. The project description states that this will be a low-density multi-family housing facility exclusively serving individuals 55 years of age and older. This senior apartment complex will have an on-site community gathering building intended to offer resident activities, community personal care services, personal improvement services, general office spaces, and in-house facility management staff. This is not any type of state licensed nursing or residential care facility.

In the Fall of 2020, The applicant made a similar request, which was considered by the Planning Commission on January 7, 2021. The application was withdrawn prior to receiving final action by the Wichita City Council. Therefore, there is no time restriction by which the applicant must wait to submit a similar application.

The five acre site was formerly the location for the Holy Savior Catholic Academy and a USD 259 school. The existing school building fronting East 15th Street would be renovated as part of the project and become the space for the community facility and lease space for offices. Two apartment buildings would be built on the north portion of the site with a courtyard in between. Parking for the proposed use would be on the east, south and west sides of the property.

The proposed uses for this PUD are as follows: those permitted by-right in MF-18 Multi-Family Residential in addition to Personal Care Service, Personal Improvement Service, and General Office. The PUD specifically prohibits all industrial and agricultural uses. In addition, exterior audio systems that project sound beyond the boundary of the PUD are prohibited, except for those times associated with a community event as defined by the City Code of Wichita.

In addition to providing apartments for seniors, the applicant would like to lease out former classrooms for uses that fall under the Personal Care Service, Personal Improvement Service, and General Office use categories. In general, Personal Care and Personal Improvement services include beauty salon/barber shop, fittings and alterations, laundromat, and nail salon. In general, General Office uses include offices for real estate, insurance, property management, investment, employment, travel, advertising, law, architecture, design, engineering, accounting, and similar uses. These uses are intended to serve the community in addition to the tenants on-site. The applicant would also like to provide a community gathering space for residents of the apartments for on-site events. In order to conduce the community gatherings as proposed, “Community Assembly” will need to be added to the list of permitted uses.

The proposed text of the PUD contains standard language regarding the height and control of lighting and light poles and architectural controls. The PUD drawing indicates a total of 197 parking stalls provided for all uses and covered parking is permitted. The applicant submitted the following parking schedule with a breakdown of how many parking stalls are provided for each use.

Use	Parking Ratio	Parking Stalls Required	Parking Stalls Provided in PUD
Apartments	1.25 stalls per 48, one-bedroom/efficiency 1.75 stalls per 32, two + bedroom	116	118
General Office (all uses in Existing School Building)	1 stall per 333 square feet (17,000 square feet total)	51	79
Community Assembly	1 stall per 21 square feet	Included with School	Included with School Building

		Building	
		Total Parking Stalls	**197**

The height of any building shall not exceed two-stories. Regarding screening and landscaping: landscaping shall be in conformance to the Wichita Landscape Ordinance. In addition, Section IV-B.3 of the Unified Zoning code only requires a six-foot solid screening fence along the north and east property lines to screen multi-family and commercial developments from properties zoned TF-3 Two Family Residential or more restrictive. On the west side of the property, the applicant shall have a six-foot solid screening fence, screening the parking area only. Trash receptacles, loading docks, storage units, and outdoor mechanical units shall be screened appropriately per the Wichita Landscape Ordinance and the Unified Zoning Code. Regarding signage: one monument style sign shall be allowed on 15th Street, limited in height to six feet with up to 90 square feet of sign area. Wall mounted signage shall be permitted along Pershing Avenue with a maximum area of 90 square feet and a ground mounted, non-illuminated directory sign is permitted for each use. Finally, the applicant is limiting trash collection to the hours of 6:00 a.m. to 10:00 p.m.

The area surrounding this site is very uniform in development of single family homes. All properties are zoned SF-5 Single-Family Residential.

Analysis: On June 17, 2021, the Metropolitan Area Planning Commission (MAPC) recommended approval subject to staff comments (11-0). Several members of the public spoke in opposition to this application at this public hearing. In general, the concerns were regarding if office and multi-family uses are appropriate for the site, concerns regarding the design of the multi-family housing, and concerns about character of those renting the units. On July 12, 2021, the District Advisory Board (DAB) I reviewed the application and recommended denial (6-0). Several members of the public spoke in opposition to this application at this public hearing. No protest petitions were received. The request can be approved with a simple majority vote.

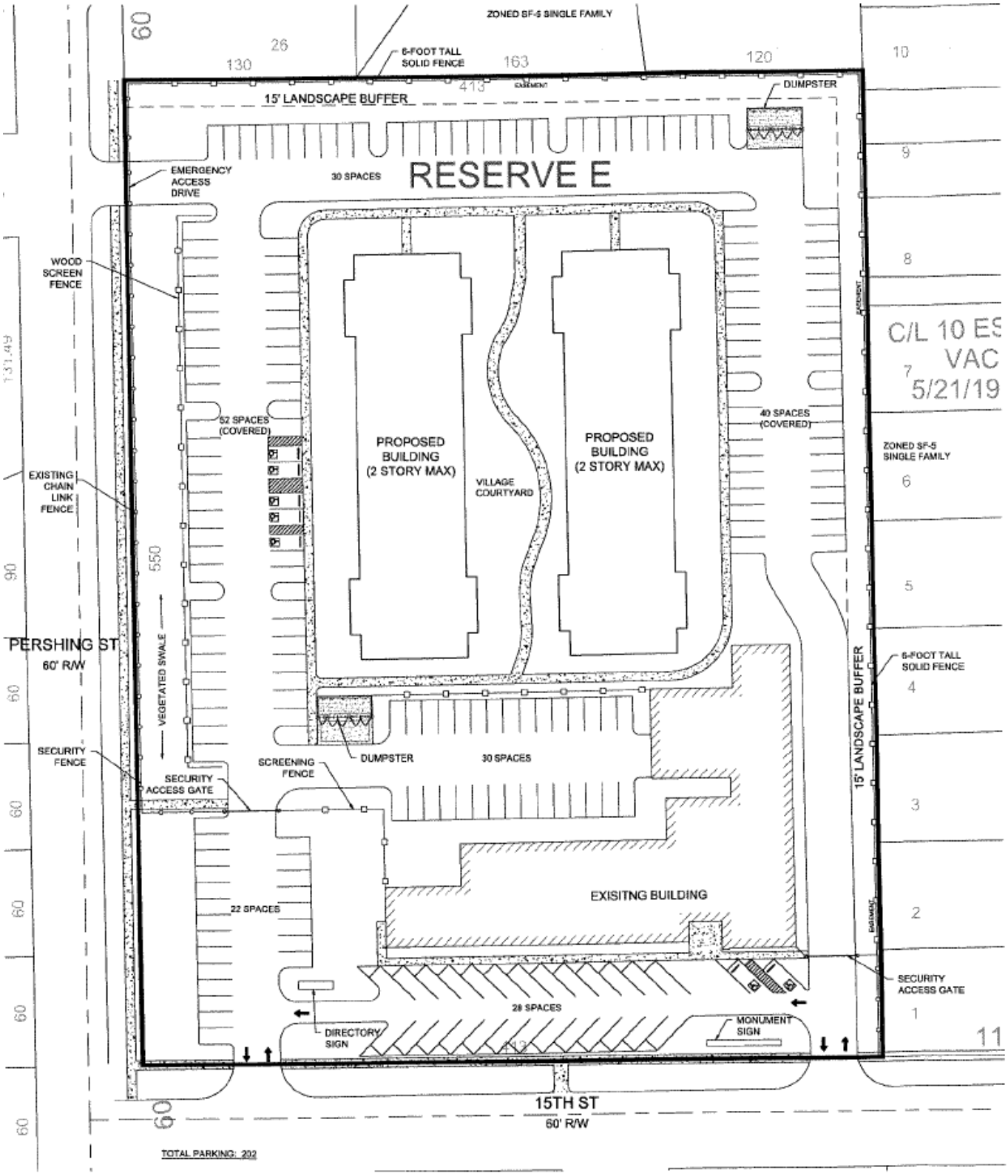
Financial Considerations: Approval of this request will not create any financial obligations for the City.

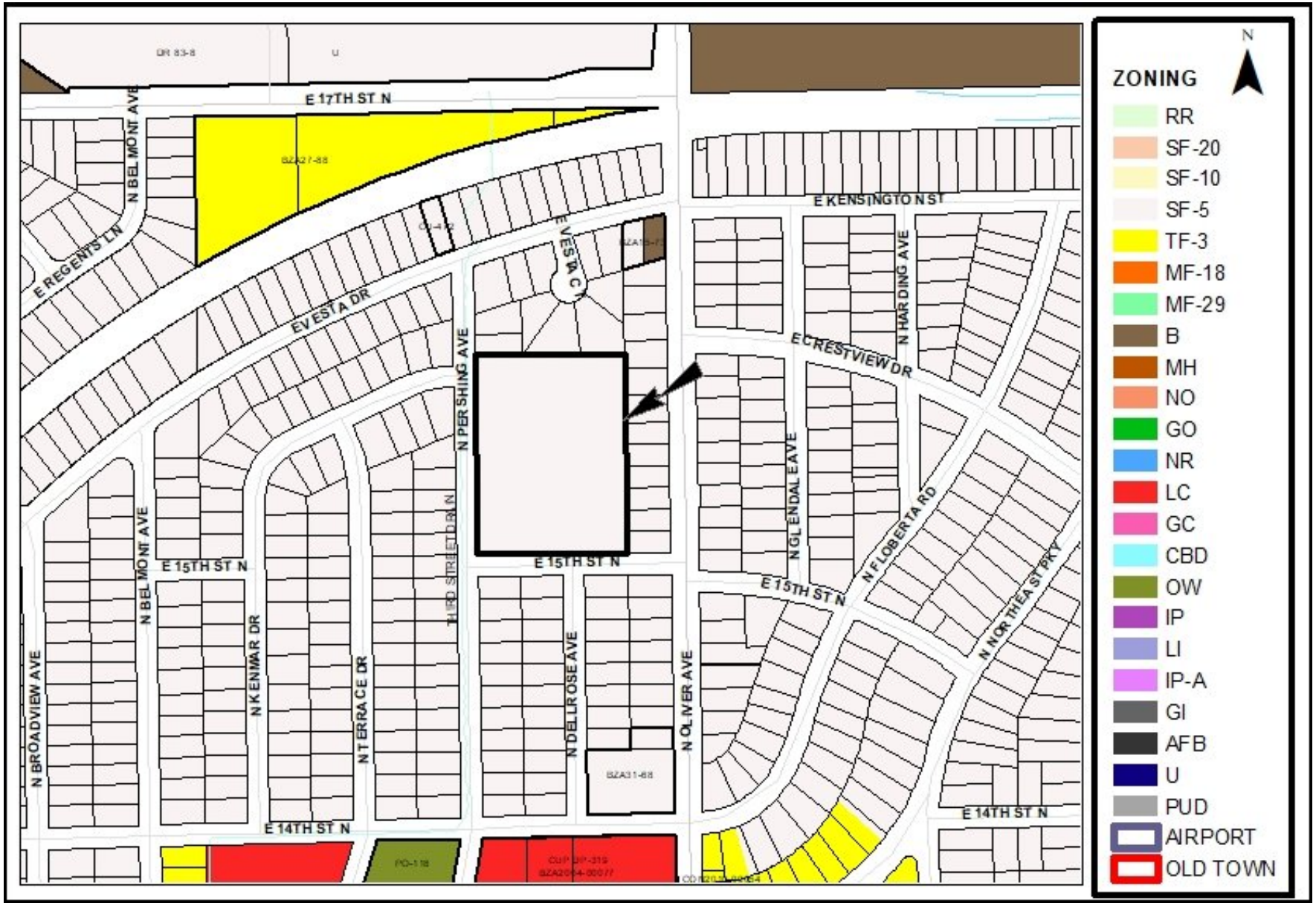
Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC, approve the requested zone change and place the ordinance on the first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four votes or a simple majority vote).

Alternatives: The City Council may: accept the recommendation of the DAB to deny the requested zone change, provide alternative findings, and override the recommendation of the MAPC (requires five votes or two-thirds majority), or return the application to the MAPC for reconsideration (requires four votes or a simple majority).

Attachments: 1) PUD Drawing, 2) Aerial Map, 3) Zoning Map, 4) Land Use Map, 5) MAPC Minutes Excerpt, 6) DAB I Report, 7) Ordinance


ZONED SF-5 SINGLE FAMILY
6-FOOT TALL SOLID FENCE
15' LANDSCAPE BUFFER
DUMPSTER
EMERGENCY ACCESS DRIVE
30 SPACES
RESERVE E
WOOD SCREEN FENCE
52 SPACES (COVERED)
PROPOSED BUILDING (2 STORY MAX)
VILLAGE COURTYARD
PROPOSED BUILDING (2 STORY MAX)
40 SPACES (COVERED)
C/L 10 ES VAC 5/21/19
ZONED SF-5 SINGLE FAMILY
EXISTING CHAIN LINK FENCE
PERSHING ST
60' R/W
VEGETATED SWALE
6-FOOT TALL SOLID FENCE
15' LANDSCAPE BUFFER
SECURITY FENCE
SCREENING FENCE
DUMPSTER
30 SPACES
SECURITY ACCESS GATE
EXISITNG BUILDING
22 SPACES
SECURITY ACCESS GATE
28 SPACES
DIRECTORY SIGN
MONUMENT SIGN
15TH ST
60' R/W
TOTAL PARKING: 202


E 17TH ST N
N BELMONT AVE
E REGENTS LN
E VESTA DR
N PERSHING AVE
E VESTA CT
E KENSINGTON ST
N HARDING AVE
E CRESTVIEW DR
N GLENDALE AVE
N FLOBERTA RD
N NORTHEAST PKY
E 15TH ST N
N BELMONT AVE
N BROADVIEW AVE
N KENMAR DR
N TERRACE DR
THIRD STREET DR N
N DELLROSE AVE
N OLIVER AVE
E 14TH ST N
ZONING
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SF-5
TF-3
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N TERRACE DR
N DELLROSE AVE
N PERSHING AVE
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N FOUNTAIN AVE
N BLUFF AVE
N SHOCKER DR
E REGENTS LN
E VESTA DR
N HARDING AVE
E CRESTVIEW DR
N GLENDALE AVE
N FLOBERTARD
N NORTHEAST PKY
N BATTIN AVE
N PINECREST AVE
N GALENDA
N MID CAMPUS DR
N INNOVATION BLVD
N BRAINARD DR
N BELMONT AVE
N FOUNTAIN AVE
N BLUFF AVE
N SHOCKER DR
N BROADVIEW AVE
N KENMAR DR
N TERRACE DR
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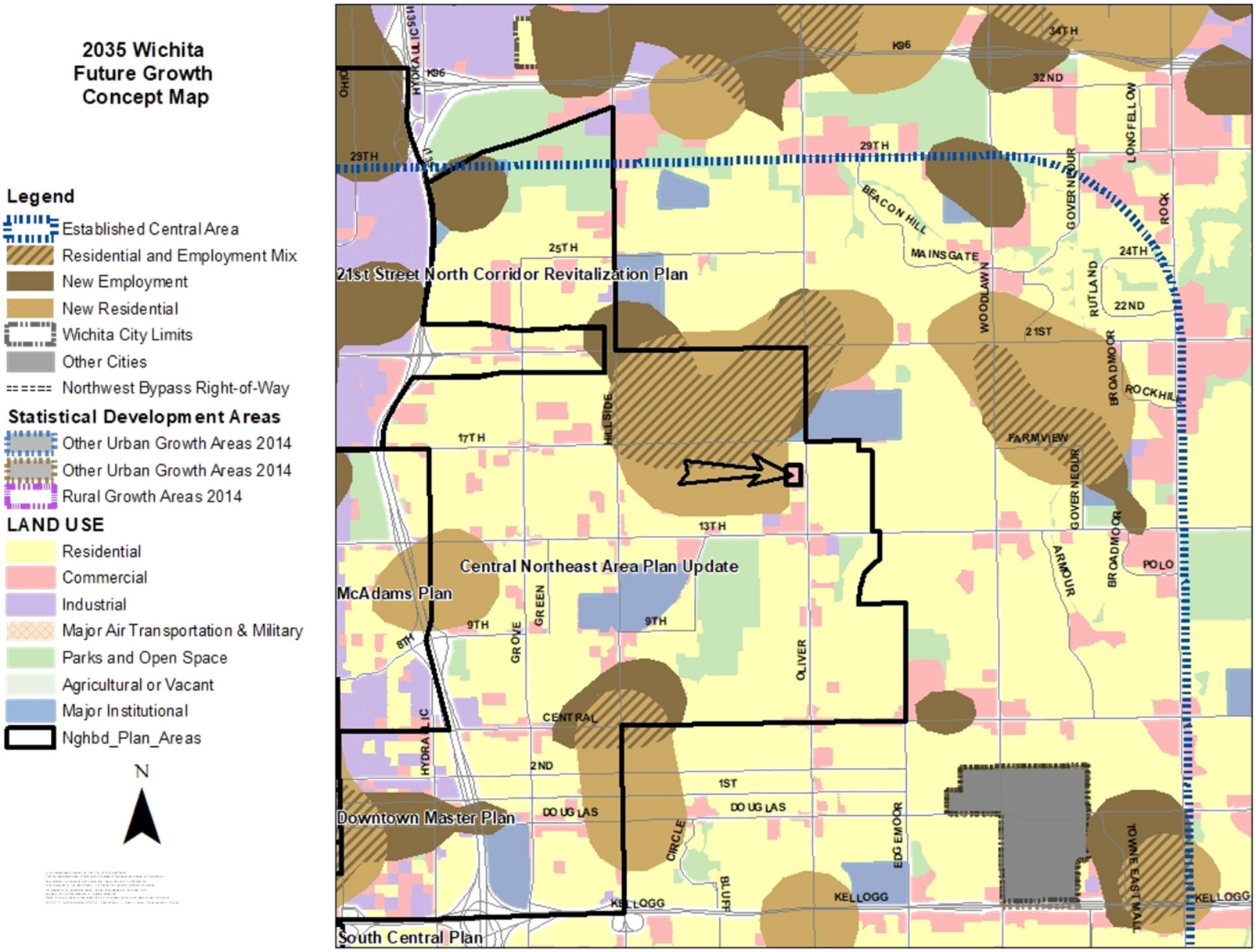
2035 Wichita
Future Growth
Concept Map
Legend
Established Central Area
Residential and Employment Mix
New Employment
New Residential
Wichita City Limits
Other Cities
Northwest Bypass Right-of-Way
Statistical Development Areas
Other Urban Growth Areas 2014
Other Urban Growth Areas 2014
Rural Growth Areas 2014
LAND USE
Residential
Commercial
Industrial
Major Air Transportation & Military
Parks and Open Space
Agricultural or Vacant
Major Institutional
Nghbd_Plan_Areas
N
21st Street North Corridor Revitalization Plan
Central Northeast Area Plan Update
McAdams Plan
Downtown Master Plan
South Central Plan
K96
34TH
32ND
29TH
25TH
24TH
22ND
21ST
17TH
13TH
9TH
8TH
2ND
1ST
OHIO
HYDRAULIC
HILLSIDE
GROVE
GREEN
OLIVER
CENTRAL
DOUGLAS
CIRCLE
BLUFF
EDGEMOOR
KELLOGG
BEACON HILL
MAINSGATE
WOODLAWN
GOVERNEUR
LONGFELLOW
ROCK
RUTLAND
BROADMOOR
ROCKHILL
FARMVIEW
ARMOUR
POLO
TOWNE EAST MALL

EXCERPT MINUTES OF THE JUNE 17, 2021 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

4.5 PUD2021-00010 - City zone change from SF-5 (Single Family) to PUD (Planned Unit Development) for the Nguyen Senior Village development located approximately 370 feet west of Oliver on E. 15th St. N. at 4640 E. 15th St. N.

Reserve E, Ken-Mar Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking to establish the Nguyen Senior Village Planned Unit Development (PUD #76) to permit multi-family development on a property generally located one block west of North Oliver Avenue and two block south of East 17th Street North. The property is addressed as 4640 East 15th Street North and is zoned SF-5 Single Family Residential. The project description states that this will be a low-density multi-family housing facility exclusively serving individuals 55 years of age and older. This senior apartment complex will have an on-site community gathering building intended to offer resident activities, community personal care services, personal improvement services, general office spaces, and in-house facility management staff. This is not any type of state licensed nursing or residential care facility.

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The five acre site was formerly the location for the Holy Savior Catholic Academy and a USD 259 school. The existing school building fronting East 15th Street would be renovated as part of the project and become the space for the community facility and lease space for offices. Two apartment buildings would be built on the north portion of the site with a courtyard in between. Parking for the proposed use would be on the east, south and west sides of the property.

The proposed uses for this PUD are as follows: those permitted by-right in MF-18 Multi-Family Residential in addition to Personal Care Service, Personal Improvement Service, and General Office. The PUD specifically prohibits all industrial and agricultural uses. In addition, exterior audio systems that project sound beyond the boundary of the PUD are prohibited, except for those times associated with a community event as defined by the City Code of Wichita.

In addition to providing apartments for seniors, the applicant would like to lease out former classrooms for uses that fall under the Personal Care Service, Personal Improvement Service, and General Office use categories. In general, Personal Care and Personal Improvement services include beauty salon/barber shop, fittings and alterations, laundromat, and nail salon. In general, General Office uses include offices for real estate, insurance, property management, investment, employment, travel, advertising, law, architecture, design, engineering, accounting, and similar uses. These uses are intended to serve the community in addition to the tenants on-site. The applicant would also like to provide a community gathering space for residents of the apartments for on-site events. In order to conduce the community gatherings as proposed, "Community Assembly" will need to be added to the list of permitted uses.

The proposed text of the PUD contains standard language regarding the height and control of lighting and light poles and architectural controls. The PUD drawing indicates a total of 197 parking stalls provided for

all uses and covered parking is permitted. The applicant submitted the following parking schedule with a breakdown of how many parking stalls are provided for each use.

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		Total Parking Stalls	**197**

The height of any building shall not exceed two-stories. Regarding screening and landscaping: landscaping shall be in conformance to the Wichita Landscape Ordinance. In addition, Section IV-B.3 of the Unified Zoning code only requires a six-foot solid screening fence along the north and east property lines to screen multi-family and commercial developments from properties zoned TF-3 Two Family Residential or more restrictive. On the west side of the property, the applicant shall have a six-foot solid screening fence, screening the parking area only. Trash receptacles, loading docks, storage units, and outdoor mechanical units shall be screened appropriately per the Wichita Landscape Ordinance and the Unified Zoning Code. Regarding signage: one monument style sign shall be allowed on 15th Street, limited in height to six feet with up to 90 square feet of sign area. Wall mounted signage shall be permitted along Pershing Avenue with a maximum area of 90 square feet and a ground mounted, non-illuminated directory sign is permitted for each use. Finally, the applicant is limiting trash collection to the hours of 6:00am to 10:00pm.

The area surrounding this site is very uniform in development of single family homes. All properties are zoned SF-5 Single Family Residential.

CASE HISTORY: In 1950, the site was platted as Reserve E in the Ken Mar Addition. On January 7, 2021, the MAPC considered PUD2020-00007, which was the initial application to establish the Nguyen Senior Village PUD. The recommendation of the MAPC was to deny the requested zone change. The application was withdrawn before receiving final action by the Wichita City Council. Below is a comparison of the differences between the two applications. The difference are only reflected in the uses permitted.

Category	PUD2020-00007	PUD2021-00010
Base Zone	MF-18 Multi-Family	MF-18 Multi-Family
Proposed Uses	• Personal Care Services • Personal Improvement Services • Community Assembly • Restaurants, which can serve alcohol	• Personal Care Services • Personal Improvement Services • Community Assembly • Office, General

ADJACENT ZONING AND LAND USE:

NORTH: SF-5 Single Family Residential

SOUTH:	SF-5	Single Family Residential
EAST:	SF-5	Single Family Residential
WEST:	SF-5	Single Family Residential

PUBLIC SERVICES: Public utilities are available to the site. Both Pershing Avenue and 15th Street are paved, two-way, local streets. Pershing Avenue has sidewalks on the east side. East 15th Street has sidewalks on the north side. Wichita Transit has bus stops located one-quarter mile south along East 13th Street.

CONFORMANCE TO PLANS/POLICIES: The application is in conformance to the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be appropriate for commercial development. This category is described as follows: *"Encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with residential uses."* The proposed density of housing with the mixture of personal services, offices, and similar type uses are consistent with the comprehensive plan.

The Central Northeast Neighborhood Plan Updated (adopted September 2005) governs the area in which this site is located. Various aspects of this Neighborhood Plan address the need and desire for senior housing and neighborhood-serving personal services. The vision statement states that the area would like to see a "fully equipped senior center that serves all the seniors in the area." Additionally, Chapter 4 identifies that the development of housing for seniors remains to be a relevant issue. Furthermore, Chapter 4 states "encourage more neighborhood-serving retail and personal services" as a priority. The purpose of this proposed PUD meets the spirit and intent of this plan.

In addition, the Wichita-Sedgwick County Comprehensive plan identifies the Established Central Area and recommends an Urban Infill Strategy for the Established Central Area. The Wichita: Places for People Plan provides recommendations for urban infill development in the Established Central Area. The subject site is located within the Established Central Area, in an area identified by the Places for People plan as being between the Regional Center at Wichita State University and a Community Core Node at East 13th Street and North Oliver. In addition, this site is also located within an identified "area of opportunity." The Places for People Plan defines Areas of Opportunity as those *"areas that generally exhibit economic challenges, a disconnected development pattern and a lack of walkable places and facilities. These areas need strategic investment, both public and private, to assist in redefining and reinvigorating the area."* A development such as this aligns with the goals of the Plan for strategic investment. The Places for People Plan also identifies the subject site to be within a Transition area between Wichita State University and 13th Street and Oliver (or nodes) and the residential neighborhood (or edge) area to the west. A transition area is defined as *"area necessary between the node and the edge that allows the intensity of development and uses, and mix of uses, to transition to the surrounding neighborhood context."* With nodes having higher intensity uses and edges have less intensive uses, the proposed PUD zoning classification for multi-family development is appropriate for this area.

RECOMMENDATION: Based on the information available at the time of the public hearing, staff recommends **APPROVAL** of the application subject to adherence to the recommended PUD text (attached), with a modification to the PUD (identified below), and the following conditions listed below.

Recommended PUD Modifications

A. Add Community Assembly as permitted uses under the PUD General Provision 4.

Recommended Conditions of Approval

1. The applicant shall record a PUD certificate with the Register of Deeds indicating that this tract (referenced as PUD #76 Nguyen Senior Village Planned Unit Development (PUD) has special conditions for development on the property.

2. A copy of the recorded certificate along with four copies of the approved PUD shall be submitted to the Metropolitan Area Planning Department within 60 days of governing body approval, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The area surrounding this site is uniform in development of single family homes. All properties are zoned SF-5 Single Family Residential. The subject site was formerly a school.

2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is currently zoned SF-5 Single Family Residential, but was formerly used a school. The site is permitted to continue to function as a school, or the site could be redeveloped for single family homes. Recent market trends for infill residential development have favored multi-family developments in the form of duplexes or higher densities.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed Planned Unit Development for this project will provide housing for seniors and neighborhood-serving personal services that have been identified as a need in this area. The development designs incorporate the existing school building, which has been a familiar structure in the neighborhood for some time. The recommended text of the PUD should mitigate most substantial negative impacts to the surrounding properties.

4. **Length of time the property has been vacant as currently zoned:** The subject property has been vacant for some time.

5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The application is in conformance to the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be appropriate for commercial development. This category is described as follows: *"Encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with residential uses."* The proposed density of housing with the mixture of personal service and similar type uses is consistent with the comprehensive plan.

The Central Northeast Neighborhood Plan Updated (adopted September 2005) governs the area in which this site is located. Various aspects of this Neighborhood Plan address the need and desire for senior housing and neighborhood-serving personal services. The vision statement states that the area would like to see a "fully equipped senior center that serves all the seniors in the area."

Additionally, Chapter 4 identifies that the development of housing for seniors remains to be a relevant issue. Furthermore, Chapter 4 states "encourage more neighborhood-serving retail and personal services" as a priority. The purpose of this proposed PUD meets the spirit and intent of this plan.

In addition, the Wichita-Sedgwick County Comprehensive plan identifies the Established Central Area and recommends an Urban Infill Strategy for the Established Central Area. The Wichita: Places for People Plan provides recommendations for urban infill development in the Established Central Area. The subject site is located within the Established Central Area in an area identified by the Places for People plan as being between the Regional Center at Wichita State University and a Community Core Node at East 13th Street and North Oliver. In addition, this site is also located within an identified "area of opportunity." The Places for People Plan defines Areas of Opportunity as those *"areas that generally exhibit economic challenges, a disconnected development pattern and a lack of walkable places and facilities. These areas need strategic investment, both public and private, to assist in redefining and reinvigorating the area."* A development such as this aligns with the goals of the Plan for strategic investment. The Places for People Plan also identifies the subject site to be within a Transition area between Wichita State University and 13th Street and Oliver (or nodes) and the residential neighborhood (or edge) area to the west. A transition area is defined as *"area necessary between the node and the edge that allows the intensity of development and uses, and mix of uses, to transition to the surrounding neighborhood context."* With nodes having higher intensity uses and edges have less intensive uses, the proposed PUD zoning classification for multi-family development is appropriate for this area.

6. **Relative gain to the public health, safety, and welfare compared to the loss in value or the hardship imposed upon the applicant:** The proposed changes should create no issues to the public health, safety or welfare given the governing language of the recommended PUD text.

7. **Impact of the proposed development on community facilities:** There are no anticipated significant adverse impacts on community facilities.

PHILIP ZEVENBERGEN, PLANNING STAFF: presented the staff report.

FOX: Regarding the pictures that were submitted by the neighbors of what they think is acceptable design, does the applicant manage any of these properties that were identified as not acceptable design?

ZEVENBERGEN: I do not know.

DOOL: Is this the same applicant as the previous application back in January?

ZEVENBERGEN: Yes

GREENE: The difference with this one is that this one is not proposing a restaurant that could serve alcohol.

KHANH KIM and TY(?) NGUYEN, 4640 E 15TH STREET NORTH, APPLICANT: They are in agreement with staff comments and the conditions of the staff report.

FOX: What is your experience with multi-family housing development projects?

NGUYEN: We do not have much experience. But we have experience in managing multi-family housing complexes.

FOX: Did you see the information presented by the neighbors showing their concerns? Can you tell me if any of the photos in the document submitted by the neighbors are any properties that you manage?

NGUYEN: We held a meeting with the neighborhood. There were some there in support and there were some opposed. We are trying to do our best to meet their needs and concerns. Regarding the photos, we do not manage any of those.

MAXINE BOSTIC, 4601 VESTA DRIVE: She represents the LRE Foundation. She submitted comments with concerns. The applicant has not managed other properties well. The kind of people who have been rented to, are not savory. There is noise, crime, and shootings. There is a senior center along Shadybrook. We do not need another one. There is a shopping center at 13th and Oliver that will handle this development versus bringing it into the neighborhood. This will exploit the single-family neighborhood with more of what has happened with other properties she manages. The applicant has a record of not screening her renters and not supervising her properties.

FOX: The applicant said they met with the neighborhood group. Were you there?

BOSTIC: No. I was not at the meeting.

BILL LYNCH, 1662 KENMAR STREET: I gave the photos in the handout as an example I do not want a two-story property. I would approve of a single story complex that look like homes. The picture they gave us as an example looks like a cheap hotel. We do not want to see this. Research shows that larger concentrations of affordable housing will have a negative impact on our neighborhood. They want to put up a development on this site when we don't have a grocery store to support more people.

DEBRA LYNCH, 1662 KENMAR STREET: I agree with previous comments. This development can be placed other places that are more suitable. It will get crowded here. It will be disruptive to the neighborhood. What they are trying to achieve here can be done elsewhere. We will not benefit from a strip mall inside of the school. We feel the apartments will be mismanaged.

LAVONTA WILLIAMS, 3928 VESTA DRIVE: I oppose this. This area is a targeted area. The people who own this own over 120 other properties. Most of these properties are in areas of town that have vacant properties, properties that cannot keep up on their taxes, and the like. These areas of town primarily have people of color. I went to a meeting and we were opposed to it. There cannot be 80 people into this area. I do not think they intend to house seniors. The people in this area may not have a lot but they are proud of what they do have. She has been cited for violating the nuisance ordinance in the past for other properties. Some of her properties have had 2 citations, which mean that if there is a third, the landlord will be charged. These are the types of people that are residing in their properties.

NGUYEN: Regarding the complaints about rentals, none of that happened at the addresses that she manages. This Village will be a separate entity managed by me.

FOX: Does Ken mar have a Neighborhood Plan? Can it create its own plan?

ZEVENBERGEN: The Ken Mar area is part of the Central Northeast Area Plan. It does not have one specifically for itself. It is part of a broader plan. They do have the ability to go through the process to create a neighborhood plan.

WARREN: I know that people it is hard for people to experience change, but mixed-use projects like this are things we are seeing all over the City. I don't see how this one is any different.

FOX: Are there environmental review standards that this project would have to meet at the next stage of the process?

ZEVENBERGEN: Planning deals with land use. There review processes in place during the application for a building permit that would have to be satisfied.

MOTION: To approve subject to staff recommendation.

GREENE moved, **WAREEN** seconded the motion, and it carried (11-0).

Interoffice Memorandum

To: City Council

From: Maddy Campbell

Subject: PUD2021-00010

Date: July 13, 2021

On July 12, 2021 the District 1 Advisory Board considered a request on behalf of Khanh Kim Nguyen (applicant) and GLMV Architecture, Mike Seiwert (agent) for a zone change from SF-5 Single-Family to PUD Planned Unit Development for the Nguyen Senior Village development located approximately 370 feet west of Oliver on East 15th Street North at 4640 E. 15th St. N.

There were six DAB members and 30 members of the public present for the meeting. The applicant was also present.

Many members of the public attended the meeting to speak against this zoning case and applicant. No members of the public supported the request. Public comments indicated that residents do not have confidence in the applicant managing this property based on their management of other properties nor in the applicant abiding by their proposal to rent exclusively to seniors. Members of the public shared sentiments that the applicant has an extensive history of not maintaining properties they own, of renting to problematic tenants, and of not disclosing issues with properties they sell. Members also spoke about concerns related to congestion on residential roads, incurred costs related to the drainage plan, and of their properties being devalued while taxes are increased. Some members of the public drew comparisons of this proposed development to redlining and denounced supporting developments which displace residents. Some felt this proposal was more akin to a commercial development, and that the applicant should utilize property zoned for commercial uses to do this type of project. Some members shared they would be receptive to development that builds affordable homes instead of apartments and retail on the parcel.

DAB inquired about the possibility of including a general provision to mandate an age requirement for the apartment units as a way of increasing the public's trust with the development. DAB shared concerns that the proposed development does not fit the characteristic of the neighborhood. DAB acknowledged the significant pushback from residents with this request and shared sentiments of wanting to support the community. Ultimately, DAB unanimously voted to deny the request.

DAB and members of the public asked and made the following summarized questions and comments:

Public: Do “personal services” include tattoo parlors, cash loan establishments, or title loan businesses?
MAPD: No.

Public: Why did they chose that area over other properties they could have chosen?
Applicant: It is an opportunity. The school has been sitting empty for a while. It is a valuable opportunity and property.
Public: That area will need to be rezoned, and our property value will go down and crime rate will go up.
Applicant: We will check all applicants and will not allow them to have anybody move in with them.
Public: You will not monitor them 24/7 to know whether or not people have moved in.
Applicant: We will.

Public: How tall will the apartment buildings be?
MAPD: They are limited to two stories.

Public: I live across from one of the owner’s rentals. Right now the grass on that property is up to my shoulders, and it has been like that for years. If he cannot maintain the houses he owns, how will he maintain the bigger property?
Applicant: I am not the manager of the other properties. Those are two different entities.
DAB: Do these two different entities have the same ownership?
Applicant: Yes, but I do not manage the house rentals.
Public: If you are not going to the home to make sure your tenants are doing what you told them to do, then it is your responsibility to go over there to cut the yard.
Applicant: We will take care of your complaint tomorrow.

Public: Assuming the apartments reach full capacity, what is your plan to address potential congestion? That residential street already gets congested.
MAPD: Public Works has reviewed this.
Public: Will a second exit drive be added?
MAPD: That is up to the applicant.

Public: The applicant previously sold one of their properties to someone without disclosing issues with the home.
Applicant: There are no problems with the property I own in the KenMar neighborhood.
Public: You are in so many other places than just the KenMar neighborhood. I was involved with the development of the City’s nuisance ordinance, because we had a shooting in one of your homes and then in another. The police chief said on the third one we will be charging you. We have four pages worth of homes you own. That is over 100 houses. Yes, you are selling them off to people. You are also promising people things that never come to fruition. I know people who live in that particular area. A school was fine for us. Will you guarantee that only seniors will be living in your proposed apartments?
Applicant: Yes.

Public: How many apartments are you talking about?
Applicant: 78.
Public: 78 apartments is way too many in that dense area.

Public: You are asking them to change the zoning. The zoning is attached to the Nguyen name, and the Nguyen name has a history of not representing very well. I was the City Council Member at that time. I

have neighborhood associations that try to call you to fix and clean up your properties. Most of them are in the 67214, 67208, and 67219 zip codes. I appreciate you trying to put something in, but I do not want you to put things over our heads and say you will do things that will never come to fruition. I taught kids from a very nice apartment, Primrose, but after a while it was very dirty. I do not want kids to go to school and say "I am from the Nguyen properties," because those kids were teased all the time because of where they lived. I do not want you to say it is going to be 78 seniors. I hate to see you try to put one over on people. They may not have much in their neighborhood association, but they are proud of what they have. We do not want gunshots all the time and all types of activity. When you told me you would sell alcohol—that was an insult. I know you took that away. Is there on site management? I have not heard that again.
Applicant: We are not selling alcohol.
Public: Alcohol was mentioned as a possibility previously.
Applicant: We possibly mentioned a small eatery.
Public: I have no reason to lie. Alcohol was mentioned. I said it was an insult to my community.
Applicant: It insults me too.
Vice Mayor Johnson: I did hear alcohol mentioned at the meeting I attended in January.

Vice Mayor Johnson: In this meeting, the DAB is supposed to make a decision based upon land usage. I encourage these conversations, because we have had situations in District 1 where conversations did not happen, mostly around transmission poles. DAB's job is to make decisions around land use, but this dialogue is very important because the community has concerns about other factors the DAB is not supposed to take into account. I listen to it all. I want this conversation to continue, but understand DAB needs to listen to land use. Density, look, those types of things.
DAB: We want to look at land use, but the impact of land use is how land has been used historically with that property owner in my opinion. Yes, we are vetting land use, but DAB can take into account history.
Public: You have to also look at the name attached to the zone change and the history.

Public: Does their current proposal of 78 units meet density regulations?
MAPD: Yes. They could go up to 90 units, so they are not maxing out the density.

Public: How about the parking related to the commercial space?
MAPD: We looked at that as well. The apartments are required to have 116 stalls. They are providing 118. The commercial section requires 51 stalls, and they are providing 79. They are providing a significant excess amount of parking for what they are proposing.

Public: It appears that your [MAPD] marching orders are to approve zoning changes, and the neighborhood is definitely not a top priority. I am making a statement on the way this has been presented. Do you take into account property history of developers, or do you only look at the current request?
MAPD: There are findings of fact based on a State Supreme Court ruling. There are eight findings we evaluate, known as the "golden rules." Public opposition—to your point we do not care about the neighborhood—that is untrue. MAPC has a public hearing. They take into account what the neighborhood says. Recommendation by professional staff is where I fit into this. We [MAPD staff] take an objective look at our plans and policy to prepare a technical staff report to present to DAB and MAPC. They take our technical aspects, listen to public comment, and weigh all those things. The State Supreme Court case determined we cannot pull one finding out to say a neighbor does not like it, so it should not be approved. We incorporate all those findings in our staff report for DAB, MAPC, and City Council to take into consider in addition to public comment.

Public: From my perspective, MAPD has to look at each proposal objectively. One thing I thought might be useful in this process is looking up a history of code violations for the developer. That could maybe help. You heard a lot of anecdotal stories. It has to be fair.
Public: I look at the DAB as the last zone of defense. I understand MAPD has a difficult job. It seems to me you are the ones that know the neighborhood and understand the consequences. It is up to you to look at the other things that you cannot quantify but you have feeling might happen if it is bad. That is what you do.
Vice Mayor Johnson: I know there are frustrations. I want to highlight MAPD legally has things they must look at. Their recommendation is based on legal precedent. If there is frustration, direct that at DAB and me. Ultimately, it is my vote that counts on the City Council. I want to validate this is a unique opportunity. If we are frustrated with the recommendation, understand it is based on legal precedent. At the bench, whether it is approval or denial, I actually have to cite actual reasons to do that. If you are frustrated with process or recommendations, legally it has to be that or the City can get sued. If the process is not followed, it can be overturned.
Public: In other words, you already approved what they want to do. How would you like that in your neighborhood association?
Vice Mayor Johnson: I live down the street. I never said I approve. I legally cannot tell you how I will vote.
Public: You said this case had been squashed.
Vice Mayor Johnson: They pulled a previous application when MAPC moved to deny. They reapplied which is what we are hearing. If you look at my voting record, I tend to support the DAB. I cannot legally tell you if I will support this.
Public: Evidently you already gave them the okay, because they are working on the building.
Vice Mayor Johnson: I have not talked to Mr. Nguyen since the January meeting.

Public: Staff did not make that decision. It was MAPC. MAPC made the decision to pass. The last thing I heard someone on that commission say was, “We are building multi-family all over town. What makes this any different?” I disagree with that, because every neighborhood is different. I will tell you there are apartments going up all in that area, especially around WSU. So much so, that people have called and shared that they are being put out and do not know where to go. What we are doing is displacing people the way we did years ago when we said we need this property for the central business district. That community moved to the McAdams area. They were Black. The County moved them out for business. This is going on right now. We are running people out of the neighborhood, and we have been there for 30 years. We love where we are. It may not be much, but we are comfortable where we are. It is nothing against you [applicant], but I have seen some of your work, and that is what bothers me.

Public: The other concern I have is if the property is zoned to allow 90 units and they say they will do 75 units, we have seen how simple it is to get an exception. You need to figure it will go to 90 units.

Public: It is supposed to be a senior facility?
MAPD: Yes.
Public: Nobody will check to ensure they are only renting to seniors.
Public: If they do not fill those rooms with seniors, can they come back and say “this is a low-income facility”?
MAPD: The PUD does not specifically limit the units to seniors.
Public: See. They know that.
MAPD: There is no binding language that says “seniors only.”
Public: It is bait and switch.

Public: They want to put a whole lot of stuff in this little land. The streets where we live are busy. We have 80 units going over there, and each family normally has two cars. If they have a company over there, those cars will overflow into the streets in front of our homes. How will you do the parking? On top of that, if those 80 units are rented out to anybody, then we have more violence and issues over there. What are we gaining? There not showing me a pretty picture.
DAB: When you do traffic assessments for parking, are you assuming one or two vehicles per unit?
MAPD: Single bedroom units are calculated at 1.25 parking spaces, and two or more bedroom units are calculated at 1.75 parking stalls per unit.
Public: If there is going to be business there also, where will they park?
MAPD: On the same site. They have to provide all of that on site per the parking requirement. They are actually providing over 30 additional spaces than what is required.

Public: How does the retail/commercial side of things have anything to do with the senior development?
MAPD: That is just how it works, because it is one continuous lot.

Public: What is the cost of the rentals?
MAPD: That is market driven.
Applicant: We cannot say right now.

Public: I remember seeing Holy Savior's name. I called Father, and he said he has nothing to do with it.
MAPD: When the applicant initially filed a request, they did not own the property at the time. Holy Savior was only involved initially, because they still owned the property. They are no longer listed on the application, because they finalized selling the property to the applicant.

Public: I live near a property the applicant owns. I count 19 residents in that one house. I have a bullet hole in my window from gang activity occurring from that home. Firecrackers are thrown all over my corner. The applicant sold a house to one of my neighbors, and it has mold in the basement. A previous tenant in that home went to the hospital from the mold. One day I decided to go and cut the grass with my tractor because it was never maintained. They left trash outside for so long it rotted from the bottom. There was water in the basement. We submitted numerous complaints to WPD, Atwater, and the council member. The three properties they own near me have gang activity and drug users and sellers. This will decrease our property value and increase our taxes. There will be increased traffic, parking, noise, and litter. They even have horses at one of their properties. Some of their tenants decided to use my driveway as part of their basketball court. I donated a lawn mower to one of their tenants who then sold it for drugs. These are the kind of people that will be living in those 78 units. This is why we are here in large numbers. We like to sleep. We want to pick flowers in our yard without this problem. I have been a neighborhood association president and member of the WIN board. I have never seen a mess like they create. I feel like we are being redlined. They are not culturally relative. We will have to pay for their drainage plan. We are being targeted. We do not need those office services. We have a whole shopping center. They should not change us to commercial and should use property already zoned as commercial to do commercial types of things. Not in my neighborhood.

Public: The City should use ARPA funding to help low-income people build and own affordable homes. If you drive in our area, you will see people are taking more pride in properties if they own. They are fixing up yards and sidewalks. To me, that is a positive thing. If we could stay more positive and move people in there that want to make difference, can we do that? The applicant should focus on developing affordable homes.
Vice Mayor Johnson: Yes, we can do that. It would be the property owner who would be able to access those funds though. They could also maybe sell their property to the land bank. The goal is home

ownership. I am not a big fan of renters. We want to bring in families. That provides stability. If done right, you could probably get 20 homes on that property.
Public: That would be better.

Public: Is the school building zoned the same as the rest of the property?
MAPD: Yes. It is all one parcel.
Public: In theory, if the proposed retail does not work out, could that section also be converted into apartments?
MAPD: Yes, but they are only allowed 90 units total for the whole property based on density calculations.

Public: We have lived in the neighborhood for more than 60 years. This is my first time coming to speak about something. When I first heard of this, I thought it would be a nursing home and good for the community. As I found out more, it became clear this was a business venture. Then I found out about the applicant's track record. It really should be based on what is best for the neighborhood. Zoning was created to protect neighborhoods. Something like this does not belong in a family neighborhood. The most important reason for voting no is the issue of us not wanting to change the neighborhood. There is already business space available on 13th Street. Putting this development in the middle of the neighborhood is not appropriate unless there is something that guarantees seniors aged 55 or up will live there.

Public: WSU drainage is another example of something promised to the neighborhood. Every time it rains, the whole street floods. This is an example where neighbors were lead to believe that drainage would not be an issue, yet it is.

DAB: I live just on the other side of 13th Street. I am very familiar with the Nguyen name. I am here to support the neighborhood.

DAB: What is the square footage of the apartments, and can the units be reduced?
MAPD: We just look at total number of units and density. It is up to the owner on how big they want to make them.

DAB: Can we put in a protective overlay to restrict a minimum age of the tenants these apartments are rented to?
MAPD: PUDs do not have protective overlays, but you could write it as a general provision of the PUD.
DAB: How would you feel writing into the PUD that the minimum age is 55?
Applicant: We would be okay with that.

DAB: One thing you talked about is integrity of the neighborhood and does the proposed project fit in with the integrity of the neighborhood. Right now, it can be a school, church, or residential. How does an apartment complex fit?
MAPD: That is why we look at the adopted comprehensive plan and other planning documents. The zoning character of the neighborhood is single-family residential. We look at all factors together.
DAB: Once you put up one unit, it changes the characteristic of the neighborhood. Once you let in one, you open the door for another. I am hearing that the scales are tipped more in favor of the developer than the community.

DAB: Does an apartment complex increase or decrease property values?
MAPD: That is an age-old question. There are many things that go into determining property values.

DAB: When we talk about the record of a developer—if they have property in the area that is already an issue, that could be indicative of future issues.
MAPD: Reputation of the property owner is something MAPD staff steers clear of. We stay objective and technical.

DAB: As the property is currently zoned, can the school building be redeveloped into apartments?
MAPD: No.
DAB: Could it be single-family homes?
MAPD: They would need to re-plat the property.

DAB: I tried to reach out to people I know in the neighborhood. It is their opinion that a facility like this is not in character with the neighborhood. The community did a good job of showing up and supporting that. When I vote on these cases, I consider if the development is something I would want in my own backyard.

DAB: If we write a general provision that the units must be rented to people aged 55 and up, how would that actually be enforced?
MAPD: The property owners would have to keep record and prove it. There is a difference between who can rent it and if they allow adult children to live with them. Does everyone in the facility need to be 55 years old? What if it is a couple with a 55 year old and a 53 year old? How do you want to craft the language? Is the age restricted tied to the renter or to everybody inside the apartment?
DAB: What is the consequence if the City finds them in violation of the age restriction?
MAPD: They get cited, and the owner would need to rectify the situation and prove those residents no longer live there.
Vice Mayor Johnson: To be transparent, City inspectors cannot go into a property unless they are let in by the tenant. If there are reports of people under 55 living in the units, the City cannot verify those complaints unless they are allowed in by the tenants. There are management groups that may punish the person that opens the door. We may not get that cooperation as a City. As you consider writing that in, understand the City may not always be able to verify complaints.

DAB: I have a concern with the commercial property. It should be a benefit for the community. I am hearing there is a disconnect with trust. There is no binding language to help with trust, and residents must rely on intent. My concern is if we go off intent alone with a lack of trust, then we are not doing a service to the community to build that trust. If I were to look at this from my own comfort level, I would want some binding language and a good effort of reestablishing that trust in ways that add additional benefits to community, such as on-site maintenance or whatever those things may be. There is history. There should be good will efforts to give back to the community that has been hurt by businesses you own.

Action Taken: Motion made by **Lawanda DeShazer** and seconded by **Landon Gibson** to ***DENY*** the request. Motion to ***DENY*** **PASSED 6-0-0.**

Respectfully submitted,
Maddy Campbell, Office of Community Services

OCA 150004

(Published in the Wichita Eagle, July 30, 2021)

ORDINANCE NO. 51-604

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. PUD2021-00010

City zone change from SF-5 Single-Family Residential to PUD Planned Unit Development, subject to the general provisions of PUD #76, on property described as:

Reserve E, Ken-Mar Addition, Wichita, Sedgwick County, Kansas.

The Nguyen Senior Village Planned Unit Development (PUD #76) shall be subject to the following conditions:

1. The applicant shall record a PUD certificate with the Register of Deeds indicating that this tract (referenced as PUD #76 Nguyen Senior Village Planned Unit Development (PUD) has special conditions for development on the property.

2. A copy of the recorded certificate along with four copies of the approved PUD shall be submitted to the Metropolitan Area Planning Department within 60 days of governing body approval, or the request shall be considered denied and closed.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Adopted this 27th day of July, 2021.

_____
Brandon J. Whipple, Mayor, City of Wichita

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
July 20, 2021

TO: Wichita Housing Authority Board

SUBJECT: Rental Assistance Demonstration Conversion Commitment

INITIATED BY: Housing and Community Services Department

AGENDA: Wichita Housing Authority (Non-Consent)

Recommendation: Authorize execution of the Rental Assistance Demonstration Conversion Commitment, together with such subsequent changes and corrections as may be necessary to complete the proceedings for closing.

Background: On February 21, 2017, the Wichita Housing Authority Board authorized the Wichita Housing Authority (WHA) to submit four Rental Assistance Demonstration (RAD) pilot program applications. The applications were awarded Commitment to Enter into a Housing Assistance Payments (CHAP) contracts by the Department of Housing and Urban Development (HUD) in September 2017.

The RAD pilot initiative is a voluntary program within HUD. RAD provides Public Housing Authorities (PHAs) with access to long-term funding so that needed improvements can be completed. Public Housing units across the country need more than $26 billion in repairs. However, Congress has not provided enough funding for PHAs to keep up with capital needs. RAD allows PHAs to recapitalize properties using financing products as well as private partnerships.

The WHA was successful in securing financing to continue the RAD project for the four multi-family senior housing properties as a single project called Wichita RAD Senior utilizing 4% Low Income Housing Tax Credits, CDBG, HOME, Capital Funds, and securing a HUD FHA 221(d)4 loan.

Analysis: The RAD financing for the multifamily senior units is anticipated to close at the end of August 2021 with construction beginning immediately thereafter. WHA was unsuccessful securing financing for the 352 single family homes. As such, in accordance with the January 2021 Public Housing Authority Plan, the WHA has begun evaluation of other repositioning strategies available through the Department of Housing and Urban Development including but not limited to Section 18 Demolition/Disposition, Section 22 Streamlined Conversion, and/or the Section 18 RAD blend. HUD has awarded WHA 16 hours of technical assistance from The Communities Group to assist in evaluating its repositioning options for the single family homes.

HUD has issued a RAD Conversion Commitment (RCC), which is attached and must be executed within 30 days in order for the project to move forward, to lock the interest rate for the FHA loan, and to schedule the closing. The RCC is a commitment and not the final RAD agreement. The RCC contains the following errors that are expected to be corrected in the final RAD Agreement, which will be executed at or before closing:

1) Page 1, the PHA Notice Address incorrectly lists 332 N Riverview
2) Page 2, the Estimated number of months for completion of all work correctly indicates 23 months but incorrectly state the completion deadline as 7/13/2022

3) Page 11, the signature block for the PHA lists the PHA Director rather than the Board Chair (Mayor). Staff will seek to correct this prior to execution by attaching a revised PHA signature block for the Mayor's signature.

On August 10, 2021 several final documents for the RAD project will be brought forth to both the City Council and Wichita Housing Board including, but not limited to, the Ground Lease Documents, Organizational & Management Documents, HUD Regulatory Documents, Development Agreement, Guaranty Agreement, Subordinate Loan Documents (CDBG & HOME), RAD Use Agreement, and Bond Documents. Pursuant to the terms of the RCC, closing will be subject to HUD's review and approval of transactional documents, and HUD may require corrections or changes to various documents and/or to the business terms of the RCC as a condition of closing. Staff request that the Mayor be authorized to approve such corrections and changes by his execution of the final documents.

Financial Considerations: There is no impact to the General Fund and the execution of the commitment makes no changes to the financial structure of the project.

Legal Considerations: The Law Department has reviewed the RAD Conversion Commitment document as to form.

Recommendation/Action: It is recommended that the Wichita Housing Authority Board authorize the execution of the RAD Conversion Commitment, together with such subsequent changes and corrections as may be necessary to complete the proceedings for closing.

Attachment: RAD Conversion Commitment

Rental Assistance Demonstration (RAD) Conversion Commitment (Public Housing; First Component)

U.S. Department of Housing and Urban Development Office of Multifamily Housing

Complete each box, even if information is duplicative

Proposed Name and Address of Covered Project:	Proposed Project Owner:	Proposed Project Owner Notice Address:
Various Various Wichita, KS 67203	Wichita RAD Senior, LP 316 462-3795 SStang@wichita.gov Project Owner is controlled by: ☑ Control by a Public Body ☐ Control by a Non-profit Body	455 N. Main , 10th Floor Wichita, KS 67202
Existing Ownership Entity, Name and Address of Converting Project: Wichita Housing Authority MCLEAN MANOR/GRAGG HUTCHERSON Various Wichita, KS 67203	PHA: Wichita Housing Authority Contact phone/email: sstang@wichita.gov PHA is an MTW agency: ☐Yes ☑ No	PHA Notice Address: 332 Riverview Street Wichita, KS 67203-4245

Dwelling Units in Covered Project (*specify total # of dwelling units, and # of RAD, non-RAD income restricted, market, and manager units*):

Total Units: 226 RAD Units: 226 LIHTC Units: 0 Market Units: 0 Other Affd Units: 0

PIH Information Center (PIC) removal application number (a/k/a Demolition-Disposition Application Number (DDA#)):

DDA0010643

Converting Project PIC Number(s) *(for all items to the right in this row, list data by each AMP # in the cells below):*	# of units converting to RAD to be removed from each AMP:	# of non-converting units to be removed from each AMP *(e.g., due to a de minimis reduction):*	Total # of units to be removed from each AMP *(sum of two middle columns)*:
KS004000001	176	0	176
KS004000002	50	0	50

☑ Project-Based Rental Assistance (PBRA)

☐ Project-Based Vouchers (PBV).

If PBV, list HAP Contract Administrator (PHA or another housing authority): _____

Number of HAP Contracts and Term length of each HAP Contract:

1 contract(s) 20 years

Reserve Fund for Replacements

Amount of Total Monthly Deposit to Replacement Reserve upon effective date of the HAP contract $6,591.67

Key features of Covered Project:

General:

- [x] Ground lease
- [ ] Transfer of Assistance
- [x] Scattered-site project
- [x] Major non-dwelling assets (e.g., free-standing buildings, community or commercial facilities or significant unimproved acreage) (explain below).
  - [ ] Existing included in the PIC removal application listed on page 1
  - [x] To be added to the Covered Project
- [ ] PHA's sole project or, together with substantially concurrent conversions, the PHA's last public housing project to convert

Inter-Related Projects:

- [ ] Multi-phase conversion
- [ ] Converting Project is adjacent to public housing units within the same AMP that are not converting (not a full conversion of a contiguous project)
- [ ] Rent Bundling
  - [ ] This is a donor property
  - [ ] This is a recipient property

  (Identify below the associated properties in the rent bundling arrangement and when the other projects have/are expected to close)

Construction:

- [ ] Demolition of current public housing units
- [ ] New Construction. If new construction, is HAP contract to be entered into:
  - [ ] at Closing, or
  - [ ] upon construction completion

Relocation:

- [ ] Tenants will be Relocated for >12 months
- [x] Tenants will be Relocated for ≤12 months
- [ ] Relocation to a New Site/ToA
- [ ] No relocation anticipated

Financing:

- [x] FHA-Insured Financing anticipated
  If so, date of Firm Commitment: 06/24/2021
- [x] Low-Income Housing Tax Credits anticipated
  Date of any allocating agency closing deadline: 07/31/2021
- [ ] Conventional financing anticipated
- [ ] No new FHA-Insured, LIHTC or conventional financing
- [ ] Existing debt, such as EPC, CFFP, OFFP or existing mixed-finance debt (list below the type of debt, whether it will remain outstanding post-conversion and, if not, whether it will be paid off prior to or at closing)
- [x] Public housing funds in Sources and Uses

Unit Configuration:

- [ ] Reduction in units. If checked, 0 (#) units reduced based on the following authority:
  - [ ] De minimis associated with this transaction (# of 0 units)
  - [ ] De minimis associated with another transaction (# of 0 units) (explain below)
  - [ ] Other (explain below)
- [ ] Change in unit configuration (explain below)

If additional information is necessary to clarify the features above and/or if there are other important features of the Transaction not described above, such additional information may be listed here:

RAD Rehab Assistance Payments:

Per Unit Monthly RAD Rehab Assistance Payment: $ 446
Maximum # of units eligible for RAD Rehab Assistance Payments: 226 Units

Choice Mobility:

- [x] Project Owner will comply with RAD Choice Mobility practices.
- [ ] Project Owner is exempt from implementing the RAD Choice Mobility practices with respect to the RAD units in the Covered Project.

Repairs:

a. Estimated number of months for completion for all Work (number of months the property is eligible for Rehab Assistance Payments): 23 months
b. Final completion deadline for all Work (after which Project Owner is in default): 07/13/2022

This commitment ('Commitment') to participate in the Rental Assistance Demonstration ('RAD') and convert the assistance of the Converting Project named in the above table is entered into by and among Wichita Housing Authority, a public housing authority organized and existing under the laws of Kansas ('PHA'); Wichita RAD Senior, LP, a Limited Partnership organized and existing under the laws of Kansas ('Project Owner'); and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates ('HUD'), as of the date executed by HUD below. If the PHA is to be the owner of the Covered Project, the PHA shall also be identified as the Project Owner.

TERMS AND CONDITIONS:

1. **Applicable HUD Regulations and Requirements.** By converting assistance and entering into the Closing Documents contemplated in this Commitment, the PHA and Project Owner agree, each as and to the extent applicable, to operate the Covered Project in accordance with all applicable law, including without limitation the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112–55, signed November 18, 2011, as amended) ("RAD Statute"); all applicable program requirements and guidance, including without limitation Notice PIH-2012-32, as amended and revised from time to time (the "RAD Notice") or any successor or additional statutes, regulations or guidance; and the terms and conditions set forth below (collectively, the "Program Requirements"). Any conflicts between this Commitment and any other HUD requirements shall be conclusively resolved by HUD. Any capitalized terms used herein but not defined have the meanings given them in the RAD Notice.

2. **Acceptance of Commitment/Expiration.**

   a. This Commitment shall terminate thirty (30) days from the date executed by HUD unless the PHA and Project Owner execute and return an unaltered copy of this Commitment to HUD, at the address that appears on the last page of this Commitment.

   b. This Commitment shall not be effective or enforceable against HUD until all conditions stated herein have been satisfied in HUD's determination.

   c. Unless all conditions stated herein have been satisfied as determined by HUD and the transactions contemplated by this Commitment (collectively, the "Transaction") are closed within 90 days from the date executed by HUD, this Commitment shall, unless extended by HUD in writing, expire and be of no further force or effect. Upon expiration, all rights and obligations of the respective parties shall cease.

3. **Closing Requirements and HUD Approvals.** As used in this Commitment, "Closing" means execution of all binding legal instruments connected to the transaction contemplated by this Commitment and, if applicable, recordation of such instruments. All requirements set forth in this Commitment must be completed to HUD's satisfaction before the Closing can occur. A Closing checklist ("Closing Checklist") is attached hereto as Exhibit E and incorporated herein. The Closing Checklist lists those items HUD has determined necessary to be submitted to and approved by HUD in order for the Closing of this Transaction to occur. Should HUD determine that any other documents or items (in addition to those listed on the Closing Checklist) are necessary to meet the terms of this Commitment or Program Requirements, the PHA and Project Owner agree to provide such documents or other items in such form and substance as acceptable to HUD or to terminate this Commitment and not proceed to Closing. Unless otherwise agreed by HUD, in the case where the Project Owner differs from the PHA, all post-closing requirements and obligations contained herein will apply to the Project Owner after the Closing. Any determination, approval or decision of HUD pursuant to this Commitment shall be in HUD's sole and absolute discretion. Unless otherwise set forth in writing by HUD prior to Closing, HUD's execution and release of the Closing Documents shall constitute any approvals or decisions required herein and not previously given in writing.

4. **Public Housing Requirements.** The PHA and Project Owner acknowledge that the Converting Project remains subject to the United States Housing Act of 1937, its Consolidated Annual

Contributions Contract and any amendments thereto, and all other pertinent Federal statutory, executive orders, regulations and other guidance, as those requirements may be amended from time to time (collectively the "Applicable HUD Requirements"), and shall not be subject to the HAP Contract, until the effective date of the HAP Contract. Unless HUD gives written instructions otherwise, for so long as the Converting Project remains public housing, the PHA and Project Owner shall take all steps necessary to ensure that:

a. Fire and other property insurance as required under Applicable HUD Requirements are and shall be maintained in full force and effect;
b. All ordinary and necessary operating expenses pursuant to Applicable HUD Requirements of the Converting Project are and shall be paid; and
c. The Converting Project remains in compliance with Applicable HUD Requirements, including without limitation all requirements related to the physical condition of the Converting Project and any remedial agreements between HUD and the PHA and remedial judicial or administrative orders, except as expressly modified by this Commitment and/or the Closing Documents.

Upon the Closing, the PHA shall certify in writing that the foregoing requirements have been met through the date of the Closing.

5. **HUD Review of Project Ownership.** The PHA and Project Owner agree that HUD approval of the ownership and control of the Covered Project is a condition of closing. The PHA shall not transfer any ownership interest in the Converting Project prior to the Closing.

6. **Closing Documents.** The PHA and Project Owner shall execute or cause to be produced, as appropriate, such agreements, instruments, certificates and other documents as HUD may require to complete the Transaction (collectively, the "Closing Documents"), using forms prescribed by or acceptable to HUD and completed, executed, recorded and/or filed in the number of copies and in such manner as directed by HUD. Without limiting the foregoing, the Closing Documents may include:
   a. If applicable, one or more releases or partial releases of the applicable Declaration(s) of Trust or comparable document;
   b. a RAD Use Agreement (document HUD-52625);
   c. a Housing Assistance Payments Contract (for PBRA, documents HUD-52620 and HUD-52618; for PBV, HUD-52530A Parts I and II and HUD-52621), including any required exhibits;
   d. Certifications and assurances; and
   e. Any additional documents required by HUD in order to determine whether criteria for Closing have been met.

7. **Use Agreement Priority.** A title report must be provided for the Converting Project and Covered Project. In addition, an owner's pro forma title policy may be requested for the Covered Project involving the addition of financing to be secured by the Covered Project. Unless otherwise approved by HUD, the RAD Use Agreement shall be superior to any and all liens and/or encumbrances against the Covered Project, including, without limitation, the lien evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents related to the Covered Project (including any LIHTC use agreement). The Project Owner shall obtain consents or subordination agreements, and have such documents executed, as HUD may determine necessary to establish such priority.

8. **Expenses and Transaction Costs.** Except as otherwise set forth in this Commitment, regardless of whether the Transaction is consummated, HUD shall not be responsible for any expenses or transaction costs incurred by or at the direction of the PHA or Project Owner in connection with the Transaction (including without limitation, fees for consultants, attorneys, environmental contractors, tax advisors and accountants; city, county and/or state taxes and/or fees; recording fees, prepayment penalties and/or premiums; costs for title insurance and title examination; surveys and appraisals).

9. **Tax, Financial, and Legal Consequences.** HUD has not provided, nor shall it provide, any opinions, representations, warranties, or covenants to any party regarding any federal, state and/or local tax consequences, financial consequences, or legal consequences relative to the

Transaction. The PHA and Project Owner acknowledge that funding of the contemplated Housing Assistance Payment Contract (HAP Contract) is subject to appropriations.

10. **Certifications, Representations and Warranties by the PHA and Project Owner.** Any statement, certification, representation or warranty made by the PHA or Project Owner in or pursuant to this Commitment is true and correct when given, and shall remain true and correct at all times through and including the Closing. In the event any such statement, certification, representation or warranty is no longer complete or correct, and without limiting HUD's rights and remedies, the PHA or Project Owner, respectively, shall notify HUD in writing immediately. Without limiting the foregoing, the PHA and Project Owner, respectively, hereby represent and certify to HUD and warrant to maintain the veracity through Closing of the following statements:
    a. All notices required by Program Requirements relating to the transaction have been timely provided to such persons and in a manner complying with applicable Program Requirements.
    b. The PHA and the Converting Project continue to meet all program eligibility requirements as stipulated in the RAD Notice.
    c. With the exception of any transfers under the PHA's Admissions and Continued Occupancy Policy or as otherwise approved by HUD, the PHA has not relocated any residents of the Converting Project in connection with the Transaction prior to the date this Commitment is executed by all parties.
    d. Except as specifically disclosed to and accepted by HUD in writing, neither the PHA nor the Project Owner (including, but not limited to Board Members, principals and executives of the PHA or Project Owner) has any knowledge that it (or any Board Members, principals and executives of the PHA or Project Owner in their official capacity as members, principals or executives of the PHA or Project Owner, as applicable) is the current subject of, nor has received any pending notice of, any debarment, suspension or other administrative proceeding, audit or investigation by HUD, including without limitation by the Inspector General, the Departmental Enforcement Center, or the Office of Fair Housing and Equal Opportunity, or any other Federal or state government agency, whether or not sanctions have been imposed against such party.
    e. No disclosed debarment, suspension or other administrative proceeding, audit or investigation would impact the PHA's or the Project Owner's ability to carry out its obligations as contemplated under this Commitment.

    Upon the request of HUD, the PHA shall provide HUD with evidence satisfactory to HUD relating to each of the foregoing certifications. Execution of the Closing Documents by the PHA and the Project Owner, respectively, constitute re-certification to HUD of the foregoing statements.

11. **Successors and Assigns.** This Commitment and its attachments are binding upon the PHA, the Project Owner and the successors and assigns of each. Unless otherwise provided herein, this Commitment may not be assigned, in whole or in part, except upon the prior written consent of HUD.

12. **Corrections.** Notwithstanding anything to the contrary contained in this Commitment, the PHA and Project Owner agree to execute, before or after the Closing, such documents, amendments or modifications as HUD deems necessary or appropriate to effectuate the intent of this Commitment or to complete or consummate the Transaction, including but not limited to instruments necessary to correct this Commitment or any of the Closing Documents.

13. **Changes to This Commitment.** HUD has approved a Financing Plan for this transaction. The PHA and Project Owner shall notify HUD of any changes to the terms set forth in the Financing Plan, or any other business terms submitted to HUD. If HUD determines such changes to be material, HUD may require an amendment to this Commitment or other reviews or approvals as HUD determines necessary to account for the changed terms. The final business terms shall be determined as of the Closing and inserted into the applicable Closing Documents. The PHA's and Project Owner's execution of the Closing Documents shall constitute acceptance of the final business terms reflected therein.

14. **Sources of Funds.**

a. HUD must review and approve all debt (secured and unsecured) against the Covered Project prior to Closing.

b. Development Budget. HUD approval of this Transaction is based on the estimated Sources and Uses attached as Exhibit B. Any changes to this Sources and Uses shall be disclosed to HUD and if HUD determines that such changes are material, HUD may require additional review and approvals and/or amendment to this Commitment. PHA and/or Project Owner shall provide HUD with the final certified Sources and Uses upon Closing.

c. PHA Funds for Development Budget. Where the Transaction includes public housing funds to be contributed by the PHA for uses other than funding the HAP Contract, these funds must be shown on the Sources and Uses. The PHA certifies that all such funds are available and reserved for the Transaction, are irrevocable, and that the PHA has obtained all consents necessary in order for the PHA to commit such funds to the Transaction.

   i. Prior to Closing, public housing Capital Funds shown in the Sources and Uses must be moved within the HUD Line of Credit Control System (LOCCS) to the "RAD Investment" Budget Line Item (BLI 1504). These funds must be drawn down out of LOCCS at closing and, until they are disbursed for a use shown in the Sources and Uses, made subject to a General Depository Agreement (GDA, form HUD-51999).
   ii. Until disbursed for a use shown in the Sources and Uses, Public housing Operating Reserves shown in the Sources and Uses must be held in an account or sub-account subject to a GDA.
   iii. To the extent such funds must be subject to a GDA as described above, the PHA may use a pre-existing GDA if the PHA is making use of separate or segregated accounting. (For example, a PHA may have a pre-existing account for Operating Fund Reserves subject to a GDA and if the converted funds to be used as shown in the Sources and Uses may be adequately separated or segregated for accounting purposes in a sub-account or otherwise remaining subject to the pre-existing GDA, the requirements of this section are fulfilled.)
   iv. If shown in the Sources and Uses, such funds may be used to satisfy obligations of the Covered Project, including without limitation, funding reserves (for example, to make an initial deposit for a replacement reserve (IDRR)) or payment of construction or other project costs in accordance with this RCC and other project documents. Methods by which the PHA may choose to disburse such funds in accordance with this section include:
      - In a lump sum as a loan to the Project Owner, subject to a loan agreement or other documentation;
      - Incrementally over time as a loan to the Project Owner, subject to a loan agreement or other documentation;
      - In a lump sum to the Project Owner as a grant or otherwise without the expectation of repayment; and/or
      - Incrementally over time to the Project Owner as a grant or otherwise without the expectation of repayment.

d. No Additional PHA funds. Except for the amounts identified in the Sources and Uses and amounts identified in the HAP Contract to fund the Covered Project in the calendar year of conversion, no public housing funds may be used as an additional source of funds for the Covered Project. By way of illustration and not limitation, after Closing, no public housing funding (including any funds deemed "project funds" or "program income" under public housing regulations) may be used to pay for any costs for any work (Work or other work) done in connection with the Covered Project.

e. Upon the conversion of assistance, the Converting Project, including any real or personal property thereof, shall no longer be used for public housing purposes, as originally authorized by the U.S. Housing Act of 1937. This Commitment provides instruction for such conversion and the treatment of the Converting Project. Any proceeds of disposition of the Converting Project (or of any real property or improvements that as of the date of this Commitment are considered public housing) in connection with the conversion of assistance contemplated by this Commitment shall be used for affordable housing purposes as defined in the RAD Notice. Any proceeds of any loans of converted public housing funds made in connection with the conversion of assistance contemplated by this Commitment shall be used for affordable housing purposes. Any uses of converted public housing funds listed in the Sources and Uses attached hereto as Exhibit B shall be considered end uses for purposes of 2 CFR Part 200.

15. **Moving to Work Considerations.** Participation in RAD by a Moving To Work (MTW) agency does not reflect a determination that the agency will remain an MTW agency, only a determination that the Covered Project will continue to be a RAD project under the terms of the RAD program.

16. **RAD HAP Contract Funding in Initial Year**. From the effective date of the HAP Contract through the remainder of the calendar year, the Covered Project will be funded only from available public housing amounts obligated prior to the effective date of the HAP Contract and from any additional public housing amounts that HUD obligates in full or in part, subject to the availability of sufficient appropriations, for the remainder of the calendar year in which the HAP Contract becomes effective. **Project Owner acknowledges that this amount for the first year may be less than the contract rent for subsequent years.** During such time, the PHA will draw down funds from LOCCS as instructed by HUD and transfer amounts to the Project Owner as payments pursuant to the HAP Contract in its capacity as or on behalf of the Contract Administrator, as applicable.

17. **RAD Rehab Assistance Payments.** It is anticipated that the Covered Project will be eligible for RAD Rehab Assistance Payments pursuant to its HAP Contract to the extent set forth on the second page of this Commitment.

18. **Section 8 Contract Rents.** Exhibit C sets out the monthly Section 8 contract rents that will be specified in the HAP Contract.

19. **Planned Construction and Rehabilitation.** Exhibit D sets forth the planned construction, repairs and/or rehabilitation for the Covered Project, including any repairs that need to be completed before closing, to be funded in accordance with the Sources and Uses (the “Work”).

    The Project Owner hereby represents, warrants and certifies to HUD and will update such representation, warranty and certification at Closing, in a form and substance acceptable to HUD, that the sources of funds are sufficient to pay for the Work and that all Work will be completed timely and in accordance with applicable RAD Program Requirements, including without limitation:

    a. The Work will be completed in accordance with:
        i. The more stringent of: (1) any applicable national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code; or (2) applicable state and local laws, codes, ordinances, and regulations;
        ii. Other applicable Federal requirements including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S for FHA-insured properties);
        iii. The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-484 6), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable;

iv. Notice PIH 2014-17 / H 2014-09, issued July 14, 2014 (and any amendments, revisions or successor documents), "Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component," which relocation requirements include, as applicable, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any relocation of residents;
v. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8, including but not limited to accessibility standards, with regard to any "substantial alterations" or other "alterations," each as defined in such regulations, as applicable;
vi. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25, as applicable;
vii. Section 3 of the Housing Act of 1968 and its implementing regulations at 24 CFR Part 135 and all of the related regulations, rules and requirements as applicable; and
viii. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937, and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements for any repairs that qualify as "construction" or "rehabilitation" as defined in such regulations, rules and requirements.

b. Any Work not completed by the final completion date listed on page 2 of this Commitment and set forth in the HAP Contract, including any reduction in the scope of Work listed on Exhibit D, unless an extension of such date or such reduction in scope is approved in writing by HUD, constitutes a default of this Commitment and of any HAP Contract entered into with respect to the Covered Project. Upon such default, HUD may terminate this Commitment and/or HUD may take action to terminate the HAP Contract relating to the Covered Project, as provided in the HAP Contract.
c. The Project Owner shall not be entitled to withdraw or take any Distributions from the Covered Project until after completion of the Work and certification of the actual cost of the Work.
d. To the extent the Work includes new construction or substantial rehabilitation, the PHA and/or Project Owner shall engage a qualified general contractor who shall obtain either (i) a payment and performance bond from a properly licensed surety, which bond and surety shall be acceptable to HUD, or (ii) a letter of credit, acceptable to HUD.

20. **Reserve for Replacements.** The Project Owner shall establish upon Closing a Reserve for Replacements, with an IDRR as set forth in Exhibit B, the Sources and Uses. Monthly deposits into the Reserve for Replacements will be made in the amount set forth on the first page of this Commitment as set forth in the HAP Contract and adjusted annually in accordance with the HAP Contract and Program Requirements.

21. **Counsel.** Closing is conditioned upon review and approval of the Transaction by HUD, including without limitation a legal review and approval of diligence and closing documents. The PHA and Project Owner, if different than the PHA, agree to select competent counsel in connection with this Transaction in a manner that satisfies the applicable rules of professional conduct. Counsel to the PHA and/or Project Owner, as appropriate, must provide a legal opinion with respect to the following matters and any other matters reasonably requested by HUD:
    a. The PHA and Project Owner are each duly organized, validly existing and in good standing under the laws of the applicable jurisdiction(s);
    b. The PHA and Project Owner each have the requisite power and authority, and have secured all consents required, to consummate the Transaction;
    c. Each of the Closing Documents executed by or on behalf of the PHA and/or Project Owner in connection with the Transaction is a legally binding obligation of such party, duly executed and delivered on behalf of such party and enforceable in accordance with its terms;
    d. There is no litigation or other claim pending or threatened against the PHA, Project Owner or the Covered Project other than as disclosed to and consented to by HUD;

e. Based upon a pro forma title policy acceptable to HUD and assuming the recordation of documents in the order contemplated by such pro forma title policy, provided counsel has no reason to believe the documents will be recorded in an order other than as listed in such pro forma title policy, the RAD Use Agreement is superior to the lien and/or encumbrance evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents of record relating to the Covered Project; and
f. All Closing Documents conform with the legal requirements set forth in this RCC and any and all changes to HUD forms or sample language have been disclosed to HUD.

22. **Last public housing unit.** If, upon completion of this RAD conversion and other RAD conversions for which this PHA has an RCC and/or CHAP, the PHA will no longer have residential units in its public housing portfolio, the PHA agrees to comply with additional instructions provided by HUD regarding the close-out of its residential public housing portfolio prior to or after Closing. The PHA acknowledges that failure to comply with HUD instructions may result in withholding Section 8 or other cash payments after Closing pending cure of such violation to HUD's satisfaction.

23. **Non-dwelling assets.** Any non-dwelling assets proposed for removal from PIC in connection with the Transaction must be listed in the PIC removal application (a/k/a Demolition-Disposition Application) identified on the first page of this Commitment and must be approved by HUD.

24. **Special Conditions.** This Commitment is subject to the Special Conditions set forth on Exhibit A.

25. **Exhibits.** The following exhibits are a part of this Commitment and incorporated herein by this reference:
    a. Special Conditions
    b. Sources and Uses of Funds
    c. Monthly HAP Contract Rents
    d. Scope of Work
    e. Closing Checklist

26. **Entire Agreement; Survival.** The information listed on the chart on the first pages of this Commitment is a part of this Commitment. All prior and contemporaneous oral and written communications are merged herein and superseded hereby, and this Commitment and all exhibits attached constitute the entire agreement between the PHA, Project Owner and HUD with respect to the Transaction. This Commitment, and the responsibilities relating to each respective party, shall survive Closing of the Transaction.

27. **Post-Closing Responsibilities.** The PHA and Project Owner agree to follow the directions of the HUD Closing Coordinator with respect to post-Closing obligations. Without limiting the foregoing, the PHA and Project Owner, as appropriate, will provide evidence of recording of the applicable Closing Documents and copies of any applicable executed HAP contract, recorded Use Agreement, and DOT Release within three (3) business days thereof and will provide copies of the remaining Closing Documents as directed within sixty (60) days of Closing. In addition, the PHA must follow instructions provided by HUD to remove the Converting Project, or portions thereof, from PIC to effect conversion.

28. **Severability**. Should any provision of this Commitment be held by a court of law to be unenforceable, such determination shall in no way compromise the enforceability of the other provisions.

29. **Counterparts.** This Commitment may be executed in counterparts. Electronic copies of signatures (such as those in portable document format (pdf)) shall be evidence of and treated as original signatures.

30. **Consistency with Federal Law.** Nothing contained in this Commitment shall impose on HUD any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance.

(signature page follows)

Signature Page to RAD Conversion Commitment

Department of Housing and Urban Development

By: Digitally signed by: Thomas R. Davis
Date: 2021.07.02 13:08:28 -04'00'

Name: Thomas R. Davis
Title: Director, Office of Recapitalization

Date: July 2, 2021

PHA: Wichita Housing Authority

The City of Wichita Housing Authority

By:

Sally Stang, Executive Director

Project Owner: Wichita RAD Senior, LP

Wichita RAD Senior LP, (a Kansas limited partnership)
By: Wichita RAD AMP 1 LLC (a Kansas limited liability company)
Its General Partner

By: Keith B. Key, Manager

Date:

EXHIBIT A
Special Conditions

- An acceptable Asbestos Containing Materials (ACM) Operations & Maintenance (O&M) Plan must be submitted to HUD prior to closing.

- A legal opinion or other documentation acceptable to HUD regarding the continuation of PILOT after conversion must be submitted prior to closing.

- Due to the proposed temporary relocation of RAD tenants to public housing units after closing, a Master Lease must be submitted to HUD counsel for review and approval in conjunction with closing.

Necessary HUD Approvals

Not Applicable

Additional Provisions to the RCC

- Due to the scattered site nature of the project and to ensure the project meets financing management and reporting requirements, the PHA will be required to provide project-level financial statements, as well as operating and management account data for HUD review and approval.

Sources and Uses Report

RCC Exhibit B

PHA Name Wichita Housing Authority

PIC Number KS004000001 **Property Name** MCLEAN MANOR/GRAGG HUTCHERSON

Transaction Log Last Modified: 07/02/2021

Sources	
Hard Debt	$10,437,500.00
Commercial FHA-Insured Loan	$10,437,500.00
Soft Debt	$7,959,534.00
Seller Note/Take Back Financing	$7,300,000.00
Deferred Developer Fees	$659,534.00
Grants	$5,555,123.00
Public Housing Capital Funds (inc DDTF)	$1,986,711.00
HOME	$1,113,950.00
CDBG	$1,154,462.00
State or Local Funds	$500,000.00
Interim Income	$800,000.00
Equity	$11,257,462.00
Tax Credit Equity	$11,257,462.00

Uses	
Acquisition Costs	$7,300,000.00
Acquisition Land and Buildings	$7,300,000.00
Payoff Existing Loans and Payables	
Other Aquisition Costs	
Hard Costs	$18,799,872.00
Demolition	
Construction/Rehabilitation	$14,826,604.00
General Requirements/Overhead/Profit	$2,119,506.00
Construction/Rehabilitation Contingency	$1,700,700.00
Builder's Risk Insurance	$153,062.00
Relocation Costs	$577,015.00
Soft Costs	$4,305,340.00
Architectural Design Fee (Plans & Specs)	$775,600.00
Construction Management/Budget Planning Fee	
Engineering Fee	
Feasibility Studies	
Environmental Reports	$125,000.00
Appraisal/Market Study	$35,000.00
Accounting	
Survey	$20,000.00
eCNA Tool	$50,000.00
Title Insurance/Exam Fee, Closing Escrow	$250,000.00
Organizational Costs	
Recordation Fee	
Borrower's Legal Counsel	$150,000.00
Lender’s Legal Counsel	$60,000.00
Consultants	
Other Professional Fees	$15,000.00
Other Loan Fees	
FHA Fees (MIP, Application, Inspection)	$200,931.00
Tax Credit Financing Fees	$341,950.00
Prepayment Penalty/Premium	
Payables	
Construction Interest (Not Deferred)	$650,000.00
Construction Loan Fees	$100,000.00
Bond Issuance Cost and Fees	$200,500.00
Permits	$62,390.00
Investor's Legal Counsel	$380,000.00
Bond Legal Counsel	$150,000.00
Permanent Financing Fees	$274,375.00
Furniture, Fixtures & Equipment	$464,594.00
Marketing & Lease Up	
Reserves	$913,980.00
Initial Deposit to Replacement Reserve	
Initial Operating Deficit Escrow	
Operating Reserve	$425,000.00
Tax and Insurance Escrow	$80,230.00
Lease-Up Reserve	$208,750.00
Other Reserves: Sec.3	$200,000.00
Developer Fees	$3,313,412.00

TOTAL SOURCES:	**$35,209,619.00**	**TOTAL USES:**	**$35,209,619.00**

EXHIBIT C
RAD Contract Rents

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent
50	1	$590.00	$108.00	$698.00
85	1	$647.00	$43.00	$690.00
82	1	$747.00	$43.00	$790.00
5	2	$839.00	$48.00	$887.00
4	2	$939.00	$48.00	$987.00

EXHIBIT D
Scope of Work

(List all work to be done in connection with the Transaction that needs to be completed before Closing)

Not Applicable

(List all work to be done in connection with the Transaction following Closing)

Work Item	Description of Improvement Work	Budget
	Earth Work	$5,000.00
	Lawns and Planting	$5,000.00
	Electric Range	$53,880.72
	Garbage Disposal	$9,890.00
	Waterproofing	$45,000.00
	Roofing and Siding	$225,000.00
	Doors	$258,980.00
	Drywall	$113,051.00
	Specialties	$121,985.00
	Cabinets	$234,400.00
	Appliance Removal/Disposal/Area Repair	$54,282.26
	Elevators	$390,600.00
	Plumbing and Hot Water	$562,400.00
	Heat and Ventilation	$1,339,000.00
	Electrical	$791,100.00
	Roads and Walks	$16,434.00
	Bond Premium	$75,723.00
	Refrigerator - Common Area	$362.50
	Electric Range - Common Area	$626.52
	Garbage Disposal - Common Area	$115.00
	Refrigerator	$31,175.00
	Rough Carpentry	$575,300.00
	Finish Carpentry	$81,029.00
	Windows	$105,000.00
	Acoustical	$106,625.00
	Resilient Flooring	$402,070.00
	Painting and Decorating	$267,982.00
	Blinds and Shades, Artwork	$52,200.00
	Range Hood	$11,954.00
	Range Hood - Common Area	$139.00
	Refrigerator - Common Area	$362.50
	Range Hood - Common Area	$139.00
	Bond Premium	$14,446.00
	Range - Common Area	$628.50
	Garbage Disposal - Common Area	$115.00
	Specialties	$43,300.00
	Finish Carpentry	$12,925.00
	Waterproofing	$9,000.00
	Blinds, and Shades, Artwork	$8,100.00
	Windows	$26,500.00
	Painting and Decorating	$81,750.00
	Refrigerator	$8,350.00
	Heat and Ventilation	$26,400.00
	Electrical	$87,600.00
	Plumbing and Hot Water	$207,600.00
	Range Hood	$2,502.00
	Garbage Disposal	$2,070.00
	Earth Work	$5,000.00
	Electric Range	$9,507.00
	Roads and Walks	$24,534.00
	Drywall	$70,762.00

Cabinets	$55,816.00
Appliance Removal/Disposal/Area Repair	$9,176.00
Resilient Flooring	$65,060.00
Rough Carpentry	$114,553.00
Lawns and Planting	$69,300.00
Roofing and Siding	$114,000.00
Doors	$63,030.00
Acoustical	$275,625.00
Heat and Ventilation	$1,426,456.00
Rough Carpentry	$594,350.00
Bond Premium	$77,690.00
Refrigerator - Common Area	$362.50
Electric Range - Common Area	$626.52
Garbage Disposal	$10,350.00
Waterproofing	$46,000.00
Roofing and Siding	$225,000.00
Doors	$78,850.00
Windows	$14,480.00
Resilient Flooring	$375,124.00
Painting and Decorating	$255,598.00
Specialties	$94,880.00
Blinds and Shades, Artwork	$66,450.00
Refrigerator	$32,625.00
Electric Range	$56,386.80
Cabinets	$238,800.00
Finish Carpentry	$79,723.00
Drywall	$172,837.00
Appliance Removal/Disposal/Area Repair	$54,785.18
Elevators	$446,400.00
Plumbing and Hot Water	$627,200.00
Electrical	$802,300.00
Roads and Walks	$19,850.00
Lawns and Planting	$5,000.00
Range Hood - Common Area	$139.00
Garbage Disposal - Common Area	$115.00
Range Hood	$12,510.00
Blinds and Shades, Artwork	$16,000.00
Plumbing and Hot Water	$270,300.00
Roofing & Siding	$256,000.00
Heat and Ventilation	$19,200.00
Windows	$37,100.00
Drywall	$103,925.00
Painting and Decorating	$86,250.00
Refrigerator	$13,425.00
Roads and Walks	$37,100.00
Range Hood	$4,448.00
Garbage Disposal	$3,680.00
Electrical	$149,350.00
Earth Work	$11,000.00
Lawns and Planting	$7,500.00
Bond Premium	$21,267.00
Refrigerator - Common Area	$362.50
Range Hood - Common Area	$139.00
Garbage Disposal - Common Area	$115.00
Rough Carpentry	$207,606.00
Finish Carpentry	$6,700.00
Waterproofing	$32,000.00
Electric Range - Common Area	$626.52
Electric Range	$18,223.64
Resilient Flooring	$128,248.00

Appliance Removal/Disposal/Area Repair	$17,605.34
Specialties	$90,140.00
Cabinets	$36,800.00
Doors	$92,150.00
	Total $14,826,604.00

EXHIBIT E
Closing Checklist
See Attached

Rental Assistance Demonstration Closing Overview & Checklist: Project Based Rental Assistance (PBRA) Conversions

In the following four sections, this document provides an overview of the RAD closing process and instructions on the document submission requirements for PBRA conversions:

1) General overview of the closing process;
2) Quick reference closing document checklist;
3) Full checklist with detailed descriptions and information on each submission requirement.
4) Instructions for uploading the draft closing package to the RAD Resource Desk

Part 1: General Overview of the Closing Process for PBRA Conversions

Assignment of a RAD Closing Coordinator, HUD Field Counsel & HUD Multifamily Account Executive
Upon issuance of the RAD Conversion Commitment (RCC), the RAD Closing Coordinator will serve as your main point of contact during the closing process. The RAD Closing Coordinator will contact you with instructions and will provide you with the name of the assigned HUD Field Counsel and HUD Multifamily Account Executive. The Closing Coordinator will also arrange a kick-off call with internal and external parties to discuss the closing process, timelines, and other topics as needed. For additional information on the RAD closing process, please see the "Closing Process for RAD Public Housing Conversions" webinar on www.radresource.net.

Required Closing Documents
A full list of closing documents is shown in Part 2. Not all documents are applicable in all closings. Use the full checklist in Part 3 to understand what's needed for your specific closing document submission. Discuss any questions you may have regarding applicability of documents with your RAD Closing Coordinator and HUD Field Counsel. The latest version of HUD documents and templates can be found in the Closing section of the Document Library on the RAD Resource Desk, www.radresource.net/doclibrary.cfm. Copies of HUD Multifamily forms can be found on HUDCLIPS.

Closing Package Submission
You must submit two copies of the draft closing package, one to your assigned RAD Closing Coordinator and one to your assigned HUD Field Counsel. **All draft closing package submissions to your RAD Closing Coordinator must be uploaded via www.radresource.net. Upload instructions can be found in Part 4 of this document. Your assigned HUD Field Counsel will still need to receive a copy of the draft closing package, either via email, CD, or hardcopy**. Please contact your assigned HUD Field Counsel for their submission instructions. Only complete draft closing packages will be reviewed. The draft closing package should be submitted to both parties within two weeks of RCC issuance and no later than two months following RCC issuance. Failure to submit a closing package within two months will result in your transaction being placed in "Delayed Submission" status where it will be unassigned for your closing coordinator and HUD counsel and your RCC will be at risk of being withdrawn by HUD.

Closing Package Review
Upon receipt of a complete closing package, the RAD Closing Coordinator and HUD Field Counsel will review, provide comments, and work with you to finalize all required documents in order to close. For the purposes of RAD, the closing date is the date of recording. You will receive instructions from your RAD Closing Coordinator regarding documents required to be submitted after closing as part of the final closing docket. Note: FHA-RAD Closings will follow the existing FHA requirements and closing process with the addition of a RAD Closing Coordinator who will review the RAD-specific documents.

Additional Guidance and Requirements for PBRA RAD Conversions
Please note that this closing checklist only pertains to the closing of the RAD conversion and that there are additional requirements that the PHA and/or new ownership entity must fulfill as part of the conversion from Public Housing to Section 8 Multifamily Housing, including leases, submitting 50058 End of Participation prior to the effective date of the RAD PBRA HAP contract, completing the 50059s, obtaining access to HUD systems, etc. Please refer to **RAD's Quick Reference Guide to Multifamily Housing Requirements** for more information.

FDS Reporting Requirements for all RAD Conversions
Projects converting to RAD will experience a series of reporting changes based on the timing of the conversion. Consult PIH-REAC PHA Financial Accounting Brief #22: FDS Reporting Requirements for Projects Converting Under RAD. A copy can be found in the Document Library on www.radresource.net.

Important Reminder -for PHAs Leaving Public Housing
If this RAD conversion represents the PHA's last remaining public housing units, consult Notice PIH 2019-13 (HA) for specific requirements and guidance for leaving the Public Housing program.

Part 2: Quick Reference Closing Document Checklist for PBRA RAD Conversions

No.	Document	Included
1	Closing Contact List	☐Yes ☐No
2	Fully executed RAD Conversion Commitment (HUD Form 52624)	☐Yes ☐No
3	Evidence of Completion of RAD Conversion Commitment Special Conditions	☐Yes ☐No ☐N/A
4	Request to Amend the RAD Conversion Commitment	☐Yes ☐No ☐N/A
5	RAD Use Agreement (HUD Form 52625)	☐Yes ☐No
6	RAD PBRA HAP Contract a) Part 1 (HUD Form 52620), including all exhibits b) Part 2 (HUD Form 52618)	☐Yes ☐No
7	Declaration(s) of Trust/Declaration(s) of Restrictive Covenants and any title encumbrance and/or exception documents	☐Yes ☐No
8	Release(s) of Declaration(s) of Trust and/or Declaration(s) of Restrictive Covenants	☐Yes ☐No ☐N/A
9	Title Pro Forma and/or Title Report	☐Yes ☐No
10	Survey and Site Plans	☐Yes ☐No
11	Sources & Uses	☐Yes ☐No
12	Consolidated Owner Certification	☐Yes ☐No
13	Certification and Assurances	☐Yes ☐No
14	Opinion of Project Owner's Counsel (post-conversion owner)	☐Yes ☐No ☐N/A
15	Opinion of PHA's Counsel	☐Yes ☐No ☐N/A
16	Post-Closing RAD Restrictive Covenants	☐Yes ☐No ☐N/A
17	Project Owner's/Management Agent's Certification (HUD Form 9839)	☐Yes ☐No
18	Management Entity Profile (HUD Form 9832)	☐Yes ☐No ☐N/A
19	Property Management Agreement	☐Yes ☐No ☐N/A
20	Evidence of Required Amount of Fidelity Bond Coverage	☐Yes ☐No
21	Tenant Leases (sample)	☐Yes ☐No
22	RAD Delayed Conversion Agreement (PBRA)	☐Yes ☐No ☐N/A
23	Master Lease/Tenancy Addendum	☐Yes ☐No ☐N/A
24	Organizational Documents for New Ownership Entity a) Organizational chart and list of key partners/principals b) Articles of Organization; By-Laws; Partnership Agreement (as applicable) c) Certificate of Existence, Certificate of Good Standing, or similar document from the Secretary of State providing the legal name of the Project Owner	☐Yes ☐No ☐N/A
25	Amendments/Releases of Existing Mixed Finance Documents a) Termination of Mixed Finance Amendment to the ACC b) Termination of Regulatory and Operating Agreement (R&O Agreement) c) Lender and PHA Subordination Agreements, as applicable	☐Yes ☐No ☐N/A
26	Deed	☐Yes ☐No ☐N/A
27	Ground Lease and Memorandum of Ground Lease	☐Yes ☐No ☐N/A
28	Evidence of Payoff, Release or Subordination of Existing Debt	☐Yes ☐No ☐N/A
29	Restrictive Covenants and Land Use Restrictions	☐Yes ☐No ☐N/A
30	General Depository Agreement (HUD Form 51999)	☐Yes ☐No ☐N/A
31	First Mortgage Financing Documentation a) Note b) Mortgage/Deed of Trust c) Intercreditor/Subordination Agreement	☐Yes ☐No ☐N/A
32	New Junior Debt Supporting Documentation a) Note b) Mortgage/Deed of Trust c) Intercreditor/Subordination Agreement	☐Yes ☐No ☐N/A
33	Bond Financing Documentation a) Documentation that issuance of the bonds has been authorized	☐Yes ☐No ☐N/A

	b) Firm Commitment to purchase the bonds	
34	LIHTC Equity Documentation a) Equity Commitment, including the pay-in schedule b) LIHTC Reservation Letter	☐Yes ☐No ☐N/A
35	New Construction or Substantial Rehabilitation Documentation a) Evidence that the General Contractor has obtained either (i) a payment and performance bond from a properly licensed surety; or (ii) a letter of credit b) Owner Completion Guarantee Agreement	☐Yes ☐No ☐N/A
36	HUD Form(s) 50075.1 with Budget Line Item 1504	☐Yes ☐No ☐N/A
37	HUD Form 50075.1 with Budget Line Item 1503 and Initial Year Funding Tool	☐Yes ☐No
38	Other Items a) Non-RAD PBV HAP or AHAP contract(s) for RAD/Section 18 blend transactions b) Other relevant documents	☐Yes ☐No ☐N/A
STEPS TO BE COMPLETED IMMEDIATELY AFTER CLOSING		
39	Form 50058 End of Participation (EOP)	☐Yes ☐No
40	Email the following documents (as applicable) to your Closing Coordinator within 3 days of recording: 1) Recorded Release of Declaration(s) of Trust/Declaration(s) of Restrictive Covenants; 2) Recorded RAD Use Agreement(s); 3) fully executed HAP Contract(s), 4) fully executed RCC Amendment; 5) Recorded Post-Closing RAD Restrictive Covenants; 6) Any other documents requested in the RAD escrow instructions letter	☐Yes ☐No
41	Upload Final Closing Docket to www.radresource.net	☐Yes ☐No
42	No rehab transactions only: Submit the RAD Completion Certification to HUD via www.radresource.net within 10 days of the HAP effective date. Note: For transactions with rehab (per Exhibit D of the RCC), the RAD Completion Certification is due 45 days after construction completion.	☐Yes ☐No

Part 3: Full Closing Checklist for PBRA Conversions

No.	Document	Applicability	Notes and Instructions
1	**RAD Closing Contact List**	Always applicable	• Provide this list as soon as possible and no later than with the submission of your draft closing package. • The list should include full contact information for all parties that will be involved in the closing including - but not limited to- PHA, Project Owner, Existing Owner (if different from the PHA or Proposed Project Owner), PHA counsel, Project Owner's Counsel, third party Escrow Agent who will receive & hold the HUD-executed RAD documents in escrow as direct by HUD, etc.
2	**RAD Conversion Commitment (RCC) – HUD Form 52624 (fully executed)**	Always applicable	• **Execution/Termination/Extensions:** o Must be fully executed by authorized representatives of the PHA, Project Owner, and Existing Owner (if different entities) within 30 days of issuance or the RCC will be terminated and must be reissued. o For existing Mixed Finance conversions where the PHA is not the current owner, the PHA must still execute the RCC as an acknowledging party. o Note that the RCC expires 90 days after issuance unless extended by HUD. HUD expects your transaction to closing within this timeframe. RCC extension requests should be sent to your assigned RAD Closing Coordinator in advance of expiration. • **Return/Submission of Fully Executed RCC:** o Upload a copy of the fully executed RCC within 30 days of issuance to the RAD Resource Desk. It should be uploaded as Item 2, Fully Executed RCC, in the Closing Document Upload section • **Changes/Amendments:** o No changes to the RCC language are allowed. o If you believe corrections are needed to the HUD-executed RAD Conversion Commitment please contact your RAD Closing Coordinator immediately; HUD may process an amendment to the RCC to incorporate the corrections as applicable. The HUD-executed RCC must still be countersigned within the 30-day timeframe. o If terms outlined in the RCC have changed, submit a request to your RAD Closing Coordinator outlining the requested changes. See item #4 in this closing checklist for information on submitting RCC amendment requests.
3	**Evidence of Completion of RAD Conversion Commitment Special Conditions**	Conversions with special conditions listed in the RCC.	Upload relevant documentation pertaining to any Special Conditions. Work with your Closing Coordinator to ensure all conditions are satisfied prior to closing. Any certifications can be included in the Consolidated Owner Certification. Note that the Necessary HUD Approvals

4	**Requests to Amend the RAD Conversion Commitment**	Applicable if proposing changes to the RCC for corrections or revisions	• Not required to be submitted with the draft closing package but should be submitted as soon as possible. • An RCC amendment may be required whenever there is a change to the RCC or its' exhibits, including Sources & Uses. • Any changes to the Sources & Uses or financing terms require an update to the Transaction Log on www.radresource.net. • Please discuss any requested amendments with your RAD Closing Coordinator. • The RCC amendment request should be uploaded to the RAD Resource Desk and should detail all requested changes and justifications as appropriate.
5	**RAD Use Agreement – HUD Form 52625**	Always applicable	• **Parties**: The Project Owner and HUD are parties to the Use Agreement. If there is a ground lease, the fee owner (generally the PHA) and the Project Owner both execute the Use Agreement. Prepare HUD's signature block for the Director, Office of Recapitalization. Include a Washington, D.C. notary block. Your assigned RAD Closing Coordinator can provide you with a copy of the appropriate signature block if needed. • **Legal Description**: Unless there is a transfer of assistance, the legal description on the Use Agreement(s) will generally cover all property released from DOT. Where assistance is being transferred to a different site, ensure that the Use Agreement encumbers the Covered Project (the project that will be receiving Section 8 subsidy), not the Converting Project (current public housing project). • **Term**: Ensure that the initial term of the Use Agreement matches the approved HAP contract term. • **Local Recording Requirements**: The Use Agreement must contain all formalities required for recording a deed in the jurisdiction of recordation (i.e., notary/acknowledgement, seal, etc.). • **Priority**: The RAD Use Agreement must be superior to all financing documents (including FHA-insured mortgages). • **Partial vs Full Release**: If the DOTs/DORCs are being partially released, include the word "partially" in the reference to that DOT/DORC Release in the Use Agreement; if the DOTs/DORCs are being fully released, include the word "fully" in the reference to that DOT/DORC Release. • **No changes** to the form are allowed (other than changes to the signature pages to reflect state recording requirements). • Include the Covered Project's name and PBRA HAP project number.

6	**RAD PBRA HAP Contract** a) Part 1 - HUD Form 52620 b) Part 2 - HUD Form 52618	Always applicable	• Completed by PHA/Owner's Counsel. • No changes to the boilerplate HAP contract language are permitted. • If applicable, HUD will provide the Rehab Assistance Payment in the RCC to be input in Part 2 of the PBRA HAP Contract. • Exhibit 2 to the RAD PBRA HAP is the Affirmative Fair Housing Marketing Plan (AFHMP), HUD Form 935.2A. This form should be completed and submitted to the local Multifamily Field Office at the Financing Plan stage. The draft closing package should include the final approved copy of the Plan or an indication that it is in process. Projects are permitted to close without an approved AFHMP; in those cases, the draft AFHMP plan should be attached with a cover page that says "Draft – The attached Affirmative Fair Housing Marketing Plan (AFHMP) has been submitted to HUD for review. No marketing or leasing is permitted until approval of the AFHMP by HUD. Marketing or leasing includes the solicitation, distribution or acceptance of applications or development of a waiting list." • The HAP Contract effective date must be the first day of either the first or second month following closing; for example, for a 9/3/16 closing, the HAP contract effective date should be 10/1/16 or 11/1/16. • Labor Standards Addendum (HUD Form 5679) must be attached to the HAP contract as Exhibit 3.
7	**Declaration of Trust and any title encumbrance and/or exception documents**	Always applicable	• Provide a copy of any Declarations of Trust and/or Declarations of Restrictive Covenants in force, with their recording information, even if they are not shown on the Title Pro Forma. • Submit any documents referenced in the legal description for the project (i.e. Plat/Parcel Map, etc.) • Along with the title report and/or pro forma, provide a copy of all title exceptions and encumbrances
8	**Release of the Declaration of Trust (DOT) and/or Declaration of Restrictive Covenants (DORC)**	Unless approved by HUD in accordance with RAD requirements, only property that is part of the Covered Project (the project that will receive PBV or PBRA assistance and will be covered by the RAD Use Agreement) is eligible for DOT/DORC Release through RAD.	• There is a HUD-approved sample form found on www.radresource.net but variations are allowed. • If all land encumbered by the DOT/DORC is not converting through this transaction, ensure that the title and body of the document indicate that it is a *partial* release. If all land encumbered by the DOT/DORC is converting through this transaction, ensure that the title and body of the document indicate that it is a *full* release. • If non-dwelling buildings and/or vacant land are associated with the Covered Project, the PIH Field Office must determine whether such assets may be released per the RAD Notice. • When there is a phased conversion of a public housing project, HUD will look to the deal specifics to determine which property, if any, will be released from the DOT/DORC. In such situations, consult with HUD prior to submitting a draft closing package. • Ensure that the Release fulfills state recording requirements. • Prepare HUD's signature page for the General Deputy Assistant Secretary for Public and Indian Housing. Include a Washington, D.C. notary block, and a witness statement/signature line below the signature block. • The legal description should identically match the legal description used in the title work. Any deviations must be explained to the satisfaction of HUD.

9	**Title Pro Forma and/or Title Report** All proposed recorded documents must be listed in proper order.	Always applicable	• Include a title report (always) and Owner's Pro Forma Policy (if applicable)
			• In cases where there is a transfer of assistance, title work must be provided for both the Converting Project and the Covered Project.
			• The title search must search back at least to the vesting deed to the PHA.
			  ○ If the title work reveals that a Converting Project is not covered by the appropriate current DOT/DORC, a DOT/DORC may need to be recorded. Please contact your RAD Closing Coordinator for further instruction. The current versions of the DOTs for Development and Modernization are available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5.
			  ○ Financial Liens and use restrictions must be subordinated to the RAD Use Agreement or released. All other encumbrances must also be subordinated unless HUD determines, in its sole discretion, that the encumbrance will not negatively impact the Covered Project.
			• If a title policy will be issued, provide a copy of the pro forma and a copy of the final policy (when issued) to HUD Field Counsel.
			• If no new debt is proposed as part of the RAD conversion and no party is receiving a title policy, a title report is acceptable. Ensure that the title report is dated within 30 days of when the HUD Field Counsel receives the complete draft package. Depending on the amount of time the deal takes to close, HUD Field Counsel may require an updated title report.
			• The legal description on the pro forma, title report and Use Agreement must precisely match. If this description does not match the DOT legal description, sufficient evidence must be provided for the HUD Field Counsel to determine (in her sole discretion), that the descriptions cover the same property.
			• Documents may be recorded in the following order:
			  ○ Release of DOT/DORC (if applicable)
			  ○ Deed or Memorandum of Ground Lease (ground lease or memo of ground lease must contain HUD required provisions subordinating to the Use Agreement)
			  ○ RAD Use Agreement (always applicable)
			  ○ Mortgages and Use Restrictions (as applicable)
			• *RAD-FHA conversions:*
			  ○ *The RAD Use Agreement must appear on schedule B-1 of the title policy.*
			  ○ *Include only the lender's pro forma in the draft closing package unless HUD Counsel specifically requests to also receive the title commitment or title report.*

10	**Survey and Site Plans**	Always applicable	• A hard copy full-sized survey of the Covered Project must be included in the draft RAD closing Package sent to the HUD Field Counsel. If DOTs or DORCs will be released from the Converting Project, a full-sized survey must also be provided for the Converting Project. ○ If a recent survey is available, include a full-sized copy in the draft closing package submitted to HUD Field Counsel. If a recent survey is unavailable, there is no change to the existing footprint of buildings and no party is requiring a new survey, an old survey may be acceptable at HUD Field Counsel's sole discretion. • Site plans are encouraged and must be submitted for new construction. • *If the transaction also involves FHA financing, the Covered Project's survey must comply with all FHA requirements.* • Discuss any concerns regarding the survey requirements with your HUD Field Counsel.
11	**Sources & Uses**	Always applicable	• Final executed Sources & Uses must be submitted prior to closing. • If the Sources & Uses are changing prior to closing from what's shown in the RCC exhibit, the RCC may need to be amended. Check with your RAD Closing Coordinator. • Any change to the Sources & Uses or key terms requires an update to the RAD Transaction Log "As Closed" column on www.radresource.net
12	**Consolidated Owner Certification**	Always applicable	• This document includes required certifications and can be tailored to include any requirements/special conditions noted in the RCC. • A draft of this document must be submitted for review and approval as part of the draft closing package. • Prior to closing, a PDF of the fully executed certification must be sent to your Closing Coordinator. • See sample template available for download on www.radresource.net. The certification is frequently updated so please reference the latest version posted online.

13	**Certification and Assurances**	Always applicable	• All submitted closing documents must be listed.
			• A draft of this document must be submitted for review and approval and then executed prior to or at closing;
			• The executed version must be submitted to HUD Field Counsel within 3 days of closing. Attach redlines to the executed version showing changes made to the documents listed since sign-off by HUD.
			• See sample template available for download on www.radresource.net.
			• The document should reflect the following recording order:
			  1. [Partial or Full] Release of Declaration of Trust or Declaration of Restrictive Covenants (if applicable)
			  2. Deed or Memorandum of Ground Lease
			  3. RAD Use Agreement (always applicable)
			  4. Mortgages and/or Use Restrictions (if applicable)

14	**Opinion of Project Owner's Counsel (Post-Conversion Owner)**	Applicable if the PHA will not retain ownership.	• If the PHA will not retain complete, direct ownership of the Covered Project after conversion, opinions are required by both Post-Conversion Owner's Counsel and PHA's Counsel. • A template containing HUD-required language is available on www.radresource.net.
15	**Opinion of PHA's Counsel**	Always applicable.	• A template containing HUD-required language is available on www.radresource.net.

16	**Post-Closing RAD Restrictive Covenant**	Applicable if there is a transfer of assistance and HUD has approved a DOT release for the converting site per RAD Notice requirements	See template on www.radresource.net.
17	**Project Owner's/Management Agent's Certification - HUD Form 9839**	Always applicable	• Available for download on HUDCLIPS • Be sure to select the correct version (9839-A, 9839-B or 9839-C) depending on your Management Agent structure. Discuss any questions with your assigned Multifamily Account Executive.
18	**Management Entity Profile - HUD Form 9832**	Always applicable	Available for download on HUDCLIPS
19	**Property Management Agreement**	Required on all conversions unless self-managed.	Include a copy of the agreement in the draft closing package.
20	**Evidence of Required Amount of Fidelity Bond Coverage**	Always applicable	See HUD Handbook 4381.5, Section 2.14 for requirements
21	**Tenant Leases**	Always applicable	• Provide the form of lease and any addendums • Use the HUD Form Model Lease (Form HUD-90105a). Available for download on HUDCLIPS • Appendix 1E of the RAD Notice must be attached as part of the "House Rules" and must control notwithstanding any other provision of the lease. • Must not contain provisions challenging RAD's tenant rights of return and grievance procedures • Prior to package submission, consult with Recap on HUD's current guidance related to Tenant Leases
22	**RAD Delayed Conversion Agreement (PBRA)** (formerly known as the New Construction Agreement)	For conversions in which the assistance is being transferred to a new site and tenants will remain in their current units until construction of the new site is completed. In this scenario, a PHA may choose a Delayed Conversion Agreement (#22) or Master Lease/Tenancy Addendum (#23).	• The existing public housing units will continue to receive public housing subsidy and remain subject to PIH requirements until construction is complete. • The PBRA HAP contract is not executed at closing; it is executed and becomes effective at the time that tenants transfer to the new site. The PHA/Owner should still submit a copy of the RAD PBRA HAP Contract and all exhibits for review as part of the draft closing package (as exhibits to the Delayed Conversion Agreement). • Although the HAP contract is not executed at closing, the RAD Use Agreement is recorded against the Covered Project at closing. • The Converting Project's DOTs are not released. • The required Delayed Conversion Agreement template is available on www.radresource.net.

23	**Master Lease/Tenancy Addendum**	For conversions in which the assistance is being transferred to a new site and tenants will remain in their current units until construction of the new site is completed. In this scenario, a PHA may choose a Delayed Conversion Agreement (#22) <u>or</u> Master Lease/Tenancy Addendum (#23).	• In transactions involving new construction and a transfer of assistance, if residents are remaining in the Converting Project until the Covered Project is constructed, the parties may elect to enter into a Master Lease between the PHA and Project Owner for leasing the Converting Project. (The other option for this scenario is execution of a Delayed Conversion Agreement – see above) • Under the Master Lease, the RAD conversion occurs at closing, the Converting Project's dwelling units are removed from PIC at closing and a HAP contract is entered into at the time of closing. • Through the Master Lease, the Project Owner leases the tenants' units from the PHA and then subleases the units to the tenants (who are now Section 8 tenants). • There is a HUD-approved Master Lease template. A Tenancy Addendum may be used in lieu of a Master Lease. • The PHA should be aware of the limitations on the use of federal funds created by use of the Master Lease structure. For example, if there is an indemnification provision, the PHA cannot use federal funds to fulfill those obligations.

24	**Organizational Documents for New Ownership Entity**
	a) Organizational chart & List of Key Partners/Principals
	b) Articles of Organization; By-Laws; Partnership Agreement (as applicable)
	c) Certificate of Existence, Certificate of Good Standing, or similar document from the Secretary of State providing the legal name of the Project Owner.
		Required when the Covered Project Owner is not the PHA; even if the PHA is transferring ownership to an instrumentality, the instrumentality's ownership documents must be provided.	• The entity must be validly formed and its term of existence must be at least as long as the HAP contract.
			• With the exception of LIHTC deals, the organizational documents must establish PHA or non-profit ownership/control. This statutory requirement is satisfied if:
			  o The PHA is retaining ownership of the project.
			  o The Project Owner is an entity in which the PHA is the sole owner or member.
			  o The Project Owner is organized as a nonprofit entity (it need not be a 501(c)(3) entity).
			• In LIHTC deals, PHA control may be established through the owner's organizational documents or the ground lease.
			  o If control is established through the organizational structure, use the HUD required provisions. (Note: these provisions are distinct from the provisions that must be included in the organizational documents for FHA deals)
			  o If control is established through a ground lease, the ground lease must contain the ground lease control provisions available on the RAD Resource Desk.
			  o Discuss any proposed alternative method of establishing PHA control with HUD Field Counsel prior to submission of a draft closing package.

25	**Amendments/Releases of Existing Mixed Finance Documents (if applicable)** a) Release of Declaration of Restrictive Covenants (DORC) b) Termination of Mixed Finance Amendment to the ACC c) Termination of Regulatory and Operating Agreement (R & O Agreement) d) Lender and PHA Subordination Agreements (if applicable)	Applicable where the Converting Project is an existing Mixed Finance Project.	• For DORC Releases, follow the procedure and requirements discussed above for DOT Releases. • The Termination of the Mixed Finance Amendment to the ACC is signed by the appropriate PIH Field Office. Once the draft documents have been deemed legally acceptable, your RAD Closing Coordinator will work with the PIH Field Office to obtain the appropriate signature. • If there is a partial conversion of a Mixed Finance Project, with some of the project's units remaining as public housing, the MF Amendment is *not* terminated; instead, an amendment must be prepared in HQ's Office of Public Housing Investments. • Termination of the ACC Amendment and Termination of the R & O Agreement are posted to www.radresource.net.

26	**Deed**	Applicable if title to the property is being conveyed.	• When the deed conveys fee simple to the Covered Project Owner, it can contain no reversionary clauses, conditions subsequent or similar provisions; the deed must be for fee simple unless the PHA is ground leasing the land to the Covered Project Owner and simply deeding the improvements. • The deed cannot be a Quitclaim Deed. • The legal description must match the title policy/title report and RAD Use Agreement.
27	**Ground Lease and Memorandum of Ground Lease**	Applicable if the property will be subject to a ground lease.	• If the Ground Lease is not recorded, submit both the Ground Lease and a Memo of Ground Lease. • Use the HUD-required provisions. • The legal description must match the title policy/title report and RAD Use Agreement. • The Ground Lease must be subordinated to the RAD Use Agreement in accordance with HUD requirements. • In deals where the Covered Project is already covered by a ground lease, the lease must be amended to include the HUD-required provisions unless otherwise approved by HUD. • The lease term must be at least as long as the HAP contract.
28	**Evidence of Payoff, Release or Subordination of Existing Debt**	Required if there is an existing EPC, CFFP, OFFP, or other form of debt that will be paid off or subordinated at closing.	• Provide evidence that the existing debt has been or will be paid off in conjunction with RAD closing. Existing debt being paid off in conjunction with the RAD closing should be shown on the Sources & Uses. • If existing debt is not being paid off at or prior to closing, the debt must be subordinated to the RAD Use Agreement in conformance with HUD guidance. • See the HUD-approved Subordination Agreement form on www.radresource.net.
29	**Restrictive Covenants and Land Use Restrictions**	Applicable in all deals with land restrictions	• Restrictions must be subordinate to the RAD Use Agreement • For non-FHA transactions, use the HUD-approved RAD Subordination Agreement or ensure that the substantive provisions of the template are included in the Restrictive Covenants document. • Restrictions cannot impact the right of tenants to remain in or return to the property after conversion • *For FHA transactions, use the FHA Subordination Agreement or other appropriate form per FHA requirements*
30	**General Depository Agreement - GDA (Form 51999)** Latest version of GDA form is dated 10/2014	Required if Public Housing funds are being used as a source of funds and not being disbursed to Project Owner for an approved use at closing.	• Consult your RAD Closing Coordinator for specific guidance and requirements. • Public Housing funds used in the transaction must be shown on the Sources and Uses and are subject to a GDA until they are disbursed for the approved use. Once disbursed, the funds need not be subject to a GDA. • Once the funds are transferred from an account held by the PHA to an account held by the Project Owner, such funds are considered disbursed for purposes of whether a GDA is required. • Until disbursed, public housing funds to be used in the transaction must be held in a segregated account or sub-account. If such account is already subject to a GDA, no new GDA is required. • If a new GDA is required, no changes to the HUD form are permitted. • No changes to the HUD form are permitted, other than those allowed for in the form itself. • *Not required for transactions with FHA financing. Follow FHA guidelines.*

31	**First Mortgage Financing Documentation:**
	a) Note
	b) Mortgage/Deed of Trust
	c) Intercreditor / Subordination Agreement
		Required for all conversions obtaining first mortgage financing.	• New financing documents must be recorded after and explicitly subordinated to the RAD Use Agreement
			• For non-FHA transactions, use the HUD-approved RAD Subordination Agreement or ensure the substantive provisions of the template are included in the appropriate debt documents.
			• *In FHA-RAD deals:*
			  ○ *Use the appropriate form of HUD-approved subordination agreement or rider for FHA transactions.*
			  ○ *The RAD Use Agreement shall be recorded before the HUD-insured mortgage.*
			  ○ *In FHA-RAD deals, all financing must comply with all FHA requirements.*
			• If financing terms have changed since RCC issuance, submit revisions to the RAD Closing Coordinator for HUD review and then update the RAD Resource Desk Transaction Log once the financing changes have been approved.

32	**New Junior Debt Supporting Documentation** a) Note b) Mortgage/Deed of Trust c) Intercreditor / Subordination Agreement	Required for all conversions with secondary financing or junior debt previously approved in the RAD Financing Plan.	• If financing terms have changed since RCC issuance, submit revisions to the RAD Closing Coordinator for HUD review and then update the RAD Resource Desk Transaction Log once the financing changes have been approved. • Aside from the Note, Mortgage/Deed of Trust, and Intercreditor/Subordination Agreement, no additional documentation is needed to be submitted in the draft closing package.
33	**Bond Financing Documentation** a) Documentation that issuance of the bonds has been authorized b) Firm Commitment to purchase the bonds	Required for all conversions utilizing bond financing	• If financing terms have changed since RCC issuance, submit revisions to the RAD Closing Coordinator for HUD review and then update the RAD Resource Desk Transaction Log once the financing changes have been approved. • Aside from the documentation regarding issuance and the firm commitment, no additional documentation is needed to be submitted in the draft closing package.
34	**LIHTC Equity Documentation** a) Equity Commitment, including the pay-in schedule b) LIHTC Reservation Letter	Required for all conversions involving tax credits.	• If financing terms have changed since RCC issuance, submit revisions to the RAD Closing Coordinator for HUD review and then update the RAD Resource Desk Transaction Log once the financing changes have been approved. • Aside from the reservation letter and equity commitment, no additional documentation is needed to be submitted in the draft closing package.
35	**New Construction or Substantial Rehabilitation Documentation** a) Evidence that the General Contractor has obtained either (i) a payment and performance bond from a properly licensed surety or (ii) a letter of credit b) Owner Completion Guarantee Agreement	New Construction or Substantial Rehabilitation only.	

36	**HUD Form(s) 50075.1 with Budget Line Item 1504**	Required on all conversions that use PH Capital Funds or RHF Funds in the development budget	• Required before Closing as soon as a final Sources and Uses is available. • Submit to your Closing Coordinator the HUD Form(s) 50075.1 with BLI 1504 manually added that matches the amount of Capital Funds and/or RHF Funds listed as a source in the final executed Sources and Uses. This is to ensure that the Capital Funds and/or RHF funds used in the Development budget will be available at closing. Note that you must submit one form per Capital Fund grant year. • Please see "RAD Initial Year Funding Process Instructions" on the Resource Desk for further information.
37	**HUD Form 50075.1 with Budget Line Item 1503 and Initial Year Funding Tool(s)**	Required on all conversions in order for PHAs to access Capital Funds that will be utilized to fund the project for the remainder of the calendar year of conversion.	• Required to be submitted once a closing date (& thus HAP effective date) is solidified • Complete the HUD Form 50075.1 for current the current Capital Fund grant year with BLI 1503 manually entered • Complete the Initial Year Funding Tool(s) with the correct HAP effective date; if a PHA wishes not to utilize Capital Funds for this purpose, input "$0" in the field that says "Enter Capital Funds Requested for Initial Year." • Operating funds are not to be included on the 50075.1. Please see "RAD Initial Year Funding Process Instructions" and the "RAD Initial Year Funding Tool" on the Resource Desk for further information.
38	**Other Documents**	Submit any other applicable closing documents	• For RAD/Sect 18 blend conversions, upload copies of the non-RAD PBV HAP or AHAP contract(s) using either the PBV HAP Contract for Existing Housing Part 1 (HUD Form 52530b) and Part 2 (52530b) or the AHAP for New Construction or Rehab Part 1 (52531a) and Part 2 (52531b).
IMMEDIATELY AFTER CLOSING- ADDITIONAL REQUIRED STEPS			
39	**Form 50058 End of Participation (EOP)**	Required on all conversions unless there is a Delayed Conversion Agreement; contact the Closing Coordinator for applicability.	• Required within 5 business days after Closing. • In order for HUD to remove the applicable units from the Public Housing Information Center (PIC), a Form-50058 End of Participation (EOP) for the public housing program for all residents still living at the property at RAD conversion must be submitted into PIC. The 50058 EOP must be effective for each resident on the last day of the month before the new HAP will be effective. For example, a property that will have an October 1 HAP effective date should submit EOPs effective September 30 for all residents still living at the property.
40	**Recorded Release(s) of Declaration of Trust, Recorded RAD Use Agreement(s), fully executed HAP Contract(s), fully executed RCC Amendment, and other documents**	Required on all conversions	• A PDF of the recorded Release(s) of Declaration of Trust, recorded RAD Use Agreement(s), fully executed HAP contract(s), fully executed RCC Amendment, post-closing RAD Restrictive Covenants, and any other documents identified by HUD as part of your RAD Escrow Instructions Letter must be submitted via email to the Closing Coordinator within 3 business days after recording. • Consult your RAD Escrow Instructions letter for specific documents
41	**Final Closing Docket**	Required on all conversions	• HUD requests that Post-Closing Dockets be submitted via www.radresource.net within 10 days of the HAP effective date • See the Post Closing Instructions on www.radresource.net for details
42	**RAD Completion Certification**	Required on all conversions	• No rehab transactions: Submit the RAD Completion Certificatio to HUD via www.radresource.net within 10 days of the HAP effective date. • For transactions with rehab (post closing repairs are listed in Exhibit D of the RCC): The RAD Completion Certification is due 45 days after construction completion.

43	**Reminder – PIH Close Out and FDS Reporting Requirements for RAD Projects**	Required on all conversions	• Projects converting to RAD will experience a series of reporting changes based on the timing of the conversion. Please see PIH-REAC PHA Financing Accounting Brief #2: FDS Reporting Requirements for Projects Converting Under RAD. A copy can be found in the Document Library on www.radresource.net. • PHAs who are converting their last remaining Public Housing units will need to work with their PIH Field Office on closing out of Public Housing. Please consult Notice PIH 2019-13 (HA)

Part 4: Instructions for Uploading the Draft Closing Package to RAD Resource Desk

The draft closing package submitted to your RAD Closing Coordinator must be uploaded to www.radresource.net. Note that your assigned HUD Field Counsel must receive a copy of the same draft closing package per his or her instructions (email, CD, hardcopy, etc). Consult your HUD Field Counsel for his or her submission preferences.

1. Login to www.radresource.net. Note that you will need upload access in order to upload documents.
2. Navigate to the **My Properties with CHAPs Issued** card and click on the property name. Its status should say **RCC Issued**.
3. The closing page will open. Use the **Go To** navigation option in the menu at the top and select **Closing Document Upload** OR scroll down the page until you see the green heading that says **Closing Document Upload – PBRA**.
4. The grid is aligned to the PBRA Closing Checklist. Upload each item shown on the grid using the **Browse** and **Upload** buttons. For any items that are not applicable to your closing, select N/A. You can input comments that you'd like your RAD Closing Coordinator to see in the **PHA/Owner Comments** field. You must click **Save for Later** (located at the bottom of the page) for your comments to save.
5. If you have uploaded ALL of the applicable documents and are ready to notify your RAD Closing Coordinator that the package is ready for his or her review, click the red button that says **Submit Closing Package**. **You will not be able to click this button until you have uploaded a document for each line item OR selected "N/A" if no document is uploaded**. If you are not ready to make the submission yet and wish to continue working on it, click **Save for Later**.
6. Email resourcedesk@radresource.net with any upload questions or issues.

CMB'S FOR July 20, 2021

New	2021	Consumption Off Premises
Kusum Lata	Valero 1***	851 S. Meridian Ave

Renew	2021	Consumption On Premises
Will Liedtke	Bricktown Brewery Rock Rd**	2035 N. Rock Rd, Ste 101

** General/Restaurant (need 50% or more gross revenue from sale of food)
*** Retailer (Grocery stores, convenience stores, etc.)

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 20, 2021

a. Storm Water Drain #481 to serve Willow Creek East 3rd Addition (south of Harry, east of Greenwich) (458-2021-085480/E1041/47308621) Traffic to be maintained during construction using flagpersons and barricades. (District II) - $568,000.00

b. 13th Street North between Tyler Road and Country Acres Avenue (13th Street North, west of Ridge) (472-2020-085654/E1006/40105821) Traffic to be maintained during construction using flagpersons and barricades. (District V) - $374,500.00

c. Traffic Signal Improvements, Douglas Avenue from McLean Blvd to Hydraulic Avenue (Douglas Ave, McLean Blvd to Hydraulic Ave) (472-2021-085709/E5055/40100515) Traffic to be maintained during construction using flagpersons and barricades. (District I,VI) - $903,212.60

d. Bedford and Mount Vernon from the north line of Lot 2, Block A, south and east to the east line of Lot 16, Block C, including the eyebrow; and on Stephanie (Lots 10 through 18, Block D, and Lots 1 thorugh 9, Block E) from the south line of Funston, south to the north line of Mount Vernon; and on Skinner from the west line of Bedford to the west line of the plat to serve Willow Creek East 3rd Addition, Ph 2 (south of Harry, east of Greenwich) (472-85507/E9123/47462319) Traffic to be maintained during construction using flagpersons and barricades. (District II) - $608,000.00

To be Bid: July 2, 2021

PRELIMINARY ESTIMATE of the cost of:
Storm Water Drain #481 to serve Willow Creek East 3rd Addition
(south of Harry, east of Greenwich)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

	LUMP SUM BID ITEMS		
1	Site Clearing	1	LS
2	Site Restoration	1	LS
3	Seeding	1	LS
4	Maintain Existing BMP's	1	LS
5	Grading, Mass	1	LS
6	Excavation	32,540	cy
	MEASURED QUANTITY BID ITEMS		
7	Pipe, SWS 15"	444	lf
8	Pipe, SWS 18"	847	lf
9	Pipe, SWS 24"	420	lf
10	Pipe, SWS 30"	202	lf
11	Pipe, SWS 36"	65	lf
12	Pipe, End Section 24"	5	ea
13	Pipe, End Section 36"	1	ea
14	Inlet, Curb (Type 1A) (L=5' W=3')	2	ea
15	Inlet, Curb (Type 1A) (L=5' W=4')	1	ea
16	Inlet, Curb (Type 1A) (L=10' W=3')	4	ea
17	Inlet, Backyard (4')	8	ea
18	Inlet, Backyard (5')	1	ea
19	Fill, Sand (Flushed & Vibrated)	345	lf
20	Rip-Rap, Light Stone	186	sy
21	6" D-50 Stone	440	sy
22	BMP, Drop Inlet Protection	9	ea
23	BMP, Curb Inlet Protection	7	ea
24	BMP, Erosion Control Mat	2,710	sy
25	BMP, Erosion Control Berm	550	lf
	LUMP SUM BID ITEMS		
26	Testing	1	LS

Construction Subtotal _____

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost $568,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

To be Bid: July 2, 2021

PRELIMINARY ESTIMATE of the cost of:
13th Street North between Tyler Road and Country Acres Avenue
(13th Street North, west of Ridge)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

	LUMP SUM BID ITEMS-PAVEMENT		
1	Mobilization	1	LS
2	Site Clearing	1	LS
3	Site Restoration	1	LS
4	Transportation of Salvaged Material	1	LS
5	Excavation	1,042	cy
6	Fill, Compacted (95% Density)	14	cy
7	Sodding	1	LS
8	~~Seeding~~ DO NOT BID	~~1~~	~~LS~~
	MEASURED QUANTITY BID ITEMS-PAVEMENT		
9	Pavement &/or Curb & Gutter & Drive Removed	912	sy
10	Sidewalk Removal	236	sy
11	AC Pavement 5" Bit. Base	851	sy
12	5" Concrete Base	50	sy
13	Crushed Rock Base 8", Reinforced	1,228	sy
14	Concrete C & G, Comb. Type 1 (6" & 1-1/2")	843	lf
15	Concrete Curb, Mono Edge (6" & 1-1/2")	40	lf
16	2" Asphalt Surface BM-2 (PG70-28)	13,813	sy
17	Cold Milling	12,912	sy
18	2" Asphalt Repair (BM-2)(PG64-22)	100	tn
19	Concrete Driveway 8", Reinforced	2,251	sf
20	Wheelchair Ramp	4	ea
21	Concrete Sidewalk, 4"	1,954	sf
	LUMP SUM BID ITEMS-TRAFFIC CONTROL		
22	Pavement Marking	1	LS
23	Signing	1	LS
24	Traffic Control	1	LS
	MEASURED QUANTITY BID ITEMS-EROSION CONTROL		
25	BMP, Curb Inlet Protection	4	ea
26	BMP, Back of Curb Protection	750	lf

Construction Subtotal _____

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost $374,500.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

To be Bid: July 9, 2021

PRELIMINARY ESTIMATE of the cost of:
Traffic Signal Improvements, Douglas Ave from McLean Blvd to Hydraulic Ave
(Douglas Ave, McLean Blvd to Hydraulic Ave)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

	LUMP SUM BID ITEMS-PAVEMENT		
1	Mobilization	1	LS
2	Site Clearing and Restoration	1	LS
3	Transportation of Salvageable Material	1	LS
	MEASURED QUANTITY BID ITEMS		
4	Pavement Removed	600	sf
5	AC Pavement Removed & Replaced, 7" (5" Bit Base) (BM-2, PG 70-28)	600	sf
6	Concrete Pavement, Remove and Replace (10", High Early Strength, Reinforced)	1,200	sf
7	Curb and Gutter, Remove and Replace	200	lf
8	Concrete Sidewalk (5"), Remove and Replace	1,200	sf
9	Brick Pavers, Remove and Replace	200	sf
10	Concrete Pavers, Remove and Replace	500	sf
11	Concrete Pavers, Remove and Replace with New	200	sf
12	MH, Adjusted	7	ea
13	MH, Adjusted with New Traffic-Rated Lid and Cover	1	ea
14	~~Wheelchair Ramp with Detectable Warning~~ DO NOT BID	0	ea
15	Ped Pushbutton Foundation, Shallow (18")	4	ea
16	Ped Pushbutton Foundation, Full Depth (30")	12	ea
17	Ped Pushbutton Foundation Sono Tube (30")	4	ea
18	Electronic Message Board (each per day)	30	dy
19	Wavetronix WX-SS-225, SmartSensor Matrix Vehicle Presense Detector w/80' Cable Harness (SET PRICE)	21	ea
20	Wavetronix WX-SS-611, Sensor Mounting Bracket (SET PRICE)	21	ea
21	Wavetronix Click!600 Cabinet Interface (SET PRICE)	9	ea
22	Wavetronix CLK114 4 CH Rack Cards (SET PRICE)	21	ea
	LUMP SUM BID ITEMS-TRAFFIC		
23	Wavetronix Matrix System Cable 18AWG/3PR (SET PRICE)	3,880	lf
24	Traffic Control	1	LS
25	Pavement Markings	1	LS
26	Traffic Signal Improvements (Douglas & McLean)	1	LS
27	Traffic Signal Improvements (Douglas & Waco)	1	LS
28	Traffic Signal Improvements (Douglas & Cent II)	1	LS
29	Traffic Signal Improvements (Douglas & Water)	1	LS
30	Traffic Signal Improvements (Douglas & Main)	1	LS
31	Traffic Signal Improvements (Douglas & Market)	1	LS
32	Traffic Signal Improvements (Douglas & Broadway)	1	LS
33	Traffic Signal Improvements (Douglas & Topeka)	1	LS
34	Traffic Signal Improvements (Douglas & Emporia)	1	LS
35	Traffic Signal Improvements (Douglas & St Francis)	1	LS
36	Traffic Signal Improvements (Douglas & Rock Island)	1	LS
37	Traffic Signal Improvements (Douglas & Washington)	1	LS
38	Traffic Signal Improvements (Douglas & Hydraulic)	1	LS
	MEASURED QUANTITY BID ITEMS-EROSION CONTROL BMPS		
39	BMP, Back of Curb Protection	50	lf
40	BMP, Curb Inlet Protection	27	ea
	MEASURED QUANTITY BID ITEMS		
41	Wheelchair Ramp with Detectable Warning (10')	5	ea
42	Wheelchair Ramp with Detectable Warning (6')	24	ea

Construction Subtotal _____

Design Fee
Engineering & Inspection
Administration
Publication
Other projects/expenditures to-date

Total Estimated Cost $903,212.60

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

472-85507 E9123 47462319

District II

To be Bid: July 9, 2021

PRELIMINARY ESTIMATE of the cost of:
Bedford, Mount Vernon, Skinner, Stephanie
Willow Creek East 3rd Addition

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

	LUMP SUM BID ITEMS-PAVEMENT (E9123)		
1	Site Clearing	1	LS
2	Site Restoration	1	LS
3	Seeding	1	LS
4	Maintain Existing BMPs	1	LS
5	Grading, Easement	1	LS
6	Signing	1	LS
7	Excavation	1,021	cy
8	Fill, Compacted (95% Density)	56	cy
	MEASURED QUANTITY BID ITEMS-PAVEMENT (E9123)		
9	AC Pavement 5" (3" Bit Base)	6,317	sy
10	Crushed Rock Base 5", Reinforced	8,034	sy
11	Concrete Pavement (VG) 7" (Reinf)	231	sy
12	Concrete C & G, Type 2 (3-5/8" RL & 1-1/2")	3,775	lf
13	Concrete Curb, Mono Edge (6-5/8" & 1-1/2")	114	lf
14	Wheelchair Ramp w/ Detectable Warnings	6	ea
15	Inlet Hookup	5	ea
16	Concrete Sidewalk 4"	9,139	sf
17	Inlet Adjusted	5	ea
18	Inlet Underdrain	90	lf
19	BMP, Back of Curb Protection	3,889	lf
20	BMP, Curb Inlet Protection	5	ea

Construction Subtotal _____

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost $608,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

47462319 E9123 472-85507
Page _____

EXHIBIT _____

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Grant with the Kansas Department of Transportation (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the KDOT grant and authorize the necessary signatures.

Background: The Kansas Department of Transportation (KDOT) grant application process requires official action by the City Council authorizing staff to execute approved grants, and administer the grant's program. The City Council's approval will authorize the City of Wichita Transit Department to receive eligible state funds in support of the City's transit services. A public hearing was held on July 7, 2021 with no comments.

The City has been allotted $1,423,977 for State Fiscal Year 2022 (July 1, 2021 through June 30, 2023) which may be used for capital or operating expenditures. Funds must be expended and requested by July 8, 2023.

Analysis: The grant will provide for continued KDOT-funded operations including operator wages and fuel. No capital items will be purchased with this fiscal year's allotment.

Financial Consideration: The total grant agreement is $1,423,977. The funds are 100% grant supported, and require no local match.

Legal Consideration: The Law Department has approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council approve the KDOT grant and authorize the necessary signatures.

Attachment: KDOT SFY2022 Agreement for State grant funds.

AGREEMENT FOR CAPITAL AND OPERATING ASSISTANCE FUNDS FOR STATE TRANSPORTATION PROJECTS BETWEEN THE SECRETARY OF TRANSPORTATION OF THE STATE OF KANSAS AND WICHITA TRANSIT

THIS AGREEMENT made this 1st day of July, 2021 is between the Secretary of Transportation of the State of Kansas (the "Secretary") and the Wichita Transit, (the "Provider").

RECITALS:

A. The Coordinated Public Transportation Assistance Act, K.S.A. § 75-5032, *et seq*. (CPTAA) provides in part for capital grants to transit authority grantees for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly persons, persons with disabilities, and the general public.

B. The Legislature of the state of Kansas has authorized the Secretary to administer the financial assistance by selecting projects of eligible applicants and administering the funds.

C. The Secretary has delegated this authority to KDOT's Bureau of Transportation Planning, Public Transportation Unit.

D. The Provider has expressed an interest in sponsoring the Project within its geographic area to include the provisions and support of Public Transportation Services and has been identified as an eligible applicant under CPTAA.

E. The Secretary is willing to provide financial assistance to the Provider for the Project, subject to the terms and provisions contained in this Agreement.

In consideration of the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"Capital Equipment"** means the personal or real property identified in Appendix A, to be purchased by Provider pursuant to this Agreement. For purposes of this Agreement, Capital Equipment may include mobility management activities and Operating Costs.

3. **"CPTAA"** means the Coordinated Public Transportation Assistance Act, K.S.A. § 75-5032, *et seq.*, which provides in part for capital grants to transit authority grantees for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly persons, persons with disabilities, and the general public.

4. **"KDOT"** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

5. **"Operating Costs"** means the day-to-day costs of providing services which may include administration and personnel costs.

6. **"Parties"** means the Secretary and KDOT, individually and collectively, and the Provider.

7. **"Project"** means those Public Transportation Services as detailed in the Provider's Project Application.

8. **"Project Application"** means the Provider's Project Application for funding submitted to the Secretary by the Provider for state CPTAA funding, incorporated into this Agreement by this reference.

9. **"Project Budget"** means the budget in Appendix A, which sets forth the allowable Project Costs for the Project and establishes the amount the Secretary will reimburse the Provider for those costs, incorporated into this Agreement by this reference.

10. **"Project Costs"** means the allowable expenses for the Project to be incurred by the Provider.

11. **"Provider"** means **Wichita Transit**, whose office is located at **777 East Waterman, Wichita, KS 67202-4615**, acting by and through **Michael Tann**, its duly authorized representative.

12. **"Public Transportation Services"** means those services accessible to elderly personals, persons with disabilities, and general public or as otherwise defined by the CPTAA, K.S.A. § 75-5034.

13. **"Secretary"** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.

ARTICLE II

PARTY RESPONSIBILITIES:

1. **Purpose of Agreement.** The purpose of this Agreement is to state the terms, conditions and mutual understandings of the Parties as to the manner in which the Project will be undertaken and completed.

2. **Scope of Project.** The Provider shall undertake and complete the Project as described in its application which is incorporated into this Agreement in accordance with the terms and conditions of this Agreement.

3. **Cost of Project.** The cost of the Project for FY 2022 will be **$1,423,977.00**, of which **$1,423,977.00** will be provided by the Secretary from state funds. The funding will be used to support the purchase of Capital Equipment and operating expenses, as listed in Appendix A. In addition to the purchase of the Capital Equipment, the Project may include Operating Costs as delineated in Appendix A, Project Budget. The Provider agrees it will provide the local funds in an amount sufficient, together with the grant, to assure payment of the total Project Costs. The Provider shall initiate and prosecute to completion all actions necessary to provide its share of the Project Costs at or prior to the time that such funds are needed to meet Project Costs. The Provider further agrees no refund or reduction of the amount so provided will be made unless there is, at the same time, a refund made to the Secretary of a proportional amount of the grant.

4. **Provider Matching Share.** The Provider's designated combination of federal, state, local, and/or private funding source has been or will be committed to provide the Provider's required share for the Project.

5. **Time Restriction on Reimbursement.** The Provider's requests for reimbursement must be submitted by the Provider no later than **July 8th, 2023**. Any funds not claimed for reimbursement by that date are forfeited by the Provider and will be retained by the Secretary. No funds will be carried over.

6. **Agreement Term.** This Agreement is effective from the date of execution of this Agreement until the useful life of the Capital Equipment, as determined by the Secretary, is expired unless this Agreement is terminated sooner in accordance with Section 10, titled Disposal of Capital Equipment, and/or Section 17, titled Termination of Agreement. Agreements pertaining to Operating Costs will have a term of one (1) year.

7. **Project Application.** The provisions and assurances found in the approved Project Application are incorporated into this Agreement by reference.

8. **Records and Reports.**

   (a) Establishment and Maintenance of Accounting Records. The Provider shall establish and maintain a separate account for the Project, either independently or within its existing accounting system, to be known as the Project account. The Provider agrees to

keep detailed and accurate accounting records of all labor, material, supplies, incidentals, and any other necessary costs involved in the Project.

(b) Retention and Inspection of Reports. The Provider shall retain at its offices during the period of contract performance and for a period of five (5) years from the date of the release of the security lien on the vehicle to the Provider all accounting records and other evidence pertaining to the Project Costs. Copies of such records will be made available for inspection by the Secretary or his or her authorized representatives upon request. The Provider shall permit the Secretary or his or her authorized representatives to inspect and audit all books and records pertaining to the Project and Project Costs at all reasonable times.

(c) Reports. The Provider shall advise the Secretary regarding the progress of the Project at such times and in such a manner as the Secretary may require, including, but not limited to, meetings and/or written reports. The Provider shall submit to the Secretary such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Secretary. Such records, include, but are not limited to, the keeping of daily trip records.

9. **Default.**

(a) Remedies.

(1) If the Provider fails to perform any of the terms of this Agreement where such failure would constitute grounds to terminate this Agreement as provided in Section 17, titled Termination of Agreement, or if the Provider becomes insolvent, ceases doing business as a going concern, conservatorship, or receivership or bankruptcy proceedings are instituted by or against the Provider, the Secretary shall have the option to terminate this Agreement in addition to and without prejudice to any other rights and remedies provided under this Agreement and any laws and regulations.

(2) The Secretary may, upon default by the Provider, repossess any of the Capital Equipment purchased under this Agreement. Any repossession; however, shall not constitute a termination of this Agreement unless the Secretary notifies the Provider of termination in writing. It is the Secretary's option to dispose of the Capital Equipment in accordance with procedures incorporated into this Agreement. The Provider shall be liable to the Secretary for all fees and expenses, including attorney's fees, incurred in connection with any repossession of the Capital Equipment or their disposition as provided herein.

(b) Non-waiver. Failure by the Secretary to require strict compliance with this Agreement by the Provider does not constitute a waiver of said Agreement or any provision thereof. No waiver by the Secretary of any breach or default of the Provider shall be deemed a waiver of any breach or default thereafter occurring.

10. **Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Provider shall indemnify and hold harmless the Secretary, and his or her officers, agents, employees from any and all costs, liabilities, expenses, damages, suits, judgments, and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement, or any contracts entered into under this Agreement, or the operation of a vehicle described herein, by the Provider, its agents, or subcontractors.

11. **Termination of Agreement.**

(a) Without Cause. The Secretary may for any reason cancel the Project and terminate this Agreement by written notice from the Secretary to the Provider.

(b) For Cause. The Secretary may terminate this Agreement by written notice to the Provider for any of the following reasons:

(1) The Provider, during the Capital Equipment's useful life, discontinues use of such Capital Equipment for the purpose of providing transportation services to elderly persons, persons with disabilities, and the general public.

(2) The Provider takes any action pertaining to this Agreement without the approval of the Secretary as required by this Agreement.

(3) The commencement or timely completion of the Project by the Provider is, for any reason, rendered improbable, impossible, or illegal.

(4) A material breach of this Agreement by the Provider, the Provider's agent, or a subcontractor.

(5) The Provider becomes insolvent or commits an act of bankruptcy, or makes a general assignment for the benefit of creditors to an agent authorized to liquidate his property or assets, or becomes involuntarily bankrupt, or if a writ or warrant of attachment or levy on a judgment or other similar process is issued by any court against all or a substantial portion of the Capital Equipment of this Agreement, and the same is not removed and discharged within thirty (30) days after entry, levy, or service, then this Agreement shall be deemed breached by the Provider, and terminated.

(c) Termination by Provider. The Provider may cancel the Project and terminate the agreement only upon written request to the Secretary and after receiving written approval by the Secretary.

(d) Action Upon Termination. Upon termination of this Agreement, the Provider agrees to dispose of the Capital Equipment in accordance with policies and procedures in Section 10, Disposal of Capital Equipment. The termination of this Agreement shall not

relieve the Provider of any of their rights and obligations to the Secretary existing at the time of expiration, or terminate those obligations of the Provider, which, by their nature, survive the termination of this Agreement.

12. **Additional Representations and Covenants of the Provider.** The Provider makes the following additional representations, warranties and covenants to the Secretary:

(a) Third Party Agreements. The Provider shall not assign this Agreement, execute any subcontract, amendment, or change order thereto, nor obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Secretary.

(b) Secretary's Employees. The Provider will not, without written permission from the Secretary, engage the services of any person or persons in the employment of the Secretary for any work required by the terms of this Agreement.

(c) Compliance with Laws. The Provider agrees to comply with all federal, state, and local laws, ordinances, and regulations in the implementation of the Project covered in this Agreement, including, but not limited to, Title VI, Title VII, and Title IX of the Civil Rights Act of 1964, 49 U.S.C. § 5332, and Executive Order 11246, as amended.

(d) Responsibility to Employees. The Provider accepts full responsibility for providing workers' compensation coverage and for payment of unemployment insurance and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in the work authorized by this Agreement, and will indemnify and hold harmless the Secretary from the same.

(e) Capabilities. The Provider possesses and will maintain requisite fiscal, managerial, and legal capacity to carry out the Project.

13. **Covenant Against Contingent Fees.** The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for the Provider, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Secretary shall have the right to annul this Agreement without liability, or in his or her discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. (See Special Attachment No. 2, Certification of Provider and Certification of Secretary of Transportation, which is incorporated into this Agreement.)

14. **Equal Employment Opportunity.** In connection with the execution of this Agreement, the Provider shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, sexual orientation, gender identity or expression, disability status, military or veteran status, or national origin. The Provider shall take affirmative action to ensure

applicants are employed, and employees are treated fairly during this employment without regard to these and any other protected factors unrelated to the essential functions of the job. Such actions shall include, but not be limited to the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

15. **Cooperation and Coordination of Transportation Services.** The Provider has demonstrated and will continue to demonstrate acceptable efforts to achieve coordination with other transportation providers and users, including private transit and paratransit operators capable of providing service and social service agencies capable of purchasing service. In connection with the performance of the Project, the Provider will cooperate with the Secretary in meeting the Secretary's goals and commitments with regard the provision of service that will not hamper interagency cooperation and coordination of transportation services provided in their respective geographic area.

16. **Disputes.** The Secretary shall resolve any disputes which may arise out of, or relating to, this Agreement when the Secretary and the Provider have been unable to resolve such disputes through negotiation. The Provider agrees to abide by the Secretary's resolution of any dispute.

17. **Prohibition Against Use of State Funds for Lobbying.** The Provider or any subcontractor shall not use state assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before the State Legislature.

18. **Status of the Contractor and the Secretary for the State of Kansas Procurement Procedures.** The Secretary shall not be responsible for any obligations that the Provider has assumed with using the State of Kansas' procurement procedures. Furthermore, the Provider acknowledges and agrees that its request to the Secretary to use the State of Kansas' procurement procedures shall not bind the Secretary to render or provide assistance in any manner associated with this Agreement.

19. **Prohibited Interest.** No member, or officer, of the Provider, during his/her tenure or two (2) years thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE III

SPECIAL PROVISIONS FOR CAPITAL EQUIPMENT

Note: If this Agreement pertains to Operating Costs only, provisions under Article III may not apply.

1. **Title of Capital Equipment.** The Provider shall hold title to all Capital Equipment purchased pursuant to this Agreement and secured pursuant to Section 11, titled Creation of Security Interest, of this Agreement.

2. **Use of Capital Equipment.** The Provider agrees the Capital Equipment will be used for the provision of transporting elderly persons, persons with disabilities, and the general public to and from activities within the area described in the Provider's Project Application. The Provider shall maintain, in an amount and form satisfactory to the Secretary, such insurance or self-insurance as will be adequate to protect Capital Equipment through the period of required use. The Provider shall keep satisfactory records with regard to use of the Capital Equipment and submit to the Secretary, upon request, such information as is required to ensure compliance with this Section. Capital Equipment may be used for the provision of Public Transportation Services within the metropolitan planning area, as defined by the Metropolitan Planning Organization (MPO) pursuant to 23 C.F.R. Part 450 for the Provider's geographic area. If, at any time, any capital equipment is used in a manner not approved by the Secretary or withdrawn from transportation service whether by planned withdrawal or casualty loss, the Provider shall immediately notify the Secretary. Refer to Section 10, Disposal of Capital Equipment for procedures regarding capital equipment disposition.

3. **Disposal of Capital Equipment.** The Provider agrees the Secretary has reserved the right to dispose of the Capital Equipment as follows:

(a) Misuse. If, at any time, any Capital Equipment is used for purposes other than those described in the Project Application or approved by the Secretary, the Provider shall immediately notify the Secretary. The Secretary then has the option of having the Provider remit to the Secretary a proportional amount of the fair market value, if any, of the Capital Equipment, which shall be determined on the basis of the ration of the financial assistance made by the Secretary to the actual costs of the Capital Equipment, as listed in Appendix A. Fair Market value shall be deemed to be the value of the property as determined by a competent appraisal solicited by the Secretary.

(b) Casualty Loss. In the event of loss due to casualty or fire, the damages paid by the insurance carrier or payable from the self-insured reserve account of the Provider shall be considered fair market value. In no event is salvage value to be considered fair market value.

(c) Withdrawal. At any time the Capital Equipment is withdrawn from transportation service by planned withdrawal, the Provider shall immediately notify the Secretary and shall remit to the Secretary a proportional amount of the fair market value. The proportional amount to be based on the original funding ratio of the Capital Equipment as listed in the Appendix A.

(d) Buy Out. The Provider can submit a written request to the Secretary to obtain release of the vehicle lien only upon the Provider's withdrawal from the program or Capital Equipment replacement. The Provider understands the Secretary has the option to approve or disapprove the request to release the lien. If a request is approved, the Provider agrees to buy out the state interest on the Capital Equipment purchased under this Agreement based on a proportional amount of the fair market value or as reasonably determined by the Secretary. The proportional amount will be based on the original funding ratio of the

Capital Equipment as listed in Appendix A. The Provider understands the Secretary has the option to approve or disapprove the request.

(e) Default. Any material default by the Provider in the Project Application or this Agreement allows the Secretary the option of requiring the Provider remit to the Secretary a proportional amount of the fair market value, as identified in Appendix A.

4. **Creation of Security Interest.** For the purpose of securing the performance of all the terms and conditions of this Agreement by the Provider, the Provider hereby grants to the Secretary, pursuant to K.S.A. § 84-9-101, *et seq.*, of the Kansas Uniform Commercial Code, a security interest in the Capital Equipment listed in Appendix A of this Agreement.

5. **Maintenance and Inspection of Capital Equipment.** The Provider shall maintain, at its expense, all Capital Equipment in accordance with the detailed maintenance and inspection schedules furnished by the manufacturer. The Provider shall submit a certification of compliance with required maintenance procedures to the Secretary on an annual basis.

6. **Maximum Utilization of Capital Equipment.** In connection with the performance of the Project, the Provider will cooperate with the Secretary in meeting its commitments and goals with regard to the maximum utilization of Capital Equipment, insuring said Capital Equipment is used in a fashion that will not hamper interagency cooperation and coordination of transportation services provided in their respective geographic area.

ARTICLE IV

GENERAL PROVISIONS:

1. **Survival of Obligations.** The Provider shall remain obligated to the Secretary under all provisions of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions.

2. **Severability**. If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

3. **Civil Rights Act.** The "Special Attachment No. 3," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions Attachment.** The provisions found in the most current version of the "Contractual Provisions Attachment (Form DA-146a)," which is attached, are hereby incorporated into this Agreement and made a part thereof (See Special Attachment No. 1).

5. **Certification Regarding Sexual Harassment.** The Provider agrees to comply with Executive Order 18-04 (February 5, 2018), by signing the Policy Regarding Sexual Harassment Special Attachment, which is attached to and made a part of this Agreement.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Provider and their successors in office.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not deemed to control or affect the meaning or construction or the provisions herein.

8. **Revisions to Agreement.** Any proposed amendment to this Agreement must be submitted in writing to the Secretary for approval and is not valid and binding unless a written amendment is signed by the Secretary and the Provider.

9. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its requirements or modification.

IN WITNESS WHEREOF: the Parties have caused this Agreement to be signed by their duly authorized officers to be effective on the day and year first above written.

WICHITA TRANSIT

BY:_____
Print Name:_____

TITLE:_____

Attest:_____

SECRETARY OF TRANSPORTATION
KANSAS DEPARTMENT OF TRANSPORTATION

BY:_____
TITLE: Assistant Bureau Chief

Attest:_____

Approved as to form:

Form Approved
From 06.24.21 to 06.30.22
By JAP Legal Dept. KDOT

State of Kansas
Department of Administration DA-146a
(Rev. 07-19)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July, 2021.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority to Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility for Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.***

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

CERTIFICATION OF PROVIDER

I hereby certify that I am the City Mayor and duly authorized representative of Wichita Transit, whose address is 777 East Waterman, Wichita, Kansas 67202-4615 and that neither I nor the above Provider I here represent has:

(a) employed or retained for the payment of a commission, percentage, brokerage, contingent fee, or other consideration, any person (other than a bona fide employee working solely for me or the above Provider) to solicit or secure this agreement.

(b) agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or

(c) paid, or agreed to pay, to any firm, organization of persons (other than a bona fide employee working solely for me or the above Provider) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Secretary of Transportation of the State of Kansas in connection with this agreement and is subject to State and Federal laws, both criminal and civil.

_____ _____

(Date)

CERTIFICATION OF THE SECRETARY OF TRANSPORTATION

I hereby certify that I am the Secretary of Transportation of the State of Kansas and that the above Provider or the Provider's representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the above referenced Provider in connection with this agreement, and is subject to applicable State and Federal laws, both criminal and civil.

_____
(Date)

_____
Secretary of Transportation
for the State of Kansas

BY: Cory E. Davis
Assistant Bureau Chief

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, it's assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment**: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

Policy Regarding Sexual Harassment

WHEREAS, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

WHEREAS, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

WHEREAS, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

WHEREAS, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation.

I hereby acknowledge that I have read the above State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

_____
Contractor Name (Type or Print)

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date

APPENDIX "A"
PROJECT BUDGET

Operations:		**Budget**
	ADA Purchased Transportation: Diesel Fuel Driver's salaries	$1,423,977.00
Capital:		$ .00
	Total Budget:	**$1,423,977.00**

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Derby and Butler County 2021 Interlocal Agreements (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the interlocal agreements for the City of Derby and Butler County for 2021.

Background: Each year, the Federal Transit Administration (FTA) provides grant money for use in providing urban public transportation services. The amount of funding is based upon a complex formula involving miles driven, population, and population density served. The grant for 2021 was awarded on June 29, 2021. The City has pre-award authority, therefore, funds can be reimbursed back to the start of the Federal fiscal year, January 1, 2021.

Analysis: The service area for which the City is allowed to seek funds includes parts of Sedgwick County and other incorporated entities within the urbanized area (UZA). The City can request funds for public transportation services to enhance the programs of the urbanized area and pass through a portion of the total annual apportionment. For Fiscal Year 2021, the pass-through funds will be $40,000 of federal funds for project administration, preventive maintenance, and operating expenses for the City of Derby; and the pass-through funds will be $10,000 of federal funds for operating expenses for Butler County for use in the City of Andover.

Financial Considerations: The City will pass through $40,000 of Federal Transit Administration funds to the City of Derby and $10,000 of Federal Transit Administration funds to Butler County. The City of Derby will pay a matching portion of $38,350 and Butler County will pay a matching portion of $10,000.

Legal Considerations: The City's Law Department has reviewed and approved the agreement as to form. The City of Derby and Butler County agree to adhere to all federal program requirements attached to the grant. The City's Transit Department will give guidance for Federal reporting required under the grant, but will have no part in operating these transportation programs within the City of Derby or Butler County.

Recommendations/Actions: It is recommended that the City Council approve the interlocal agreements and authorize the necessary signatures.

Attachments: Interlocal agreement with the City of Derby and interlocal agreement with Butler County.

INTERLOCAL AGREEMENT
For Section 5307 Funding

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and the City of Derby, Kansas ("DERBY"). Unique entity identifier for the City of Derby is 021367180.

WICHITA and DERBY both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide on-going support to transit services provided by WICHITA and DERBY. It is therefore, mutually agreed as follows**:**

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective January 1st, 2021 terminating after receipt of final payment or December 31st, 2021, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and DERBY shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and DERBY agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist DERBY in set-up guidance for proper reimbursement and payout documents, and data submission. WICHITA will be responsible for scheduling an annual meeting with DERBY for review and future planning.

3. **Allocation of FY2021 Section 5307 Funds.** For FY2021, DERBY shall be designated by WICHITA to be a sub-grantee (pass-through) recipient to receive Section 5307 (CFDA 20.507, Federal Transit Formula Grants) funding from the Federal Transit Administration (FTA) for project administration, preventive maintenance and operating. The FTA Federal award identification number is KS-2021-007-00 and was awarded on June 29, 2021. Section 5307 funding requires all sub-grantee (pass-through) recipients to fund a percentage of the total cost as a local match. Total amount to DERBY is **$78,350**. The allocation anticipated from the FTA Section 5307 funds in FY2021 is **$40,000**, with a local match of **$38,350**. The total allocation for operating is $75,600 [federal portion $37,800, local match $37,800 (50%/50%)]; the total allocation for preventive maintenance is $2,750 [federal portion $2,200, local match $550 (80%/20%)].

4. **Contact Information.** The Federal awarding agency is FTA. Shannon Graves is the FTA contact. He can be reached at 816-329-3926 or Shannon.graves@dot.gov. City of Wichita (Wichita Transit) is the designated recipient of fund to be passed through to DERBY. Tonja Howard is the WICHITA contact and can be reached at 316-352-4807 or thoward@wichita.gov.

5. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by DERBY shall be matched at an appropriate percentage by local funds secured by DERBY and shall be available for use by DERBY, as its governing body deems appropriate within the FTA requirements, as set out in Exhibits C and D attached.

6. **Carryover of Funds.** Funds allocated to DERBY pursuant to Sections 4 and 5 may be carried over for a maximum of 2 years from start of federal fiscal year of grant, unless terminated earlier.

7. **Future Allocation of 5307 Funds.** Based on the amount of carryover funds available and the availability of SECTION 5307 funds, DERBY may be subject to less apportionment than the $40,000 FTA portion available for allocation in a Fiscal Year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and DERBY hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and DERBY may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** DERBY shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, DERBY shall retain such financial and non-financial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement for auditors or WICHITA. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** DERBY, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** DERBY shall, at anytime, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), all of its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. DERBY is required to provide WICHITA with access to their single audit report.

13. **Per §200.331 Requirements for pass-through entities,** All pass-through entities must:
    (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
    (1) Federal Award Identification.
    (i) Subrecipient name (which must match the name associated with its unique entity identifier);
    (ii) Subrecipient's unique entity identifier;
    (iii) Federal Award Identification Number (FAIN);
    (iv) Federal Award Date (see §200.39 Federal award date);
    (v) Subaward Period of Performance Start and End Date;
    (vi) Amount of Federal Funds Obligated by this action;
    (vii) Total Amount of Federal Funds Obligated to the subrecipient;
    (viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and
(2) Performing on-site reviews of the subrecipient's program operations;
(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

14. **Discrimination.**

A. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of DERBY receiving funds pursuant to this Agreement.

B. DERBY further agrees to implement and comply with the "Revised Non-discrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

A. **Compensation and Method of Payment.** Compensation and method of payment to DERBY relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

B. **Total Payments.** Total payments to DERBY will be in the contracted amount of $40,000.00 FTA portion for activities starting January 1, 2021, unless carryover money remains, then carryover money will be drawn down first. Payments will be made contingent upon the availability of FTA funds. KS-2021-007-00 has Pre-Award Authority allowing payments to be made as of the beginning term of this agreement.

C. **Restriction on Disbursements.** No grant funds shall be disbursed to DERBY or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to**:**

A. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

B. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

C. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience;

D. Upon receipt of notice of termination, DERBY shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	Fiscal Year 2021 Certifications and Assurances for FTA Assistance Programs
Exhibit D	FTA 2021 Master Agreement
Exhibit E	Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY OF DERBY, KANSAS
By order of the City Council

_____
Randy White, Mayor (Date)

APPROVED AS TO FORM:

_____
Jacque Butler, City Attorney (Date)

ATTEST:

_____
Hillary Lawrence, City Clerk (Date)

CITY OF WICHITA, KANSAS
By order of the City Council

_____
Brandon Whipple, Mayor (Date)

APPROVED AS TO FORM:

_____
Jennifer Magana, Director of Law (Date)

ATTEST:

_____
Karen Sublett, City Clerk (Date)

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

During the term of this Agreement, the contractor or subcontractor, vendor, or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination—Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this Agreement, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may promulgated thereunder.

B. Requirements of the State of Kansas**:**

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin, or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer" or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed o have breached this Agreement and it may be canceled, terminated, or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated, or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraph 1 through 4, inclusive, of this Subsection B in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements**:**

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The vendor, supplier, contractor, or subcontractor shall submit and Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor, or subcontractor will, in all solicitations or advertisements for employees placed by or on the behalf of the vendor, supplier, contractor, or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin, or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor, or subcontractor shall include the phrase, "Equal Opportunity Employer" or similar phrase;

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement, and it may be canceled, terminated, or suspended in whole or in part by the contracting agency.

D. Exempted from these requirements are**:**

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or Agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors, or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the federal government or contract involving federal funds; provided that such contractor, subcontractor, vendor, or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the federal agency involved.

Exhibit B
Scope of Services and Method of Payment

The City of Derby will provide preventive maintenance, project administration and operating activities in support of general public transportation services in Derby, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2021 is $40,000. Total amount to DERBY is **$78,350**. The allocation anticipated from the FTA Section 5307 funds in FY2021 is **$40,000**, with a local match of **$38,350**. The total allocation for operating is $75,600 [federal portion $37,800, local match $37,800 (50%/50%)]; the total allocation for preventive maintenance is $2,750 [federal portion $2,200, local match $550 (80%/20%)];

DERBY will submit an invoice for payment no later than 30 days after the end of each quarter. WICHITA will reimburse DERBY for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and DERBY must submit a revised invoice.

Exhibit C
Fiscal Year 2021 Certifications and Assurances for FTA Assistance Programs

The 2021 Certifications and Assurances will be on file for review at Wichita Transit, 777 E. Waterman.

Exhibit D
FTA 2021 Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53 and Title 23, United States Code (Highways), as amended by,
the Fixing America's Surface Transportation (FAST) Act,
the Moving Ahead for Progress in the 21st Century Act (MAP-21),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the SAFETEA-LU Technical Corrections Act of 2008,
or other federal laws that FTA administers.

FTA MA (28)
February 9, 2021

http://www.transit.dot.gov

Exhibit E
Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

I certify, by agreement of this contract, that neither _____,
(name of supplier, independent contractor, or offering party)

nor any of its principals or subcontractors with a price equaling or exceeding $25,000 to be awarded, that are a part of this offer is presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in Federal assistance programs or activities under Executive Order 12549 (Debarment and Suspension), and neither _____, nor any of its principals or
(name of supplier, independent contractor, or offering party)

subcontractors, is listed on the General Services Administration's list of Parties Excluded from Federal Programs (available through the Internet at (http://epls.arnet.gov/servlet/EPLSSearchMain/1) and on the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://exclusions.oig.hhs.gov/search.html), and neither _____, nor any of its principals or subcontractors has, within a
(name of supplier, independent contractor, or offering party)

three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses; and have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the party is unable to certify to any of the statements in this certification, such party shall attach an explanation to this offer.

Where a party fails to submit and complete this certification, such party's offer shall be determined to be an incomplete submission.

Business/Supplier/Independent Contractor/Individual

Name: _____
Federal Tax ID No.: _____
DUNS No.: _____
Address: _____

By (individual or authorized representative)

Name (signed): _____
Name (printed): _____
Title: _____
Date: _____

INTERLOCAL AGREEMENT
For Section 5307 Funding

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and the County of Butler, Kansas ("BUTLER"). Unique entity identifier for the County of Butler is 097707004.

WICHITA and BUTLER both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide on-going support to transit services provided by WICHITA and BUTLER. It is therefore, mutually agreed as follows**:**

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective January 1st, 2021 terminating after receipt of final payment or December 31st, 2022, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and BUTLER shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and BUTLER agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist BUTLER in set-up guidance for proper reimbursement and payout documents, and data submission. WICHITA will be responsible for scheduling an annual meeting with BUTLER for review and future planning.

3. **Allocation of FY2021 Section 5307 Funds.** For FY2021, BUTLER shall be designated by WICHITA to be a sub-grantee (pass-through) recipient to receive Section 5307 (CFDA 20.507, Federal Transit Formula Grants) funding from the Federal Transit Administration (FTA) for operating. The FTA Federal award identification number is KS-2021-007-00 and was awarded on June 29, 2021. Section 5307 funding requires all sub-grantee (pass-through) recipients to fund a percentage of the total cost as a local match. Total amount to BUTLER is **$20,000**. The allocation anticipated from the FTA Section 5307 funds from FFY2021 funds is **$10,000**, with a local match of **$10,000**. The total allocation for operating is $20,000 [federal portion $10,000, local match $10,000 (50%/50%)]. BUTLER is not apportioned project administration funds.

4. **Contact Information.** The Federal awarding agency is FTA. Shannon Graves is the FTA contact. He can be reached at 816-329-3926 or Shannon.graves@dot.gov. City of Wichita (Wichita Transit) is the designated recipient of fund to be passed through to BUTLER. Tonja Howard is the WICHITA contact and can be reached at 316-352-4807 or thoward@wichita.gov.

5. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by BUTLER shall be matched at an appropriate percentage by local funds secured by BUTLER and shall be available for use by BUTLER, as its governing body deems appropriate within the FTA requirements, as set out in Exhibits C and D attached.

6. **Carryover of Funds.** Funds allocated to BUTLER pursuant to Sections 3 and 4 may be carried over for a maximum of 2 years from start of federal fiscal year of grant, unless terminated earlier.

7. **Future Allocation of 5307 Funds.** Based on the amount of carryover funds available and the availability of SECTION 5307 funds, BUTLER may be subject to less apportionment than the $10,000 FTA portion available for allocation in a Fiscal Year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and BUTLER hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and BUTLER may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** BUTLER shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, BUTLER shall retain such financial and non-financial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement for auditors or WICHITA. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** BUTLER, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** BUTLER shall, at any time, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), all of its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. BUTLER is required to provide WICHITA with access to their single audit report.

13. **Per §200.331 Requirements for pass-through entities,** All pass-through entities must:
    (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
    (1) Federal Award Identification.
    (i) Subrecipient name (which must match the name associated with its unique entity identifier);
    (ii) Subrecipient's unique entity identifier;
    (iii) Federal Award Identification Number (FAIN);
    (iv) Federal Award Date (see §200.39 Federal award date);
    (v) Subaward Period of Performance Start and End Date;
    (vi) Amount of Federal Funds Obligated by this action;
    (vii) Total Amount of Federal Funds Obligated to the subrecipient;
    (viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and
(2) Performing on-site reviews of the subrecipient's program operations;
(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

14. **Discrimination.**

A. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of BUTLER receiving funds pursuant to this Agreement.

B. BUTLER further agrees to implement and comply with the "Revised Non-discrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

A. **Compensation and Method of Payment.** Compensation and method of payment to BUTLER relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

B. **Total Payments.** Total payments to BUTLER will be in the contracted amount of $10,000.00 FTA portion for activities starting January 1, 2021, unless carryover money remains, then carryover money will be drawn down first. Payments will be made contingent upon the availability of FTA funds. KS-2021-007-00 has Pre-Award Authority allowing payments to be made as of the beginning term of this agreement.

C. **Restriction on Disbursements.** No grant funds shall be disbursed to BUTLER or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to**:**

A. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

B. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

C. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience;

D. Upon receipt of notice of termination, BUTLER shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	Fiscal Year 2021 Certifications and Assurances for FTA Assistance Programs
Exhibit D	FTA 2021 Master Agreement
Exhibit E	Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

COUNTY OF BUTLER, KANSAS
By order of the County Commission

_____
Marc, Murphy, Commission Chair

APPROVED AS TO FORM:

_____
Terry Huelskamp, Attorney for Butler County
Butler County Counselor

ATTEST:

_____
Tatum Stafford, Butler County Clerk

CITY OF WICHITA, KANSAS
By order of the City Council

_____
Brandon Whipple, Mayor

APPROVED AS TO FORM:

_____
Jennifer Magana, Director of Law

ATTEST:

_____
Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

During the term of this Agreement, the contractor or subcontractor, vendor, or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination—Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this Agreement, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may promulgated thereunder.

B. Requirements of the State of Kansas**:**

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin, or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer" or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed o have breached this Agreement and it may be canceled, terminated, or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated, or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraph 1 through 4, inclusive, of this Subsection B in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements**:**

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The vendor, supplier, contractor, or subcontractor shall submit and Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor, or subcontractor will, in all solicitations or advertisements for employees placed by or on the behalf of the vendor, supplier, contractor, or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin, or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor, or subcontractor shall include the phrase, "Equal Opportunity Employer" or similar phrase;

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement, and it may be canceled, terminated, or suspended in whole or in part by the contracting agency.

D. Exempted from these requirements are**:**

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or Agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors, or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the federal government or contract involving federal funds; provided that such contractor, subcontractor, vendor, or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the federal agency involved.

Exhibit B
Scope of Services and Method of Payment

The County of BUTLER will provide operating activities in support of general public transportation services in BUTLER County, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2021 is $10,000. Total amount to BUTLER is **$20,000**. The allocation anticipated from the FTA Section 5307 funds in FY2021 is **$10,000**, with a local match of **$10,000**.

BUTLER will submit an invoice for payment no later than 30 days after the end of each month. WICHITA will reimburse BUTLER for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and BUTLER must submit a revised invoice.

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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
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or other federal laws that FTA administers.

FTA MA (28)
February 9, 2021

https://www.transit.dot.gov

Exhibit E
Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

I certify, by agreement of this contract, that neither _____,
(name of supplier, independent contractor, or offering party)

nor any of its principals or subcontractors with a price equaling or exceeding $25,000 to be awarded, that are a part of this offer is presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in Federal assistance programs or activities under Executive Order 12549 (Debarment and Suspension), and neither _____, nor any of its principals or
(name of supplier, independent contractor, or offering party)

subcontractors, is listed on the General Services Administration's list of Parties Excluded from Federal Programs (available through the Internet at (http://epls.arnet.gov/servlet/EPLSSearchMain/1) and on the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://exclusions.oig.hhs.gov/search.html), and neither _____, nor any of its principals or subcontractors has, within a
(name of supplier, independent contractor, or offering party)

three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses; and have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the party is unable to certify to any of the statements in this certification, such party shall attach an explanation to this offer.

Where a party fails to submit and complete this certification, such party's offer shall be determined to be an incomplete submission.

Business/Supplier/Independent Contractor/Individual

Name: _____
Federal Tax ID No.: _____
DUNS No.: _____
Address: _____

By (individual or authorized representative)

Name (signed): _____
Name (printed): _____
Title: _____
Date: _____

WICHITA PUBLIC LIBRARY

Monthly Activity Report
June 2021

Service Highlights

The Summer Reading Program began on June 1. There was strong interest from individuals and families who saw different marketing for the program around town. By the end of June, there were 507 registered for Baby Bookworms, 2,791 for Kids Read, and 644 for Teens Read, for a total of 3,942 participants. This is a 41% increase from this time in 2020, although still distant from the 10,033 in 2019. Programs have been held virtually or outdoors.

The Library's #ReadICT podcast, "Read. Return. Repeat.," released its fourth episode discussing category eight, "a book about local history." Librarian Sara McNeil talked with Jami Frazier Tracy, Curator of Collections for the Wichita-Sedgwick County Historical Museum, about Wichita history, the museum and local history books.

The Library began circulating its second "Library of Things" item, radon detectors, on June 7. These are provided through a partnership with Pure State Radon LLC who provides radon detectors to libraries for customer borrowing. Customers are now able to borrow a radon detector kit for 14 days to test radon levels in homes or businesses. According to the EPA, Sedgwick County is considered to be a medium risk zone for radon. Learn more.

Wichita's Diverse History of Baseball kicked off on June 12th with the first planned program, *The Other Boys of Summer* documentary followed by a discussion with filmmaker Lauren Meyer facilitated by WSU Prof. Wilma Moore-Black. The film highlighted stories of the athletes who played Negro League Baseball prior to integrated baseball leagues. Attendees learned why Meyer chose this particular subject matter and things that surprised her along the way, plus fun stories from her interviews. One attendee wrote, *"I have recently been learning about the Negro Leagues and was especially glad to hear the stories as told by their players themselves. Wichita certainly has had opportunities to participate in the integration of baseball. Excellent programming. I am a great fan of Ken Burns but this was equal to his programs."*

Raymond Olais presented on Mexican American baseball around Wichita, specifically in Newton, where they are about to host the 73rd annual Men's Fast Pitch Tournament. Ray is a retired art teacher who started researching local baseball lore in order to paint a mural celebrating the tournament. Mexican Americans had to build their own stadium to house the tournament because the city eventually made it difficult for them to rent the town park. Because of their ethnicities, Mexican Americans were not allowed to play on the white teams or the black teams, so they started their own. Mr. Olais presentation provided a review of teams, players, coaches and sponsors that helped these leagues endure over the last century. The grant-funded project will continue into August.

Other News

The Digital Services team worked on two funding opportunities through the American Rescue Plan Act (ARPA):

- State Library of Kansas to support digital inclusion efforts and to support library services that meet the needs of the community. The Library will ask for funding to update and add functionality to its Laptops Anytime dispenser at the Advanced Learning Library.
- Emergency Connectivity Fund (ECF) to provide funding for internet connectivity and devices to customers in areas beside library locations. This funding would create a new service to provide long-term internet and device borrowing to customers by providing internet and hotspot bundles for customers.

Human Resources released 12 positions and interviews have begun to fill these vacancies. In addition, recruitment for the Director of Libraries position has begun.

Activity pieces for the Children's STEAM Garden have arrived, and JR Customs started the fabrication of the airplanes that will provide shade for the area.

Librarian John Cleary worked with six SCORE/Small Business Association clients this month, collecting information for business plan start-up, market research and demographic information. Some of the areas researched were freight hauling services, commercial real estate services, traveling nurse services, auto sales services and non-profits.

The Library is a community partner of the Wichita Journalism Collaborative, a cohort of news outlets and community partners working together to bring timely and accurate news and information to Kansans. On Wednesday, the Collaborative hosted an online panel discussion about mental health as we begin to emerge from the COVID-19 pandemic. You can watch it here.

The Library and community partners are thrilled to announce the next selection for the NEA Big Read: Wichita, *The House on Mango Street* by Sandra Cisneros. This book tells the story of Esperanza Cordero, a young Latina girl growing up in Chicago, inventing for herself who and what she will become. The story of Esperanza's childhood is told through a series of heartbreaking and joyous vignettes and discusses childhood and self-discovery. The next installation of the NEA Big Read: Wichita will be February 12-March 27, 2022.

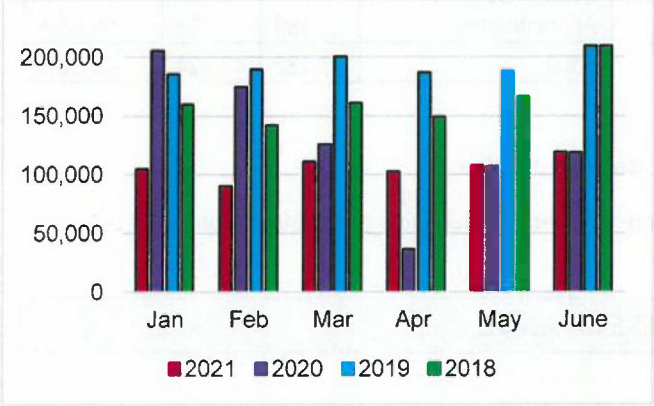
The Teen Library Ambassador program is working well towards its intended purpose, producing many creative posts and art pieces to use on library social media or for future purposes in the Teen Pavilion, as well as building teen skills in workplace-relevant tasks like digital media and using online communication software. In June 2021, the 16 Teen Library Ambassadors collectively contributed over 85 volunteer hours to the library.

Alford and Walters Branches are both jobsites for a summer teen Way to Work employee. The teens are doing a great job learning new job skills at the library and helping staff get work done.

Service Dashboard

All Library buildings were closed to the public from March 17-May 25, 2020. From November 25, 2020-March 7, 2021, all locations were limited to curbside and drive-up services. Although services have expanded, they are still reduced from pre-COVID levels. The Evergreen Branch closed on November 30, 2020 for renovations and a temporary outlet opened on December 21 at the Evergreen Recreation Center. The Linwood Park Branch closed on January 15, 2021 and the Walters Branch opened on February 1.

LIBRARY VISITS (door count, catalog sessions, and website visits)

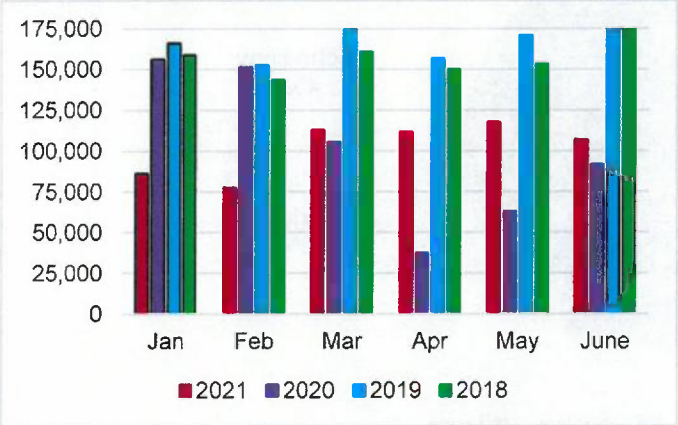


JUNE

	2021	2020	% change
Door Counts	39,900	30,897	29.14%
Catalog Log-ins	34,854	40,980	-14.95%
Website Visits	44,289	46,680	-5.12%
Total	119,043	118,557	0.41%

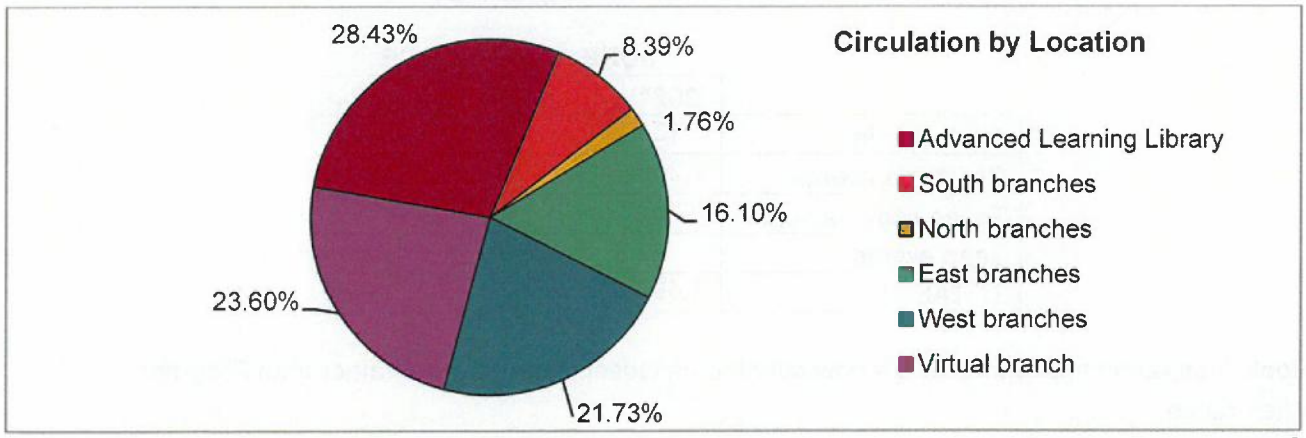
Due to equipment failure, the door count for the Angelou Northeast Branch is artificially low in April and May 2021.

CHECKOUTS

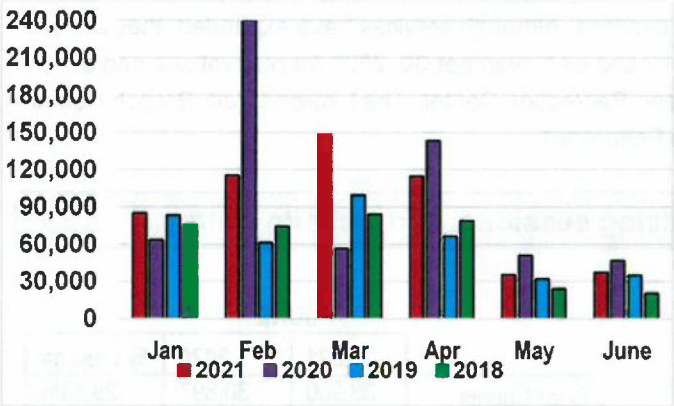


JUNE

	2021	2020	% change
Physical Circ	106,744	59,256	80.14%
Virtual Circ	32,971	32,227	2.31%
WPL	*25,859*	*23,120*	*11.85%*
State	*7,112*	*9,107*	*-21.91%*
Total	139,715	91,483	52.72%



QUESTIONS ANSWERED (by staff in person/phone and through online services)

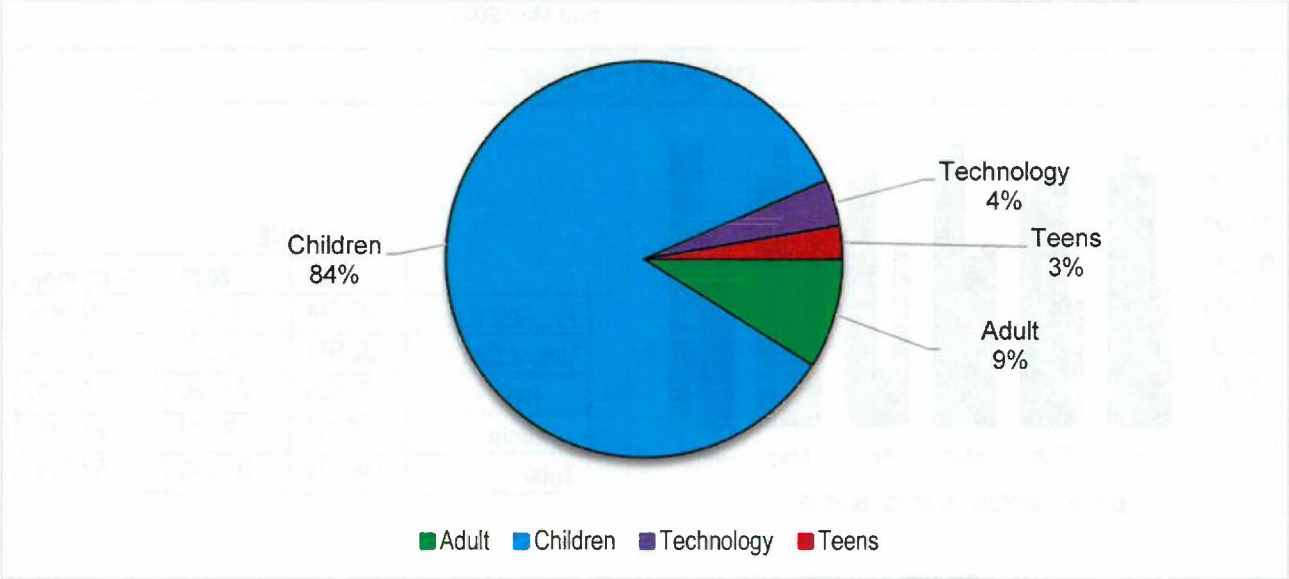


	JUNE		
	2021	2020	% change
Reference Questions	6,493	1,629	298.59%
Database Searches	28,122	43,883	-35.92%
Technology Assistance	2,327	999	132.93%
Book-A-Librarian Appointments	190	112	69.64%
Total	37,132	46,624	-20.36%

Database usage for May 2021 was initially under-reported. It has been updated.

Some locations did not report the number of reference questions answered or technology assistance provided between June-December 2020.

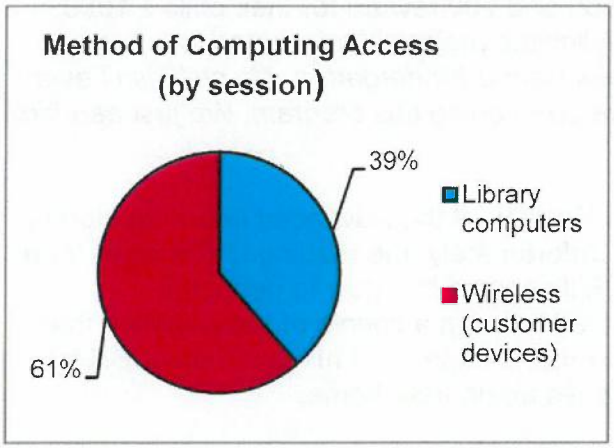
PROGRAM ATTENDANCE



	JUNE ATTENDANCE		
	2021	2020	% change
Adult events	134	0	N/A
Children's events	1,266	0	N/A
Technology training	57	0	N/A
Teen events	41	0	N/A
TOTAL	1,498	0	N/A

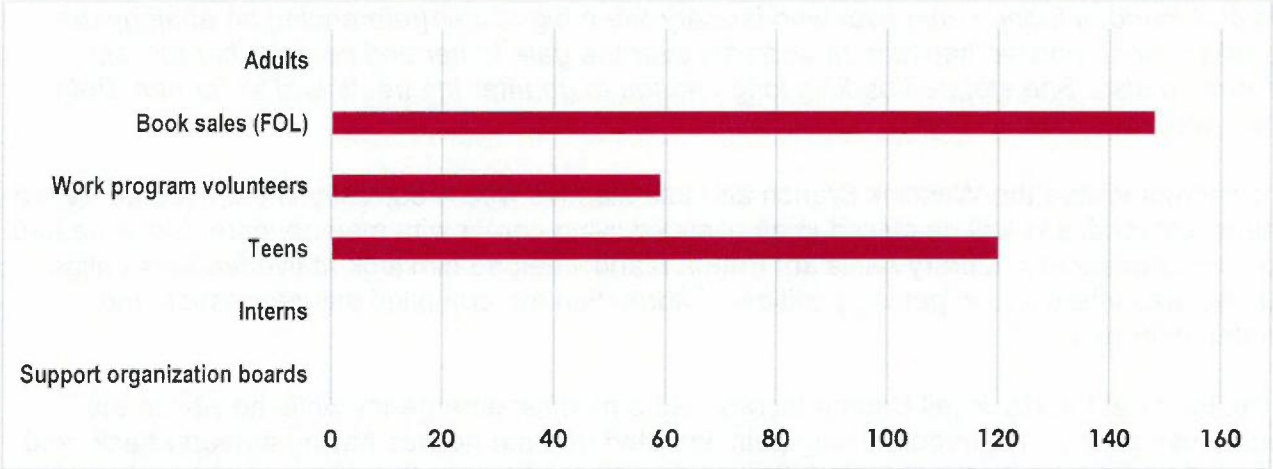
Book-A-Librarian appointments are now counted as Questions Answered rather than Program Attendance.

PUBLIC COMPUTING



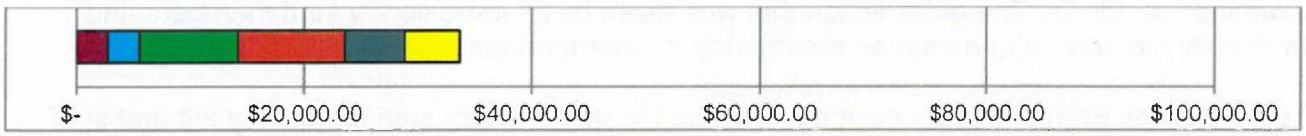
	JUNE		
	2021	2020	% change
Workstation Sessions	3,749	4,361	-14.03%
Wi-Fi Sessions	5,849	3,328	75.75%
Number of Users	635	466	36.27%
Hours of Access	5,956	5,542	7.47%

VOLUNTEERS (hours of service)



Number of volunteers YTD = 47 Hours of service YTD = 976

MATERIALS DONATIONS (value if purchased)



Year to date total = $33,695.79 Items added to Library collections YTD = 1,946

Service Snapshot: Recent Raving Fans Stories

A customer at the Rockwell Branch redeemed the 500 and 700 reward for their child's 1000 Books Before Kindergarten program and gave the following praise: *"Just wanted to let you know that you have a great program with 1000 Books Before Kindergarten. My child isn't even in kindergarten yet, and he can read* ***because*** *we've been doing this program. We just had him tested and he's at first grade level!"*

Bill Rohde had a customer come into the Children's Pavilion at the Advanced Learning Library looking for educational DVDs for his fourth grader. Unfortunately, the reading DVDs were for a younger audience and not what he was hoping for. Bill showed him how to get to the homework help page on the library website and walked through a couple of the websites that classroom teachers like to use. The patron was thrilled and expressed his gratitude to Bill for taking the time to walk him through how to find the sites again from home.

A participant in the "Pandemic Pets" program went out of her way to send Noelle an email about the program: *"I wanted to say that I enjoyed the Pandemic Pets program. I was able to use two techniques later that were successful! One, when going home and entering the front door, I backed-up when my puppy wanted to jump on me and gave her the 'sit' command. She did it! Second, a friend came over who is scary like a big spider [referencing an analogy the speaker used], and we had him throw treats over the gate to her and he gave her the 'sit' command also. She stopped barking long enough to go after the treats and sit for him. Both times were successful! Yay!"*

A customer visited the Westlink Branch and told staff his wife is currently in the hospital. When she is released, she will be placed in an assisted living center with memory care. Since he had no computer access, Library Assistant Emma Marlow helped him look at five facilities online that we was interested in getting additional information for, compiled the information and printed it for him.

A customer at the Rockwell Branch Library had a medical emergency while he was in the facility using Wi-Fi. He began feeling pain, shouted out that he was having a heart attack, and then fell from his chair. Library Clerk Sydney Hawkins rushed to the man to check on him, and Library Clerk Jack Welch immediately called 911. Youth Services Librarian Katrina York stayed with the customer until the EMTs arrived, asking him questions to both keep him focused and coherent and to try to build a better understanding of the incident. The EMTs examined the customer, discussing with him his current medical conditions and trying to determine what steps needed to be taken. The customer ended up driving himself to the hospital after being examined by EMTs. The quick action that was taken by all three library staff members and their ability to stay calm during an emergency is commendable.

Two Rockwell Branch Library customers wanted to thank library staff for all they felt that staff have done this last year. One commented that she felt she should be paying the library more money for all the times staff came out and delivered by curbside and drive-thru in the cold and rain. She was glad she was still able to get books. The other commented, *"I consider you all heroes, right up there with all the others."*

WICHITA PUBLIC LIBRARY

Minutes of a Virtual Meeting of the Library Board of Directors
June 15, 2021

The regular meeting of the Library Board of Directors was held on Tuesday, June 15, 2021 at the Advanced Learning Library with the following present: Ms. Erinn Bock, Ms. Donna Douglas, Ms. Daisha Eaton, Ms. Lauren Hirsh, Mr. Randall Johnston, Ms. Shannon Littlejohn, Mr. Kevin McWhorter, Ms. TaDonne Neal, Ms. Shelby Petersen, Mr. Chuck Schmidt, and Mr. Jonathan Winkler.

Call to Order

President Kevin McWhorter called the meeting to order at 12:03 p.m., a quorum being present.

Staff Presentation

Sara Dixon, Programming Manager, presented information about the Library's upcoming program series "Wichita's Diverse History of Baseball." In celebration of baseball's return to Wichita, the Library is partnering with Humanities Kansas, the Kansas African American Museum, Urban Professionals and other organizations to present "Wichita's Diverse History of Baseball," a Candid Conversations series that explores Wichita's storied history of minority baseball, from the Negro Leagues to the Mexican American teams. On Sunday, June 21, 1925, the Ku Klux Klan played an exhibition baseball game against the all-black Monrovians at the ballpark on Ackerman Island in Wichita. This game is the starting point of discussions and series of programs being presented by the Library and its partners throughout the summer. Media coverage promoting this programming series has been done via announcement at the May 6 Mayor's Briefing, an article in The Community Voice, a news spot on KWCH, and targeted digital ads.

Approval of the Agenda

Jonathan Winkler moved (Petersen) to approve the agenda as published. **Motion carried unanimously.**

Public Comment

None

Approval of Minutes

Minutes of the regular meeting held on May 18, 2021 were presented. Lauren Hirsh moved (Winkler) to approve the minutes as included in board packets. **Motion carried unanimously.**

DRAFT

Unfinished Business

Jonathan Winkler provided an update on the Evergreen Center naming process. Library and City staff have proposed extending the community engagement piece regarding the ranking of the top five names to ensure a thorough job of gathering resident feedback, and the timeline is not as tight as it was for the Walters branch naming process. As of June 4, 129 submissions had been received. The naming recommendation campaign will now end on June 30 with the narrowing down of name recommendations to five being conducted at the July board meeting. The day after the July meeting, the five names will be presented to the community with the top rankings being presented at the September board meeting. The final name recommendation will be presented to City Council on October 5.

New Business

On behalf of the Finance Committee, Kevin McWhorter moved (Douglas) to approve the April 2021 finance report and supplemental bills in the following amounts: General Fund bills of $859,530.86; Grant Fund Bills of $20,730.56; and Gift and Memorial Fund bills of $2,351.31 for a total of $882,612.73. **Motion carried unanimously.**

Jonathan Winkler moved to approve the following policy updates:

CIR-001 Customer Registration
CIR-006 Interlibrary Loan
CIR-007.1 Circulation Parameters
CIR-008 Circulation of Reference Materials
CIR-011.1 Lost and Damaged Items Fee Schedule
COL-002 Materials Selection Policy
REF-009 Meeting Room Facilities
REF-009.2 Advanced Learning Library AV Maker Studio

Shelby Petersen questioned the wording in the first paragraph of CIR-001 Customer Registration in regard to identification required for Library card registration. After discussion, the wording should be as follows: "A Library card will be issued to any registering customer who provides ~~identification~~ proof of identity with name and proof of current address, and who agrees to abide by the circulation policies of the Library." Jonathan Winkler moved (Petersen) to accept the policy updates as amended. The motion **passed** by a vote of 10-1 with Ms. Lauren Hirsh opposed.

Finance Committee Report

None

Operations Committee Report

None

Planning & Facilities Committee Report

None

Public Affairs Committee Report

None

Special Committee Reports

Friends of the Library – Kensley Pottebaum reported that hours have been adjusted at the Used Bookstore in the Advanced Learning Library based on customer preferences. There is a used book sale ongoing currently online with pickup at the Library occurring the weekend of June 19.

Library Foundation – Kristi Oberg reported that $88,905 in funds have been raised directly to benefit the Library exceeding last year's total for the entire year. The Foundation has submitted a cultural arts grant with extensive help from Library staff. Our request is for $50,400. The Foundation has planned gifts of $760,000 with a letter of intent signed on $260,000 and working on details of $500,000 letter of intent. The Foundation will be approaching the Library Foundation Board to receive approval to do another mailing to Library card holders.

Wichita Genealogical Society (WGS) – Julie Crawford reported the June meeting will focus on creating a research guide for all levels. At the May board meeting it was decided to increase the number of special interest groups to three.

Director of Libraries Report

Interim Director Dowell reported that work on the Children's Garden is ongoing; JR Custom Metal is targeting this week to complete two of the seven planes. Spirit has requested that one plane at a time be sent for painting to help expedite the process. Dondlinger Construction will begin installation once three or four planes are complete.

The sidewalk at the Advanced Learning Library has been completed and is being used regularly. The buffalo grass on the north side of the building is not responding to the shade. Parks and Recreation is looking at possibly planting bushes and adding mulch to this area.

The Walters branch property manager discussed with the owner the possibility of installing a mural on the branch. The owner stated he is not interested in doing so at this time. The bike racks for the branch have been received and Public Works will be installing them soon.

City staff have received OSHA guidance for employers regarding COVID practices. Updated policies will be forthcoming.

The Library received permission to fill some vacancies. The Director of Libraries position has been opened and a recruiting firm is currently accepting applications.

Announcements

None

Adjournment

The meeting was adjourned at 1:16 p.m.

The next regularly scheduled meeting will be July 20, 2021.

Respectfully submitted,

Kristi Dowell

DRAFT

Agenda Item No. II-5

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Community Event with Alcohol Consumption - Blessed Sacrament's Oktoberfest (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Adopt the Resolution to allow alcohol consumption during Blessed Sacrament Oktoberfest event on October 2, 2021.

Background: A Community Event Application that would establish a Temporary Entertainment District (TED) and allow alcohol consumption has been submitted for Blessed Sacrament's Oktoberfest event, scheduled for October 2, 2021. In accordance with Section 3.11.065(d) of the Code of the City of Wichita and the Community Events Procedure, a resolution is required authorizing consumption of alcoholic liquor on sidewalks and on public streets, which have been closed to motor vehicle traffic during such licensed community event. The City Council has approved the request for street closures involved in this event; area businesses and residents have been notified of the street closures, which are depicted on the attached map. The TED will include the 100 block of North Quentin from the north curb line of Douglas Avenue, extending north to the south curb line of First Street North. Upon review of the application for this community event and upon consideration of the factors set forth in the Code of the City of Wichita, the City Council shall determine if such approval should be given.

Analysis: Section 3.11.080 of the Code of the City of Wichita sets forth criteria that must be considered for approval of a proposed community event. Those factors applicable to this event include findings that the event will not obstruct the operation of emergency vehicles or equipment; the event does not present a safety, noise, or traffic hazard; the event conforms to regulations regarding the use and/or the allowable number of participants for the proposed location; the proposed event does not violate any laws of the City of Wichita, State of Kansas or the United States; and that closures of public streets have been approved by the City Council. Applying this criteria, staff has reviewed the application of Blessed Sacrament's Oktoberfest for a community event with consumption of alcoholic liquor allowed and finds that such criteria has been met and recommends approval of the event permit.

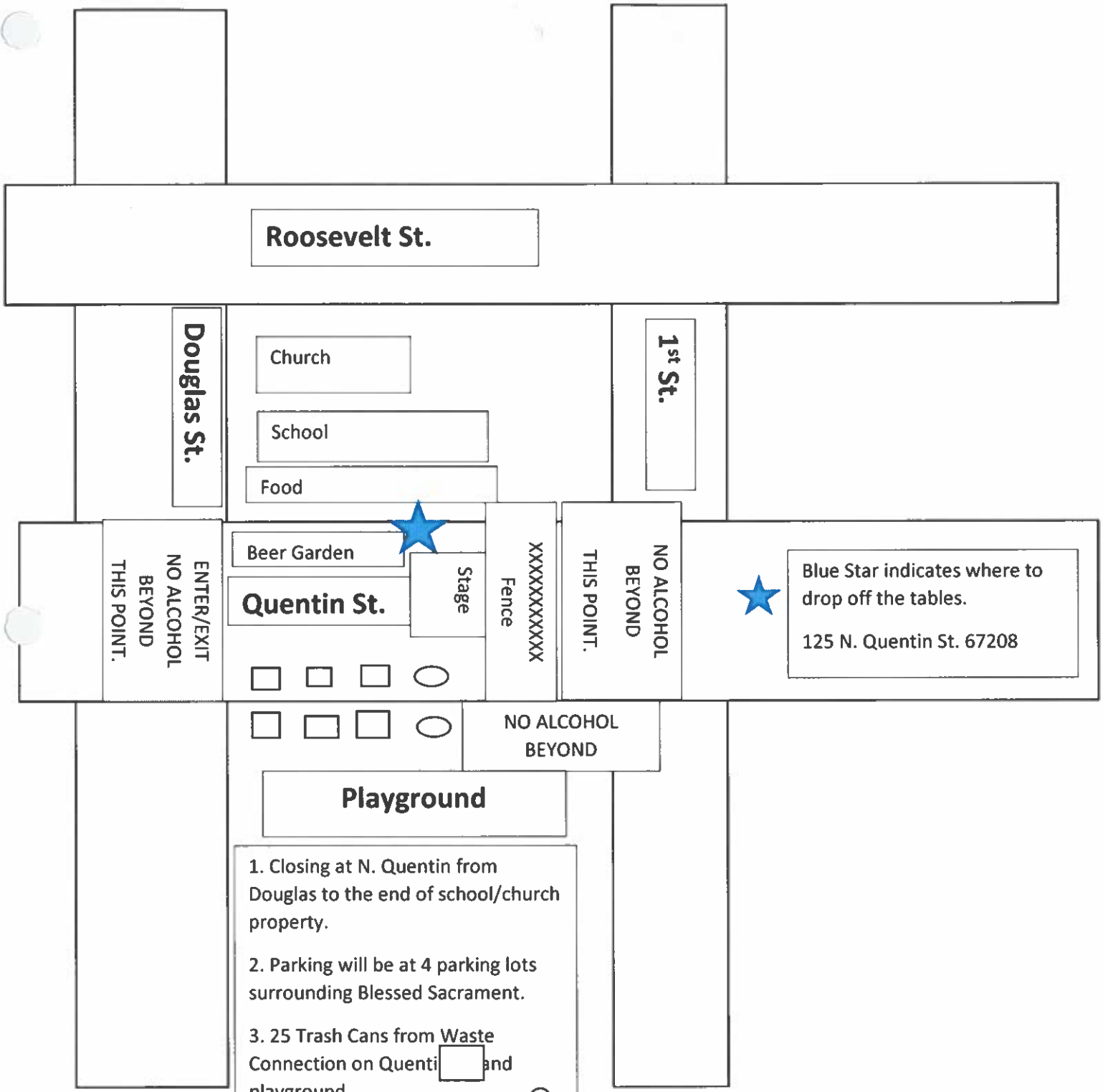
Financial Consideration: There are no financial considerations.

Legal Consideration: The Law Department has prepared the proposed resolution and approved as to form.

Recommendation/Actions: It is recommended that the City Council adopt the resolution to allow alcohol consumption upon sidewalks and public streets within the parameters outlined in the Community Event Application during the Blessed Sacrament's Oktoberfest event on October 2, 2021, and authorize the necessary signatures.

Attachments: Resolution and map of proposed site for consumption of alcoholic liquor for the Blessed Sacrament's Oktoberfest event.

Blessed Sacrament Catholic Church, Oktoberfest,



1. Closing at N. Quentin from Douglas to the end of school/church property.

2. Parking will be at 4 parking lots surrounding Blessed Sacrament.

3. 25 Trash Cans from Waste Connection on Quenti[illegible]and playground.

4. (6) Porta johns

5. (2) Handwashing stations.

6. Fence and tents will section off Beer Garden

7. Alcoholic beverages will be served by old gym steps and no participating establishments.

RESOLUTION NO. 21-275

A RESOLUTION AUTHORIZING THE CONSUMPTION OF ALCOHOLIC LIQUOR ON PUBLIC STREETS DURING THE BLESSED SACRAMENT'S OKTOBERFEST COMMUNITY EVENT

WHEREAS, the City Council has approved as a community event the Blessed Sacrament's Oktoberfest event to occur on October 2, 2021.

WHEREAS, the City Council has approved the 100 block of North Quentin to be closed to vehicular traffic from Douglas Avenue to First Street for such event from 6:00 a.m. to 11:59 p.m.on Saturday, October 2, 2021, and with the consumption of alcoholic liquor allowed thereon from 9:00 a.m. to 11:00 p.m. on October 2, 2021.

WHEREAS, a temporary permit for the consumption of alcoholic liquor at Blessed Sacrament has been applied for and will be issued by the State of Kansas and the City of Wichita upon the presentation of this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to Section 3.11.065(d) of the Code of the City of Wichita, and in consideration of the factors set forth in Section 3.11.080 of the Code of the City of Wichita, grants its approval for the consumption of alcoholic liquor on the city streets, sidewalks and public right of ways which are located within the designated event area of the Blessed Sacrament Parish Festival, to occur from 9:00 a.m. to 11:00 p.m. on October 2, 2021 as set forth above.

ADOPTED by the governing body of the City of Wichita, Kansas, this 20th day of July, 2021.

CITY OF WICHITA, KANSAS

By_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett
City Clerk

Approved as to Form:

_____
Jennifer Magana, City Attorney &
Director of Law

Agenda Item No. II-6

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Lease of 230 North Mosley for Wichita Police Department (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the lease.

Background: Since September 1, 2012, the Wichita Police Department has leased 2,000 square feet at 230 North Mosley in Old Town for the Patrol South officers. The space is well located to provide coverage to the Old Town area as well as access to the core area. The lease expired on August 31, 2017 and the occupancy continued on a month-to-month basis since lease expiration. A new lease has been negotiated that allows Patrol South to continue to occupy the current space.

Analysis: The proposed lease has a three-year term with one three-year option. Rent is $24,000 per year payable in monthly installments. This equates to $2,000 per month, or $12 per square-foot. The landlord will be responsible for water, sewer, property taxes, property insurance and major maintenance. The tenant is responsible for electricity, gas, janitorial and cleaning and liability insurance. The lease rate and responsibilities of the parties are the same as in the prior lease agreement.

Financial Considerations: Funding for this agreement is included in the Police Department operating budget.

Legal Considerations: The Law Department has approved the lease as to form.

Recommendation/Action: It is recommended that the City Council approve the lease, authorize necessary signatures, and approve budget adjustments as required.

Attachments: Premises map and lease agreement.

Lease Agreement

This Lease is made and entered into, effective this __th day of _____ 2021, by and between:

South Beech Development, L.L.C., a Kansas Limited Liability Corporation, hereinafter referred to as LANDLORD

and

The City of Wichita, hereinafter referred to as TENANT.

In consideration of the payments, covenants and agreements contained within this Lease, the parties agree as follows:

ARTICLE 1 PREMISES

1.1 Lease Premises:

LANDLORD hereby leases to TENANT the following described real property located in the City of Wichita, Sedgwick County, Kansas:

Suite D, 230 North Mosley

As outlined in red on Exhibit "A" (Which shall hereinafter by referred to as the "Leased Premises"), subject to the terms and conditions contained herein. Said space contains approximately 2,000 square feet (which shall hereinafter be referred to as the Leased Premises), subject to the terms and conditions contained herein.

1.2 Definitions:

The term "Common Area" shall be defined as the exterior deck on the west, south and east face of the building, the lobby on the first floor, the corridors, common rest rooms in the corridor, and the elevator.

The term "Building" shall include the four exterior walls, roof and all space enclosed by the walls and roof.

The term "Property" shall include the "Building" and approximately ten foot on the east side of the "Building" to the property line.

The term "Parking" shall refer to the Parking District that was established by the City of Wichita that allows occupancy within the buildings located in the "Old Town Marketplace District", (bounded by Washington Street, Douglas Avenue, the railroad overpass located between St. Francis and Mead Streets and Second Street). For the right to use this parking the City of Wichita charges a monthly fee based upon the Old Town Zoning Overlay.

1.3 Easements:

LANDLORD grants TENANT the rights under this Lease to use in common with LANDLORD and other tenants, occupants and visitors to the Building the Common Area. LANDLORD reserves the right to increase, reduce or change the size, height, layout, or location of the Building and its common areas and facilities (but not to the Leased Premises). No easement, license or other right to light, air, or view is created by this Lease. The Leased Premises do not include, and TENANT is given no right to use,

control or occupy, the exterior wall surfaces of the Building and the roof of the Building. All space in or adjacent to the Leased Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, utility lines, sinks, and other Building facilities, and access thereto through the Leased Premises is reserved for the LANDLORD.

Parking rights are on a first come serve basis within the parking lots in the Parking District. Parking rights in the parking area to the south of the Building is reserved for customers, guests or patrons of the Building.

1.4 Lead Paint:

Since this building was built prior to 1978, this building may contain lead-based paint.

ARTICLE 2 – TERM

2.1 Base Term:

The Base Term of this Lease shall commence on August 1, 2021 and will expire on July 31, 2024.

2.2 Option to Renew:

TENANT is hereby granted one (1) option to extend this Lease in Lease Premises for a period of Two (2) years, which shall run continuously from the original ending period of the then current term. Option shall be accepted by the TENANT, unless TENANT notifies LANDLORD in writing at least ninety (90) days prior to the expiration of the then current term of this Lease. Rent for the Option period shall be Two Thousand, Three Hundred Dollars ($2,300.00) per month.

ARTICLE 3 – RENT

3.1 Amount:

TENANT agrees to pay LANDLORD, as Rent during the Base Term for the Leased Premises as follows:

August 1, 2021 to July 31, 2024, $2,000.00 per month paid in advance at the beginning of each and every month during the term of the Lease.

3.2 Payment of Rent:

Rent shall be paid to LANDLORD at 701 East First, Wichita, Kansas 67202, or at such other place as the LANDLORD may designate in writing to the TENANT.

3.3 Late Fees:

All payments received after the tenth day of each month shall be subject to a late fee in the amount of five percent (5%) of the balance due, calculated on rent, taxes, insurance and common area maintenance charges owing, as well as past due late fees and other charges per the Lease.

3.4 Security Deposit:

N/A

ARTICLE 4 – UTILITIES / TRASH

From the time of the signing of this Lease Agreement forward, LANDLORD shall pay for water and sewer, as part of the Rent. TENANT shall pay for all other utilities used on the Leased Premises and shall provide any deposits required for such services. LANDLORD shall pay for trash service for the TENANT.

ARTICLE 5 – TAXES

LANDLORD shall pay all real estate taxes and any special assessments assessed against the Building and Common Area during the term of this Lease. TENANT shall pay all personal property taxes levied or assessed against the equipment or other personal property owned by TENANT in the Leased Premises.

ARTICLE 6 – USE AND PURPOSE of "LEASED PREMISES"

6.1 TENANT'S Use:

TENANT agrees that the Leased Premises shall be used and occupied as an "Office" and for no other purpose without LANDLORD'S prior written consent. TENANT agrees that no activity shall be carried on in the Leased Premises, which shall be in violation of any applicable law.

6.2 Signs:

TENANT shall not place on, in or near any exterior door, any wall or any window of the Leased Premise any sign or advertising matter that is visible from the exterior of the Leased Premises without first obtaining LANDLORD'S written approval and consent, which consent will not be unreasonable denied or delayed. LANDLORD agrees that LANDLORD'S consent will not be required for signage customary in TENANT'S industry as long as such signage is consistent with the signage in usage in the general vicinity of the Leased Premises, and is done in a professional and attractive manner. TENANT agrees to maintain such sign or advertising matter as approved by LANDLORD in good condition and repair. All signs shall comply with applicable ordinances or other governmental restrictions and the determination of such requirements and the prompt compliance therewith shall be the responsibility of the TENANT.

ARTICLE 7 – IMPROVEMENTS

LANDLORD agrees to furnish the Leased Premises to TENANT in an "AS IS" condition. TENANT shall make all other improvements at its expense. TENANT shall obtain approval of improvements from LANDLORD before work is to commence. A licensed Contractor must be used (reasonable approved by LANDLORD) and all permits from the City must be obtained. TENANT shall allow no lien or charge to be placed on the Leased Premises. TENANT shall provide routine maintenance to keep and maintain the Leased Premises in a safe condition and in as good condition as at the commencement of this Lease, normal wear and tear excepted. TENANT shall hire a licensed company within the trade and approved by LANDLORD to provide routine/nominal maintenance for the heating and air conditioning equipment, which includes annual inspections, cleaning and changing the filters for the heating and air conditioning equipment. LANDLORD shall be responsible for repairs not caused by the negligence of the TENANT to the Leased Premises which shall include only the heating and air conditioning equipment, exterior walls, roof, plumbing, electrical wiring, circuits and outlets and other structural components of the Leased Premises. TENANT shall give to LANDLORD prompt written notice of any accident to, or any defects in, the roof, structural components, water pipes, gas pipes, and heating and air conditioning on or in the Leased Premises that may come to its notice, and such defects shall be remedied by LANDLORD, at the expense of LANDLORD, with due diligence. Should LANDLORD, within ten working days after TENANT'S written notice to LANDLORD of repairs that should be made to the Leased Premises, fail to make such repairs, TENANT, after an additional three (3) day written notice to LANDLORD stating TENANT'S intent to have complete the repairs TENANT'S direction, may make the repairs itself, and may deduct

the cost of such repairs from the Rent. TENANT shall have the right to make any alterations or improvements to the Leased Premises with the prior express written consent of LANDLORD; provided however, that the expiration of the Lease, improvements permanently affixed to the Leased Premises, whether or not installed or made by TENANT (with or without the permission of LANDLORD as required herein) shall become a part of the Leased Premises subject to other terms of this Lease. TENANT shall have the right and privilege of erecting and installing additional offices and trade fixtures necessary to carry on its business; provided however, that such installations will not injure the Leased Premises and shall be made in a first class, workmanlike manner and comply with all laws, ordinances, rules, and regulations of governmental authority. Upon termination of this Lease, or any renewal hereof, TENANT shall have the privilege of removing such installations, provided that no damage is caused thereby to the Leased Premises and the Building.

ARTICLE 8 – INSURANCE

8.1 Property Insurance:

During the term of this Lease, LANDLORD shall maintain and pay for all risks physical loss or damage insurance subject to standard exclusions equal to: (1) replacement insurable value (R.I.V.) of the Building; to be determined annually and will not be less than $1,000,000. TENANT shall be responsible, as it desires, for insuring any or all of its personal fixtures, trade fixtures, furnishing, equipment and any improvements constructed by TENANT. TENANT agrees to add LANDLORD, as additionally named insured and as a Loss Payee to the property insurance policies.

8.2 Liability Insurance:

TENANT shall maintain at its expense at all times during the Lease term full liability insurance properly protecting and indemnifying LANDLORD and naming LANDLORD as additionally insured in an amount not less than $1,000,000. TENANT will initial and give LANDLORD a standard insurance certificate or binder until such time that TENANT can furnish a full copy of the policy issued.

8.3 Waiver of Subrogation:

TENANT and the LANDLORD will not try to collect from each other if property owned by either party is damaged or destroyed by an insurable peril and the loss is covered by insurance from either party.

8.4 Property of TENANT

LANDLORD is not liable or responsible for any loss to the TENANT'S property, unless the damage or loss is the result of an intentional and willful wrongful act by LANDLORD.

8.5 Liability of TENANT:

TENANT shall protect, indemnify and save LANDLORD harmless from and against all and
any liability and expense of any kind arising from injuries or damages to persons or property on the "Leased Premises" arising out of or resulting in any way from any act or omission of TENANT, its agents, servants and employees, in the use of the "Leased Premises" during the term of this Lease.

8.6 Notice of Claim or Suit:

TENANT agrees to promptly notify LANDLORD of any claim, action, proceeding or suit instituted or threatened against the LANDLORD. In the event LANDLORD is made a part of any action for damages which TENANT has herewith indemnified LANDLORD

against, then TENANT shall pay all costs and shall provide effective counsel in such litigation or shall pay, at LANDLORD's option, the attorney fees and costs incurred in connection with said litigation by LANDLORD.

8.7 Failure to Procure Insurance:

In the event TENANT shall fail to procure insurance required under this Article and fail to maintain the same in force continuously during the term, LANDLORD shall be entitled to procure the same and TENANT shall immediately reimburse LANDLORD for such premium expense.

ARTICLE 9 – CASUALTY DAMAGE

In the event the Leased Premises are damaged or destroyed by fire or other casualty, the parties shall proceed as follows:

9.1 Partial Destruction:

If the damage is so minor that it will not interfere with the TENANT'S use of the property, then LANDLORD shall immediately repair such damage at LANDLORD'S expense paid by insurance proceeds received by LANDLORD and this Lease shall continue in full force and effect for the remainder of the term without rent abatement. If the loss was caused by an act or inaction of the TENANT or its agents, employees or invitees then TENANT will be responsible to pay for any repairs to the Leased Premises not covered by insurance and reimburse LANDLORD within 30 days of being invoiced.

9.2 Substantial Destruction:

In the event the Leased Premises are partially damaged but not rendered totally unfit for its intended use (to an extent less than twenty five percent (25%) of replacement cost), then the LANDLORD shall immediately repair such damage at LANDLORD'S expense paid by insurance proceeds received by LANDLORD and this Lease shall continue in full force and effect for the remainder of the term, except rent shall abate in proportion tot he damage during the period of repair. If the loss was caused by an act or inaction of the TENANT or its agents, employees or invitees caused the damage then TENANT will be responsible to pay for any repairs to the Leased Premises not covered by insurance and reimburse LANDLORD within 30 days of being invoiced.

9.3 Major Destruction:

In the event the Leased Premises are damaged or destroyed so as to render them substantially unfit for its intended use (to an extent more than twenty-five percent (25%) of replacement cost or if such damage cannot be repaired within 90 days after TENANT'S notice to LANDLORD to rebuild), TENANT, at TENANT'S option, may terminate this Lease and if the loss was caused by the action or inaction of TENANT, pay over to LANDLORD, within 30 days, the dollar value of LANDLORD'S insurance deductible. TENANT shall elect to either rebuild or terminate this Lease within sixty (60) days after the damage occurs. In the event TENANT elects to terminate this Lease, TENANT shall be relieved of liability for any further payments under this Lease. In the event of rebuilding as aforesaid, the rent, as set forth in Article 3 above, shall not be due and owing during the period when the leased premises are untenanable.

ARTICLE 10 – ASSIGNMENT AND SUBLEASE

TENANT shall not assign its interest in this Lease or sublease the Leased Premises or any part thereof nor permit any other person or persons to occupy any portion of the Leased Premises, without the prior written consent of the LANDLORD and such consent shall not be unreasonable withheld. Any attempted assignment in violation hereof shall, at the LANDLORD'S option, constitute grounds for the termination of the Lease.

ARTICLE 11 – RIGHT OF ENTRY

LANDLORD shall have the right to enter the Leased Premises at reasonable times with the prior permission of TENANT, for the purpose in inspecting the same or for the purpose of doing anything that may be required under the Lease. LANDLORD shall reimburse TENANT for any damages to the Leased Premises caused by the LANDLORD during such entries.

ARTICLE 12 – DEFAULT

In the event TENANT shall at any time default for more than ten (10) days after written notice to TENANT in the payment of any installment of rent or parking or fail for more than thirty (30) days after written notice to TENANT to fulfill (or be diligently pursuing such fulfillment if such cannot be reasonable done in thirty (30) days) any of the other covenants, provisions, agreements or obligations under this Lease; or in the event the TENANT shall become insolvent or shall be adjudged bankrupt, or shall make an assignment for the benefit of creditors, or if a receiver shall be appointed for the TENANT, or if the interest of the TENANT in said Leased Premises shall be sold or placed for sale under execution or other legal process, then the LANDLORD may at its option, terminate this Lease. In the event of such termination, the balance of the term shall be forfeited and the LANDLORD shall be entitled to immediate possession of the Leased Premises and the TENANT shall be liable for all damages occurring by reason of its failure to comply with the terms hereof, including rental payments. In case of default by the TENANT and the LANDLORD does not elect to terminate the Lease, then the LANDLORD shall have the right to enter upon the Leased Premises and re-let the Leased Premises for the remainder of the term, in which case such rental shall be applied against the amount due and owing by TENANT under this Lease. In the event of a breach by the LANDLORD, then TENANT has the option to terminate this Lease providing that the breach is not cured within thirty (30) days from written notice of the breach by TENANT.

If TENANT shall fail, other than as a result of damage or fire or other casualty or in connection with remodeling the Leased Premises, to continuously and uninterruptedly, use, occupy, operate, or conduct TENANT'S business in the Leased Premises in accordance with normal business practices, such failure shall not be considered to be a default under this Lease, but shall entitle LANDLORD to give notice to TENANT in the same manner as if a default had occurred, and if TENANT shall not have resumed continuous operation within sixty (60) days following the date of such notice, LANDLORD shall be entitled to terminate this Lease in accordance with this Paragraph, TENANT shall surrender the Leased Premises and shall pay all rent and other charges to the date of termination, but shall not be liable for rent or other charges after such date.

ARTICLE 13 – EMINENT DOMAIN OR CONDEMNATION ACTION

In the event all the Leased Premises shall be taken under the right of eminent domain by any authority having the right of condemnation, or if a portion of the premises is so condemned as will prevent the practical use of the premises for TENANT'S purposes, this Lease and all obligations hereunder shall terminate on the date title vests, pursuant

to such proceeding. If such taking does not prevent the practical use of the premises for the purpose of the TENANT, then this Lease shall continue in full force and effect and the rental shall abate proportionately and such other adjustments shall be made as shall be just and equitable. In the event eminent domain or condemnation action is commenced involving the Leased Premises, LANDLORD and TENANT shall have their respective claims against the condemning authority for damages.

ARTICLE 14 – POLLUTION

TENANT will be held liable for any contaminants caused by TENANT.

ARTICLE 15 – WAIVER

Any failure by the LANDLORD to declare a forfeiture or termination of the Lease by reason of TENANT'S default hereunder shall not be considered as waiver of its right thereafter to declare a forfeiture or termination for any other like or succeeding default.

ARTICLE 16 – INDEMNIFICATION

TENANT shall keep, protect, and save harmless LANDLORD from any loss, cost, claim, judgment, or expense, and from any liability to any person or property arising out of any failure of TENANT, in any respect, to comply with and perform all of the covenants, requirements and provisions contained herein. LANDLORD shall keep, protect, and save harmless TENANT from any loss, cost, claim, judgment, or expense of any sort of nature (including reasonable attorney's fees) and from any liability to any person, natural or artificial, on account of any injury, damage, or death to any person or property arising out of the failure of LANDLORD in any respect to comply with and perform all of the covenants, requirements, and provisions of this Lease or any damage caused by other Tenants of the Building or any environmental condition caused by LANDLORD

ARTICLE 17 – HOLDING OVER

In the event TENANT continues to occupy the Leased Premises after the last day of the terms hereby created, or after the last day of any extension of said term, and LANDLORD elects to accept rent thereafter, a tenancy from month to month only shall be created and not for any longer period, but subject to all other provisions of this Lease.

ARTICLE 18 – SURRENDER AT TERMINATION

Upon expiration of this Lease for any reason, whether by reason of expiration of the term hereof, termination at TENANT'S option, or cancellation for default or otherwise, TENANT shall and hereby covenants and agrees forthwith peaceably to surrender and deliver up possession of the Leased Premises to LANDLORD broom clean and in as good condition and repair as the same were in at inception of this Lease, normal wear and tear excepted, including, but not limited to, the obligation to repair any and all damages caused by TENANT'S removal of any trade fixtures or equipment installed by TENANT during the term hereof.

ARTICLE 19 – ENTIRETY OF AGREEMENT

This instrument incorporates all of the obligations, agreements, and understandings of the parties hereto, and there are no oral agreements or understandings between the parties hereto concerning the property covered by this Lease Agreement.

ARTICLE 20 – HEIRS AND ASSIGNS

This Lease shall be binding upon the successors and permitted assigns of the parties hereto.

ARTICLE 21 – BINDING EFFECT

This Lease shall be to the benefit of and be binding on the parties hereto, their respective heirs, successors, personal representatives and assigns.

ARTICLE 22 – COVENANT OF QUIET ENJOYMENT AND USE

LANDLORD agrees that, if the rent is being paid in the manner and at the time prescribed and the covenants and obligations of TENANT being all and singular kept, fulfilled and performed, TENANT shall lawfully and peaceably have, hold, possess, use and occupy and enjoy the premises so long as this Lease remains in force, without hindrance, disturbance or molestation from LANDLORD and Tenants, subject to the specific provisions of this Lease.

ARTICLE 23 – SUBORDINATION:

Upon request of LANDLORD, TENANT shall subordinate its right hereunder to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing now or hereafter in force against the Building; provided LANDLORD obtains from the holder of any such mortgages a nondisturbance agreement that provides that in the event of any foreclosure, sale under a power of sale, ground or master lease termination, or transfer in lieu of any of the foregoing or the exercise of any other remedy pursuant to any such mortgage (a) TENANT'S use, possession, and enjoyment of the Leased Premises shall not be disturbed and this Lease shall continue in full force and effect so long as TENANT is not in default hereunder, and (b) this Lease shall automatically become a direct Lease between any successor to LANDLORD'S interest, as landlord, and TENANT as is such successor were the LANDLORD originally named hereunder.

ARTICLE 24 – REAL ESTATE FEE:

LANDLORD and TENANT have not retained a real estate broker for this Lease and that no real estate fees or finders fees are due.

This lease contains 8 pages counting this one, plus

Signature page
Exhibit A: Lease Premises Location
Exhibit B: Rules and Regulations

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on this _____ day of _____, 2021.

LESSOR
CITY OF WICHITA, KANSAS

By_____
Brandon Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

LESSEE
South Beech Development, LLC

By_____
David Burk, Manager

Approved as to form:

_____
Jennifer Magana, City Attorney and Director of Law
Director of Law

Exhibit A

The plan shown on this page is preliminary and may be modified at any time, in one or more respects, without the LESSEE's consent at the option of the LESSOR, but the size, dimensions, and relative location of the Leased Premises shall not be altered. The Lease Premises are outlined in red.

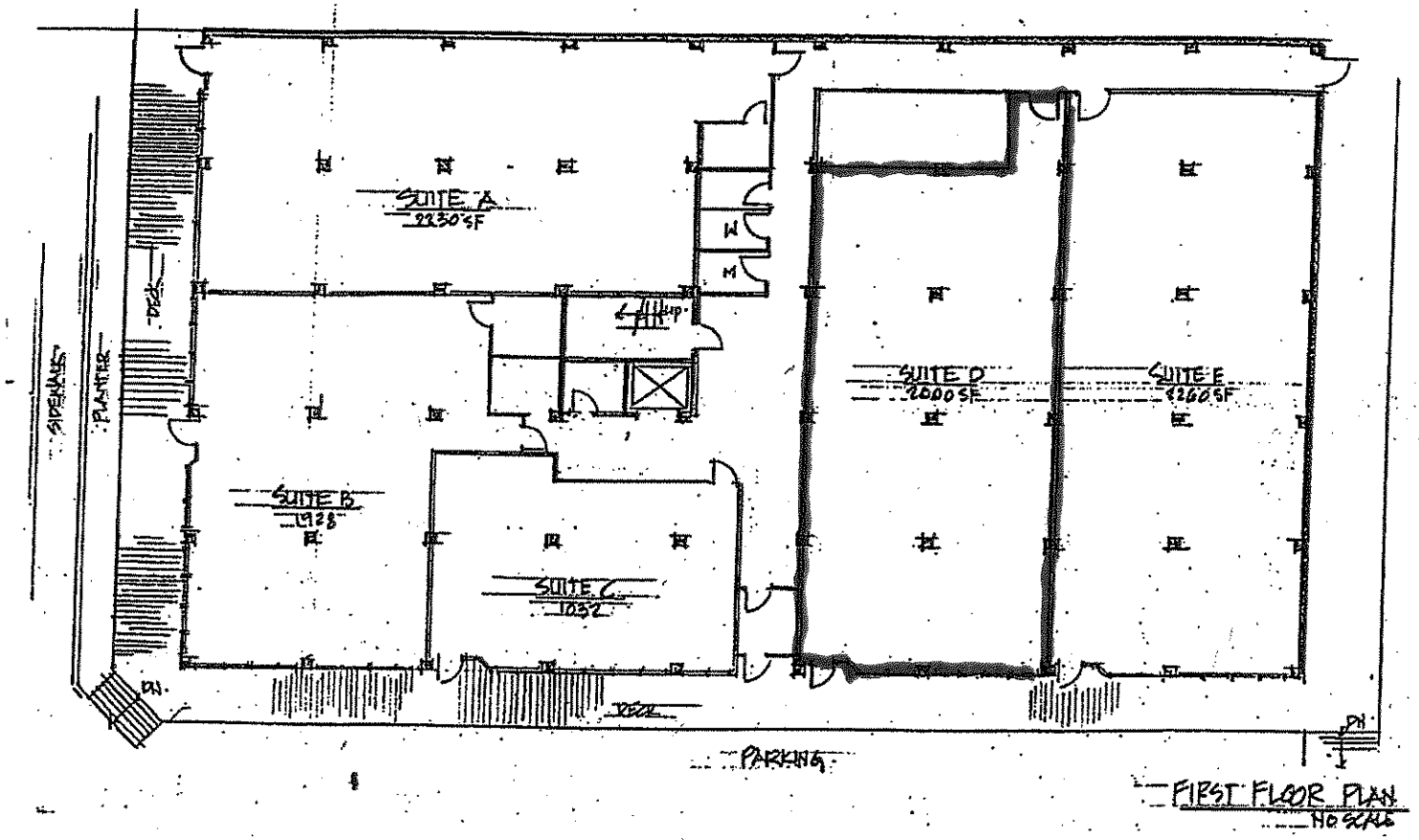


Exhibit B: RULES AND REGULATIONS

TENANT agrees as follows:

1. No loud speakers, televisions, phonographs, radios or other devices, except for security alarms, shall be used in a manner so as to be heard or seen outside of the Leased Premises without the prior written consent of LANDLORD. No aerial shall be erected on the roof or exterior walls of the Leased Premises or on the grounds, without in each instance, the written consent of LANDLORD. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

2 TENANT shall keep the "Leased Premises" at a minimum 60 degrees F. to prevent freezing of water in pipes and fixtures.

3. The plumbing facilities in the "Common Area" shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by TENANT who shall, or whose employees, agents or invitees shall have caused it.

4. TENANT shall not burn any trash or garbage of any kind in or about the Leased Premises. Trash container for the Building is located in the parking lot to the northeast.

5. TENANT shall not make noises, cause disturbances, or create odors, which may be offensive to other tenants of the Property or their officers, employees, agents, servants, customers or invitees.

6. TENANT and employees shall park in the lot directly to the northeast to allow customers and patrons to park in the parking lot to the south of the Leased Premises.

Lease Addendum

Date of amendment: March 10, 2021

Landlord/lessor: South Beach Development. L.L.C., a Kansas Limited Liability Corporation

Tenant/lessee: The City of Wichita

Property Address: 230 N. Mosley, Suite D, Wichita, Kansas

Commencement of Lease: December 1, 2020

The aforementioned lease agreement is hereby amended as follows:

Article 8.2 is replaced with the following language:

TENANT is self-insured and is responsible for any or all of its personal fixtures, trade fixtures, furnishing, equipment and any improvements constructed by the TENANT.

Landlord/lessor: _____

Wichita Police Department: _____

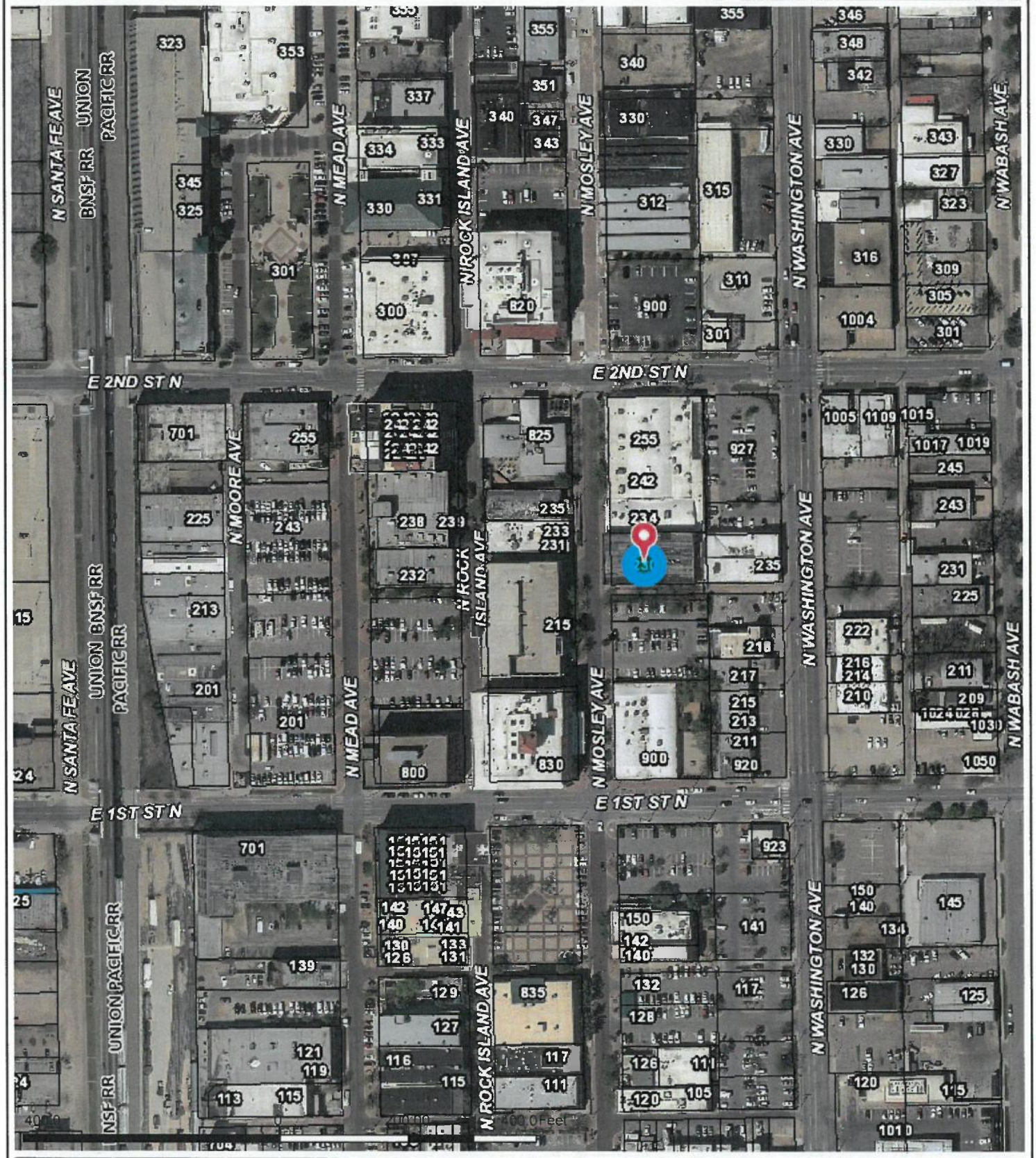
ATTEST

Jamie ~~Butler~~ Buster
Deputy City Clerk

Melinda Walker
Purchasing Manager, City of Wichita

APPROVED AS TO FORM

Jennifer Magana, City Attorney



This information is not an official record, and cannot be used as such. The user should rely only upon official records available from the custodian of records in the appropriate City and/or County department. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita.

1: 2,400

Map Created On: 7/7/21 10:03 AM

ENCROACHMENT AGREEMENT

STATE OF KANSAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SEDGWICK	§	

WHEREAS, Phillips 66 Carrier LLC, a Delaware limited liability company, (hereinafter referred to as "Permittor"), is the current owner of the right-of-way specified in an instrument dated the 3rd day of September, 1930 from J W Pierpont and Grace Pierpont covering lands in Sedgwick County, State of Kansas, said instrument being filed of record in Book 98, Page 224 of the Deed Records of Sedgwick County, Kansas; and partially released by the instrument dated the 14th day of August, 1969, said instrument being filed of record in Book 650, Page 215 of the Deed Records of Sedgwick County, Kansas; and also partially released by the instrument dated the 28th day of November, 1969, said instrument being filed of record in Book 657, Page 115 of the Deed Records of Sedgwick County, Kansas (hereinafter referred to as the "Right-of-Way"), and

WHEREAS, Permittor owns and operates one 12" pipeline and one 16" pipeline in the lands covered by Permittor's Right-of-Way; and

WHEREAS, the City of Wichita, (hereinafter referred to as "Permittee", whether one or more) with an address of 455 N Main, Wichita, Kansas 67202, is the owner of a tract of land which is subject to the above specified Right-of-Way; and

WHEREAS, Permittee has requested permission to encroach upon Permittor's Right-of-Way located on Permittee's land specified above by constructing a sidewalk (hereinafter referred to as the "Encroachment", whether one or more); and

WHEREAS, Permittor is agreeable to permitting said Encroachment subject to the terms and conditions of this Encroachment Agreement ("Agreement").

NOW, THEREFORE, for and in consideration of Ten Dollars ($10.00), and of the premises and of the covenants hereof contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Subject to the terms and conditions of this Agreement, Permittor hereby consents to the placement and maintenance of the Encroachment within the Right-of-Way as specifically described and/or depicted on Exhibit "A", attached hereto and made a part hereof. The Encroachment within the Right-of-Way shall be placed only in the locations described and/or depicted on Exhibit "A". Any changes in the nature or location of the Encroachment shall require the prior written approval of Permittor.

2. Permittee has been advised and is fully aware that Permittor now has, and shall continue to have, the right to utilize the land within the Right-of-Way and Permittor is hereby granted the right to use additional workspace outside of said Right-of-Way for pipeline purposes; that in so doing, Permittor may, at any time and from time to time, and without liability to Permittee, enter upon said land, place and transport machinery and equipment thereon, excavate trenches or ditches thereon, and perform other pipeline operations and related activities thereon, any of which may damage or destroy the Encroachment. Permittee agrees that Permittor shall have no obligation to repair, restore or replace the Encroachment or to compensate Permittee for any damage to or destruction of the Encroachment arising out of any such Permittor activity. Permittee also agrees that Permittor shall not be responsible or liable for, and Permittee hereby releases Permittor from, any lost business or consequential damages resulting from Permittor's above described activities, howsoever caused.

3. Permittee shall give Permittor at least ten (10) days prior written notice before commencing any construction, maintenance, repair, replacement, or removal of the Encroachment on the Right-of-Way, or any movement of equipment across the Right-of-Way, in order that Permittor shall have an opportunity to have an inspector or representative present during the time such activities are carried out and so that Permittor's pipeline(s) can be staked to minimize the possibility of damage. Notice is to be given to the following individual at the listed address and phone number:

Phillips 66 Carrier LLC
Real Estate Services Manager
P.O. Box 421959
Houston, Texas 77242-1959
1-877-267-2290

4. Any future encroachments by Permittee on, or disturbances of, Permittor's Right-of-Way are strictly forbidden unless expressly permitted by Permittor under a separate fully executed Encroachment Agreement. Permittee will not excavate, nor permit others to excavate, on Permittor's Right-of-Way for subgrade preparations or for any other purposes, except as allowed by this Agreement. Permittee, at its sole cost and expense, shall at all times maintain the Encroachment in a condition which will not interfere with or endanger Permittor's pipeline(s) or the operation of such pipelines located within Permittor's Right-of-Way.

5. Nothing in this Agreement shall be construed as a release of any of Permittor's rights in the Right-of-Way instrument specified above and this Agreement shall in no way limit or impair said rights.

6. If it becomes necessary in Permittor's sole judgment, to lower or relocate Permittor's pipeline(s) as a result of any encroachment by Permittee within the Right-of-Way, other than the Encroachment, such lowering or relocating of the pipeline(s) shall be undertaken by Permittor at the sole cost and expense of Permittee including, but not limited to, the cost of acquiring any additional right-of-way. Any relocation of Permittor's pipeline(s), as well as the relocation route, shall be at the sole discretion of Permittor.

7. Permittor shall have the right to adequately mark its pipeline(s) with permanent line markers and ground placards to promote public safety and the future safe operation of said pipeline(s), and to meet applicable governmental regulations.

8. Permittee represents and warrants that it is in compliance with and shall continue to comply with all of the terms and conditions set forth in Permittor's Design Guidelines and Construction Guidelines attached hereto as Exhibit "B".

9. **PERMITTEE SHALL PROTECT RELEASE, INDEMNIFY, DEFEND AND HOLD PERMITTOR, ITS PARENTS, SUBSIDIARIES, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS, THEIR SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, FINES, PENALTIES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES, COSTS OF LITIGATION AND/OR INVESTIGATION AND OTHER COSTS ASSOCIATED THEREWITH), AND LIABILITIES, OF EVERY KIND, (COLLECTIVELY REFERRED TO HEREAFTER AS "CLAIMS"), INCLUDING WITHOUT LIMITATION THOSE RELATING TO LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL DAMAGES, POLLUTION OR CONTAMINATION), AND INJURY TO OR DEATH OF ANY PERSONS, IN ANY WAY ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE EXERCISE OF ANY OF THE RIGHTS IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE CONSTRUCTION, PRESENCE, MAINTENANCE, USE, REPAIR OR REMOVAL OF THE PERMITTED ENCROACHMENT, OR ANY BREACH OF THIS AGREEMENT BY PERMITTEE OR BY ANYONE ACTING ON BEHALF OF PERMITTEE, REGARDLESS OF THE CAUSE OR CAUSES THEREOF, INCLUDING WITHOUT LIMITATION ANY CLAIMS CAUSED BY OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY THE INDEMNIFIED PARTIES' SOLE, JOINT OR CONCURRENT NEGLIGENCE OR FAULT (WHETHER IMPOSED BY STATUTE, RULE, REGULATION OR OTHERWISE) AND STRICT LIABILITY, EXCEPT TO THE EXTENT ANY SUCH CLAIMS ARE CAUSED BY THE INDEMNIFIED PARTIES' WILLFUL MISCONDUCT.**

10. This Agreement shall be a covenant running with the property rights under which Permittee is conducting its activities on Permittor's Right-of-Way.

11. Permittee may not assign its rights hereunder without prior written notice to Permittor of such assignment; nevertheless, the provisions hereof shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

EXECUTED on the dates set forth in the acknowledgments, but effective for all purposes as of the _____ day of _____, 2021 (the "Effective Date").

PERMITTOR

PHILLIPS 66 CARRIER LLC

Signature:_____

Printed Name:_____

Title:_____

PERMITTEE

CITY OF WICHITA

Signature:_____

Printed Name: Brandon J. Whipple

Title: Mayor

STATE OF OKLAHOMA §
§
COUNTY OF WASHINGTON §

On this _____ day of _____, 2021, before me _____ _____, the undersigned officer, personally appeared _____ _____, known to me (or satisfactorily proven) to be the person whose name is subscribed as __ _____, of Phillips 66 Carrier LLC, and acknowledged that he/she, as such _____, being authorized so to do, executed the foregoing instrument as the act of his/her principal for the purposes therein contained, by signing the name of the said Phillips 66 Carrier LLC by himself/herself as _____.

_____
NOTARY PUBLIC

Notary Public in and for _____ County

My commission expires:
_____

STATE OF KANSAS §
§
COUNTY OF SEDGWICK §

This instrument was acknowledged, before me this _____ day of _____ 2021, by Brandon J. Whipple, Mayor of the City of Wichita.

SEAL

_____
Notary Public

My Commission Expires:_____

APPROVED AS TO FORM:

_____
Jennifer Magana, Director of Law

EXHIBIT "A"

Sherwood Glen Park Walking Path Construction

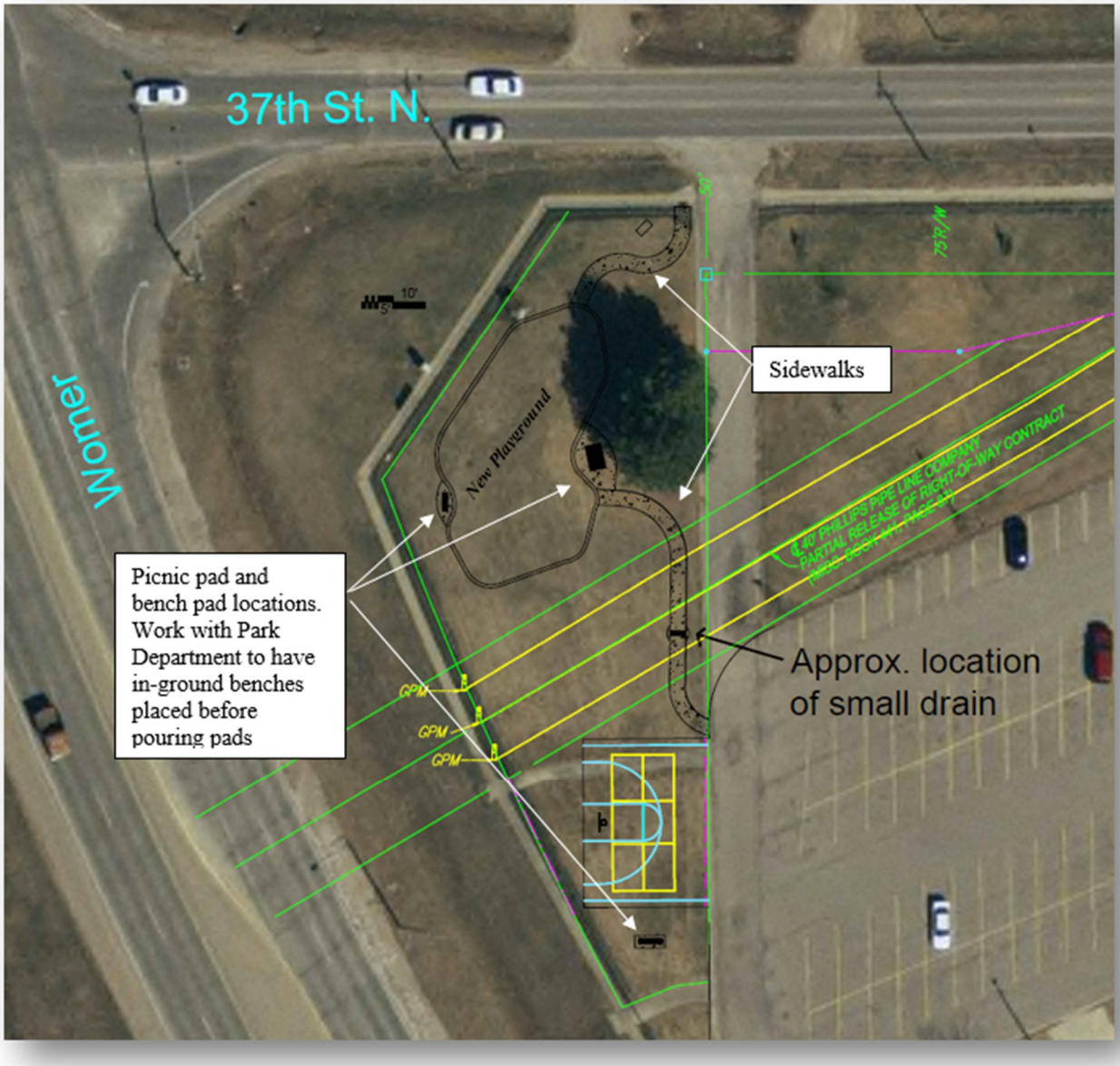
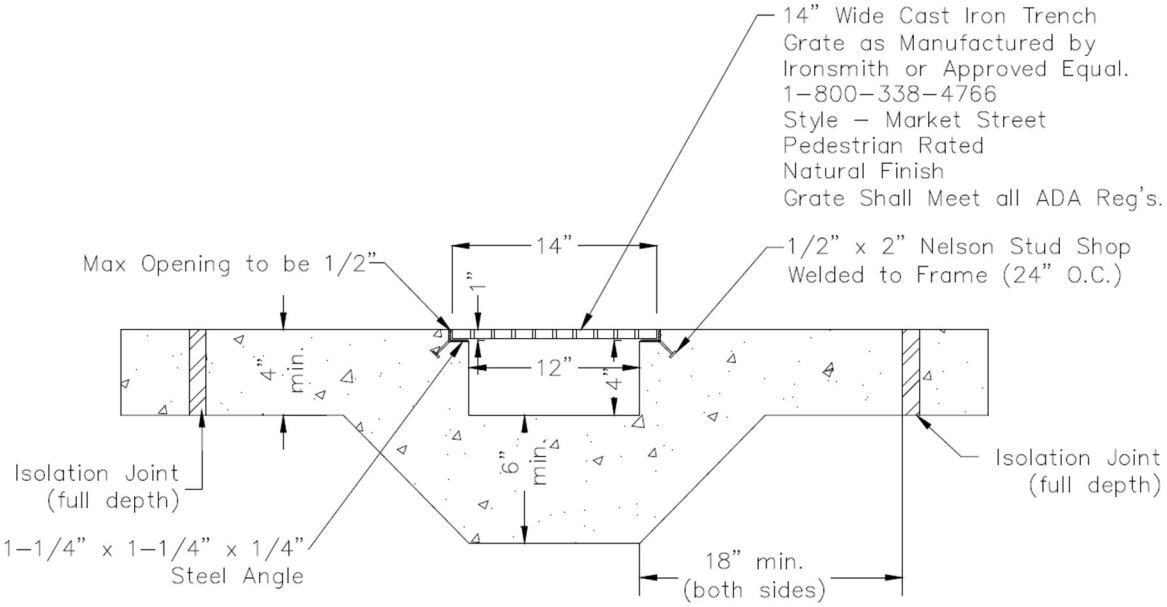


EXHIBIT "B"

DESIGN GUIDELINES AND CONSTRUCTION GUIDELINES



1 CONCRETE SIDEWALK CROSSING FLUME W/ STEEL GRATE COVER

NOT TO SCALE

Agenda Item No. II-7

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Encroachment Agreement with Phillips 66 across City-Owned Property Located at Sherwood Glen Park, Womer and 37th Street North (District VI)

INITIATED BY: Park & Recreation Department

AGENDA: Consent

Recommendation: Approve the Encroachment Agreement and authorize all necessary signatures.

Background: Phillips 66 Carrier LLC, (Phillips) has two existing gas pipelines angling through Sherwood Glen Park, at the southeast corner of Womer and 37th St. N. (part of the former Police Training Center). This new park site was donated to the City by Catholic Charities on February 12, 2019. Since that time, a small multi-purpose athletic court and playground have been constructed and the park is nearing completion. A connecting walkway, benches and picnic table are proposed to finish this neighborhood park.

Analysis: A portion of the proposed park sidewalk will cross the Phillips gas pipelines and platted pipeline easement. Phillips has reviewed the path alignment and has requested that an Encroachment Agreement be completed to allow the City to install the park path across the easement.

Financial Considerations: There are no financial obligations to the City.

Legal Considerations: The Law Department has reviewed and approved the Encroachment Agreement as to form.

Recommendation/Action: It is recommended that the City Council approve the Encroachment Agreement and authorize all necessary signatures.

Attachments: Encroachment Agreement.

Agenda Item No. II-8

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: Castlegate 3rd Addition Sanitary Sewer Petition (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the revised petition and revised budget, and adopt the amending resolution.

Background: On November 5, 2019, the City Council approved petitions to extend infrastructure into Castlegate 3rd Addition. The revised petition is a requirement for the plat and is valid per Kansas Statute 12-6a01. The signatures on the petitions represent 92.21% of area and 33.33% of resident owners in the improvement district.

Analysis: The project will provide sanitary sewer improvements required for a new residential development located north of Central, west of 119th Street West.

Financial Considerations: The petition total for the sanitary sewer improvements is $243,000. The funding source for the projects is 100% special assessment. The cost is unchanged from the original petition but the amount spread per lot changed. The cost per lot for the unsigned lots remains the same as the original petition.

Legal Considerations: The Law Department has reviewed and approved the revised petition and amending resolution as to form.

Recommendations/Actions: It is recommended that the City Council approve the revised petition and revised budget, adopt the amending resolution, and authorize the necessary signatures.

Attachments: Revised petition and amending resolution.

Revising $

PETITION 468-2019-017401
(SANITARY SEWER IMPROVEMENTS – CASTLEGATE 3RD ADDITION, WICHITA, SEDGWICK COUNTY, KANSAS)

TO: The Mayor and City Council (the "Governing Body")
City of Wichita, Kansas

1. The undersigned, being the owners of record of more than one-half of the area liable for assessment set forth below for the proposed improvements of the City of Wichita, Kansas (the "City"), do hereby request that said improvements be made in the manner provided by K.S.A. 12-6a01 *et seq.* (the "Act").

(a) The improvements proposed to be made are as follows (the "Improvements"):

Construction of a lateral sanitary sewer, including necessary sewer mains and appurtenances to serve the Improvement District defined below.

The Improvements shall be constructed in accordance with City standards and plans and specifications prepared or approved by the City Engineer.

(b) The estimated or probable cost of the proposed Improvements is: $243,000.00, exclusive of interest on financing and administrative and financing costs; said estimated amount to be increased at the pro rata rate of 1 percent per month from and after the date of submission of this Petition to the City. If expenses have been incurred for the Improvements and construction has not started within two years of the initial design contract, the Improvements will be deemed abandoned and expenses incurred to date will be assessed against property in the Improvement District defined below in accordance with the provisions hereof.

(c) The extent of the proposed improvement district (the "Improvement District") to be assessed for the costs of the proposed Improvements is:

Castlegate 3RD Addition
Lots 1 through 3, Block A
Lots 3 through 20, Block B
Lots 2 through 5, Block C
Lots 2 through 4, Block D

(d) The proposed method of assessment is on a fractional basis as described below.

Lots 1 and 3, Block A, Castlegate 3rd Addition, shall each pay 344/10,000 of the total cost of the improvements; Lot 2, Block A, Castlegate 3rd Addition, shall pay 328/10,000 of the total cost of the improvements; Lot 3, Block B, Castlegate 3rd Addition, shall pay 160/10,000 of the total cost of the improvements; Lots 4, 6 through 11, Block B, Lots 4 and 5, Block C, Castlegate 3rd Addition, shall each pay 301/10,000 of the total cost of the improvements; Lot 5, Block B, Lots 2 and 3, Block C, shall each pay 201/10,000 of the total cost of the improvements; Lots 12 through 19, Block B, Lots 2 through 4, Block D, Castlegate 3rd Addition, shall each pay 468/10,000 of the total cost of the improvements; and Lot 20, Block B, Castlegate 3rd Addition, shall pay 364/10,000 of the total cost of the improvements.

In the event all or part of the lots or parcels in the proposed Improvement District are reconfigured before or after assessments have been levied, the assessments against the replatted area shall be recalculated on a square foot basis.

(e) The proposed apportionment of the cost of the Improvements, between the Improvement District and the City at large, is: 100% to be assessed against the Improvement District and 0% to be paid by the City-at-large.

(f) The payment of assessments proposed to be imposed hereunder may be indefinitely deferred against those property owners eligible for deferral pursuant to the City's Special Assessment Deferral Program.

(g) The undersigned acknowledge that property within the proposed Improvement District is subject to benefit fees to be imposed as a result of previously constructed sewer main improvements that benefit the property within the proposed Improvement District. Such benefit fees shall be imposed pursuant to K.S.A. 12-6a19, in the following manner: $20,848.00, assessed among all property within the proposed Improvement District on a fractional basis as described below:

> Lots 1 and 3, Block A, Castlegate 3rd Addition, shall each pay 344/10,000 of the total cost of the benefit fees; Lot 2, Block A, Castlegate 3rd Addition, shall pay 328/10,000 of the total cost of the benefit fees; Lot 3, Block B, Castlegate 3rd Addition, shall pay 160/10,000 of the total cost of the benefit fees; Lots 4, 6 through 11, Block B, Lots 4 and 5, Block C, Castlegate 3rd Addition, shall each pay 301/10,000 of the total cost of the benefit fees; Lot 5, Block B, Lots 2 and 3, Block C, shall each pay 201/10,000 of the total cost of the benefit fees; Lots 12 through 19, Block B, Lots 2 through 4, Block D, Castlegate 3rd Addition, shall each pay 468/10,000 of the total cost of the benefit fees; and Lot 20, Block B, Castlegate 3rd Addition, shall pay 364/10,000 of the total cost of the benefit fees.

2. It is further requested that the proposed Improvements be made without notice and hearing as required by the Act.

3. If the Improvements are: (i) abandoned, altered and/or constructed privately, in part or whole, precluding the building of the Improvement under the authority of this Petition and the Act; or (ii) it is necessary for the City to redesign, repair or reconstruct the Improvements after its initial design and/or construction because the design and/or construction does not meet the requirements of City code provisions; any costs incurred by the City as a result of submission of this Petition shall be assessed to property within the proposed Improvement District in accordance with the provisions hereof.

4. Names may not be withdrawn from this Petition by the signers hereof after the Governing Body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first.

5. The Governing Body is further requested to proceed with adoption of a resolution authorizing the Improvements and establishing the Improvement District in accordance with the Act and the construction of the Improvements in an expeditious manner.

Signature	Dated	Property Owned Within Proposed Improvement District
Castlegate Development LLC By: _____ Rodney Ketzner, Manager	3/3/21	**Castlegate 3rd Addition** Lots 1 and 3, Block A Lots 3, 6 through 20, Block B Lots 4 and 5, Block C Lots 2 through 4, Block D
H & H Homebuilders, Inc. By: _____ Randel M. Harder, President	3/4/21	Lot 2, Block A Lot 4, Block B
Randall L. Gee and Kathleen R. Gee		Lot 5, Block B
The R.D. Wood Revocable Trust Dated May 30, 2006 AND The B.J. Wood Revocable Trust dated May 30, 2006, restated and amended on September 11, 2015.		Lot 2, Block C
Lisa A. Weber		Lot 3, Block C

****

THIS PETITION was filed in my office on 04/13/2021.

Deputy City Clerk

(Published in the ***Wichita Eagle***, on July 23, 2021)

RESOLUTION NO. 21-276

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH SUCH FINDINGS (SANITARY SEWER IMPROVEMENTS– CASTLEGATE 3RD ADDITION) (468-2019-017401).

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City Council of the City (the "Governing Body") has heretofore by **Resolution No. 19-414** of the City (the "Prior Resolution") authorized certain internal improvements; and

WHEREAS, **the proposed apportionment cost of the improvement district authorized by the Prior Resolution has changed;**

WHEREAS, pursuant to the receipt of a new petition (the "Petition"), it is necessary to authorize the improvements requested therein by the adoption of a new resolution of the City and repeal the Prior Resolution; and

WHEREAS, the Petition was filed with the City Clerk proposing certain internal improvements; and said Petition sets forth: (a) the general nature of the proposed improvements; (b) the estimated or probable cost of the proposed improvements; (c) the extent of the proposed improvement district to be assessed for the cost of the proposed improvements; (d) the proposed method of assessment; (e) the proposed apportionment of the cost between the improvement district and the City at large; and (f) a request that such improvements be made without notice and hearing as required by K.S.A. 12-6a01 *et seq.* (the "Act")

WHEREAS, K.S.A. 12-6a19 provides that whenever the construction of any water, stormwater, sanitary sewer or arterial street improvement is initiated by petition pursuant to the Act, the City may require the imposition of a benefit fee on property which is benefitted by such improvements but was not included within the original improvement district established for the levy of special assessments for such improvements; and

WHEREAS, the Petition contains a request that the City create an area for which benefit fees will be imposed pursuant to K.S.A. 12-6a19; and

WHEREAS, the Governing Body hereby finds and determines that said Petition was signed by **the owners of record of more than one-half of the area** liable for assessment for the proposed improvements, and is therefore sufficient in accordance with the provisions of the Act.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. **Repealer**. The Prior Resolution is hereby repealed.

Section 2. **Findings of Advisability**. The Governing Body hereby finds and determines that:

(a) The improvements proposed to be made are as follows (the "Improvements"):

Construction of a lateral sanitary sewer, including necessary sewer mains and appurtenances to serve the Improvement District defined below.

(b) The estimated or probable cost of the proposed Improvements is: **$243,000.00**, exclusive of interest on financing and administrative and financing costs; said estimated amount to be increased at the pro rata rate of 1 percent per month from and after the date of submission of this Petition to the City. If expenses have been incurred for the Improvements and construction has not started within two years of the initial design contract, the Improvements will be deemed abandoned and expenses incurred to date will be assessed against property in the Improvement District defined below in accordance with the provisions hereof.

(c) The extent of the proposed improvement district (the "Improvement District") to be assessed for the costs of the proposed Improvements is:

Castlegate 3rd Addition
Lots 1 through 3, Block A
Lots 3 through 20, Block B
Lots 2 through 5, Block C
Lots 2 through 4, Block D

(d) The method of assessment is: **on a fractional basis as described below.**

Lots 1 and 3, Block A, Castlegate 3rd Addition, shall each pay 344/10,000 of the total cost of the improvements; Lot 2, Block A, Castlegate 3rd Addition, shall pay 328/10,000 of the total cost of the improvements; Lot 3, Block B, Castlegate 3rd Addition, shall pay 160/10,000 of the total cost of the improvements; Lots 4, 6 through 11, Block B, Lots 4 and 5, Block C, Castlegate 3rd Addition, shall each pay 301/10,000 of the total cost of the improvements; Lot 5, Block B, Lots 2 and 3, Block C, shall each pay 201/10,000 of the total cost of the improvements; Lots 12 through 19, Block B, Lots 2 through 4, Block D, Castlegate 3rd Addition , shall each pay 468/10,000 of the total cost of the improvements; and Lot 20, Block B, Castlegate 3rd Addition, shall pay 364/10,000 of the total cost of the improvement.

In the event all or part of the lots or parcels in the proposed Improvement District are reconfigured before or after assessments have been levied, the assessments against the replatted area shall be recalculated on a square foot basis.

(e) The apportionment of the cost of the Improvements, between the Improvement District and the City at large, is: **100%** to be assessed against the Improvement District and **0%** to be paid by the City-at-large.

(f) The payment of assessments to be imposed hereunder may be indefinitely deferred against those property owners eligible for deferral pursuant to the City's Special Assessment Deferral Program.

(g) The undersigned acknowledge that property within the proposed Improvement District is subject to benefit fees to be imposed as a result of previously constructed **sewer main** improvements that benefit the property within the proposed Improvement District. Such benefit fees shall be imposed pursuant to K.S.A. 12-6a19, in the following manner: **$20,848.00 assessed among all property within the proposed Improvement District on a fractional basis as described below:**

Lots 1 and 3, Block A, Castlegate 3rd Addition, shall each pay 344/10,000 of the total cost of the benefit fees; Lot 2, Block A, Castlegate 3rd Addition, shall pay 328/10,000 of the total cost of the benefit fees; Lot 3, Block B, Castlegate 3rd Addition, shall pay 160/10,000 of the total cost of the benefit fees; Lots 4, 6 through 11, Block B, Lots 4 and 5, Block C, Castlegate 3rd Addition, shall each pay 301/10,000 of the total cost of the benefit fees; Lot 5, Block B, Lots 2 and 3, Block C, shall each pay 201/10,000 of the total cost of the benefit fees; Lots 12 through 19, Block B, Lots 2 through 4, Block D, Castlegate 3rd Addition, shall each pay

468/10,000 of the total cost of the benefit fees; and Lot 20, Block B, Castlegate 3rd Addition, shall pay 364/10,000 of the total cost of the benefit fees.

Section 3. **Authorization of Improvements**. The Improvements are hereby authorized and ordered to be made in accordance with the findings of the Governing Body as set forth in ***Section 2*** of this Resolution.

Section 4. **Plans and Specifications**. The City Engineer shall prepare plans and specifications for said Improvements and a preliminary estimate of cost therefore, which plans, specifications and estimate shall be presented to the Governing Body for its approval.

Section 5. **Bond Authority; Reimbursement**. The Act provides for the Improvements to be paid by the issuance of general obligation bonds or special obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of the Prior Resolution, and 60 days before the date of adoption of this Resolution, to the extent of the increased authorization contained herein, all pursuant to Treasury Regulation § 1.150-2.

Section 6. **Effective Date**. This Resolution shall be effective upon adoption. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the office of the Register of Deeds of Sedgwick County, Kansas.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 20, 2021.

(SEAL)

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Jennifer Magaña, City Attorney
and Director of Law

Agenda Item No. II-9

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

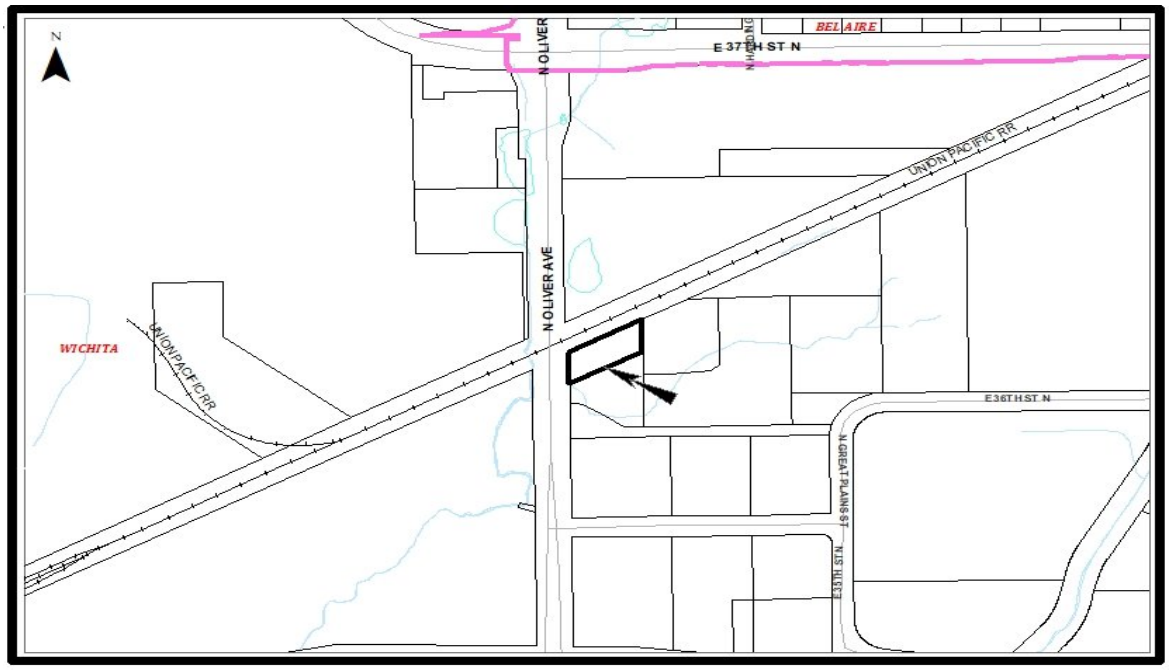
SUBJECT: VAC2021-00014 – City Request to Vacate a Drainage Easement Dedicated by Separate Instrument on Limited Industrial (LI) Zoned Property Generally Located on the East Side of North Oliver Avenue, Midway Between East 37th Street North and East K 96 Highway on the South Side of the Railroad Right-of-Way (District I).

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The Metropolitan Area Planning Commission recommends approval of the vacation request (9-0).

Staff Recommendation: Staff recommends approval of the vacation request.



Background: The applicant proposes to vacate the drainage easement dedicated by separate instrument (Doc#/FLM-PG: 29080941) located on Lot 4, Block 1, Great Plains Business Park 2nd Addition. The Great Plains Business Park 2nd Addition was recorded with the Register of Deeds March 31, 1992.

The Limited Industrial (LI) zoned site is located on the east side of North Oliver Avenue, midway between East 37th Street North and East K 96 Highway. The applicant proposes to construct a building that will encroach into the subject easement. The applicant has provided a replacement drainage easement dedicated by separate instrument that will be recorded with the Vacation Order at the Sedgwick County Register of Deeds. No other utilities will be impacted by this vacation request.

Analysis: On April 22, 2021, the Metropolitan Area Planning Commission (MAPC) voted (9-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order and the dedication of a drainage easement dedicated by separate instrument. The Law Department concurs that the approval of the Vacation Order is in accordance with City policy. The original Vacation Order and the dedication of a drainage easement dedicated by separate instrument will be recorded with the Sedgwick County Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.

Attachments:
- Vacation Order
- MAPC Minutes Excerpt

BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

IN THE MATTER OF THE VACATION OF A DRAINAGE EASEMENT DEDICATED BY SEPARATE INSTRUMENT	**)**	
GENERALLY LOCATED ON THE EAST SIDE OF NORTH OLIVER AVENUE, MIDWAY BETWEEN EAST 37TH STREET NORTH & K 96 HIGHWAY, ON THE SOUTH SIDE OF A RAILROAD RIGHT-OF-WAY	**)**	**VAC2021-00014**
MORE FULLY DESCRIBED BELOW	**)**	

VACATION ORDER

NOW on this 20th day of July, 2021, comes on for hearing the petition for vacation filed by Great Plains Ventures, Inc., c/o Susan C. Brandis, President (owner), praying for the vacation of a described portion of the drainage easement dedicated by separate instrument, to wit:

The drainage easement dedicated by separate instrument, Doc#/FLM-PG: 29080941, located on Lot 4, Block 1, Great Plains Business Park 2nd Addition, Wichita, Sedgwick County, Kansas, said vacated drainage easement dedicated by separate instrument being more particularly described as follows:

> That part of Lot 4, Block 1, Great Plains Business Park 2nd Addition to Wichita, Sedgwick County, Kansas, described as Beginning at the northwest corner of said Lot 4, said northwest corner also being the intersection of east line of Oliver Street as dedicated in said Great Plains Business Park 2nd Addition and the southeast line of the Missouri Pacific Railroad Right-of-Way; thence N62°18'27"E coincident with the northwest line of said Lot 4, 247.53 feet; thence S00°00'00"W, 115.00 feet; thence S62°18'27"W, parallel with the north line of said Lot 4, 247.53 feet to a point in the west line of said Lot 4, said point being 115.00 feet south of the northwest corner of said Lot 4; thence N00°00'00"E coincident with the west line of said Lot 4, 115.00 feet to the point of beginning.

.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on April 1, 2021, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the described portion of the drainage easement dedicated by separate instrument, and the public will suffer no loss or inconvenience thereby.

3. A drainage easement dedicated by separate instrument will be recorded with this Vacation Order at the Sedgwick County Register of Deeds.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

6. The vacation of the described portion of the drainage easement dedicated by separate instrument, should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 20th day of July, 2021, ordered that the described portion of the drainage easement dedicated by separate instrument is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County.

CITY OF WICHITA, KANSAS

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Jennifer Magana, City Attorney and Director of Law

EXCERPT MINUTES OF THE JUNE 17, 2021 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

3.3 Case No. VAC2021-00014: City Vacation of a portion of a drainage easement; generally located on the east side of Oliver Street approximately ½ mile north of K-96 Highway, south of the Union Pacific Railway.

RECOMMENDED ACTION: **APPROVE 6-0.**

Lot 4, Block 1, Great Plains Business Park 2nd Addition, Wichita, Sedgwick County Kansas.

The applicant proposes to vacate the drainage easement dedicated by separate instrument (Doc#/FLM-PG: 29080941) located on Lot 4, Block 1, Great Plains Business Park 2nd Addition. The applicant proposes to construct a building that will encroach into the subject easement. The applicant has provided an attached exhibit and legal description. There appears to be storm water outlets and open channel conduit in the area of the vacation request. Approval of any plans by Public Works/Storm Water is required. Removal and/or relocation of public and/or franchised utilities shall be according to City Standards and will be at the applicant's expense. COX has underground equipment close to the vacation area. Evergy has no equipment in the subject drainage easement. Contact information for Evergy is LaDonna Vanderford at 316-261-6290. Condition #2 protects all utilities.
The Great Plains Business Park 2nd Addition was recorded with the Register of Deeds March 31, 1992.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Storm Water, Water and Sewer, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described drainage easement dedicated by separate instrument.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

    1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 1, 2021, which was at least 20 days prior to this public hearing.

    2. That no private rights will be injured or endangered by vacating the described drainage easement dedicated by separate instrument, and that the public will suffer no loss or inconvenience thereby.

    3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

(1) Vacate the described portion(s) of the drainage easement dedicated by separate instrument as described in an approved legal description. Provide Planning with the approved legal description on a Word document via E-mail for use on the Vacation Order. This must be completed prior to the case going to City Council for final action.

(2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(3) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the Vacation Order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Sedgwick County Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION

The Subdivision Committee recommends approval subject to the following (but not limited to) conditions:

(1) Vacate the described portion(s) of the drainage easement dedicated by separate instrument as described in an approved legal description. Provide Planning with the approved legal description on a Word document via E-mail for use on the Vacation Order. This must be completed prior to the case going to City Council for final action.

(2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(3) Provide Planning with any required easement(s) dedicated by separate instruments with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the Vacation Order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Sedgwick County Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation

MILES moved, **FLORENCE** seconded the motion, and it carried (9-0).

DRAINAGE EASEMENT

THIS EASEMENT made this 24th day of May, 2021, by and between, Great Plains Ventures, Inc., a Kansas corporation, Grantor, and the City of Wichita, Kansas, a municipal corporation, Grantee.

WITNESSETH: That the Grantor, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a perpetual easement for the purpose of constructing, operating, maintaining, and repairing drainage systems and ways, and any appurtenances thereto, over, along, and under the following described real estate situated in Sedgwick County, Kansas, to-wit:

That part of Parcel 4A as designated and described in the Amended Lot Split of Lots 1, 2, 3, 4, and part of Lot 5, Block 1, Great Plains Business Park 2nd Addition to Wichita, Sedgwick County, Kansas, recorded in the Office of the Sedgwick County Register of Deeds in DOC.#/FLM-PG: 29584878 described as follows: Commencing at the northwest corner of said Parcel 4A; thence S00º00'00"E (platted basis of bearings) coincident with the west line of said Parcel 4A, a distance of 97.54 feet for a point of beginning; thence S89º56'09"E, a distance of 2.12 feet; thence N35º29'08"E, a distance of 157.03 feet to the intersection with the southeast line of a 16.5 foot Southwestern Bell Easement recorded in the Office of the Sedgwick County Register of Deeds in Misc. Book 391, Page 282; thence N62º18'27"E coincident with the southeast line of said 16.5 foot Southwestern Bell Easement, a distance of 25.93 feet; thence S87º55'12"E, a distance of 103.01 feet to the intersection with the east line of said Parcel 4A; thence S00º00'00"E coincident with the east line of said Parcel 4A, a distance of 20.01 feet; thence N87º55'12"W, a distance of 98.42 feet; thence S62º18'27"W, a distance of 15.84 feet; thence S35º29'08"W, a distance of 139.18 feet; thence S00º00'00"E, a distance of 19.07 feet; thence N89º56'09"W, a distance of 26.00 feet to the intersection with the west line of said Parcel 4A; thence N00º00'00"E coincident with the west line of said Parcel 4A, a distance of 20.00 feet to the point of beginning.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such drainage systems and ways, and any appurtenances thereto.

IN WITNESS WHEREOF: The said Grantor has signed this document the day and year first written.

Great Plains Ventures, Inc.

By: Susayn C. Brandes

Susayn C. Brandes, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

This instrument was acknowledged before me on May 24, 2021, by Susayn C. Brandes, President of Great Plains Ventures, Inc., a Kansas corporation.

PENNY ANDERSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp.: 1/10/23

Penny Anderson

Notary Public

(seal)

(My Appointment Expires: 1/10/23)

Reviewed and approved by the City Engineer:

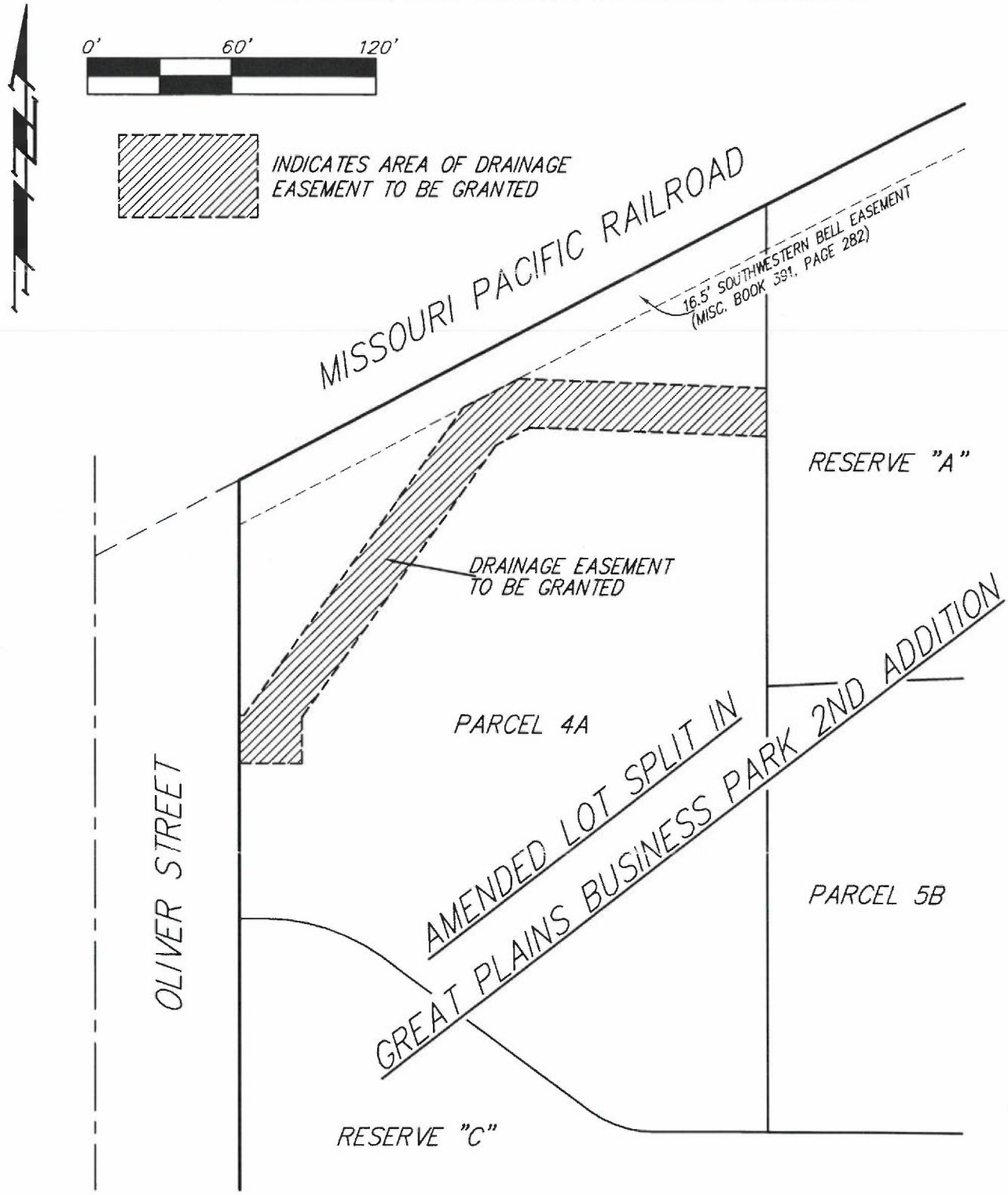
Shane Nellis

for Gary Janzen, PE

Last Revised April 2017

EXHIBIT

DRAINAGE EASEMENT IN PARCEL 4A, AMENDED LOT SPLIT IN PART OF GREAT PLAINS BUSINESS PARK 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS



21 MAY 2021

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316.262.7271 F 316.262.0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Agenda Item No. II-10

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

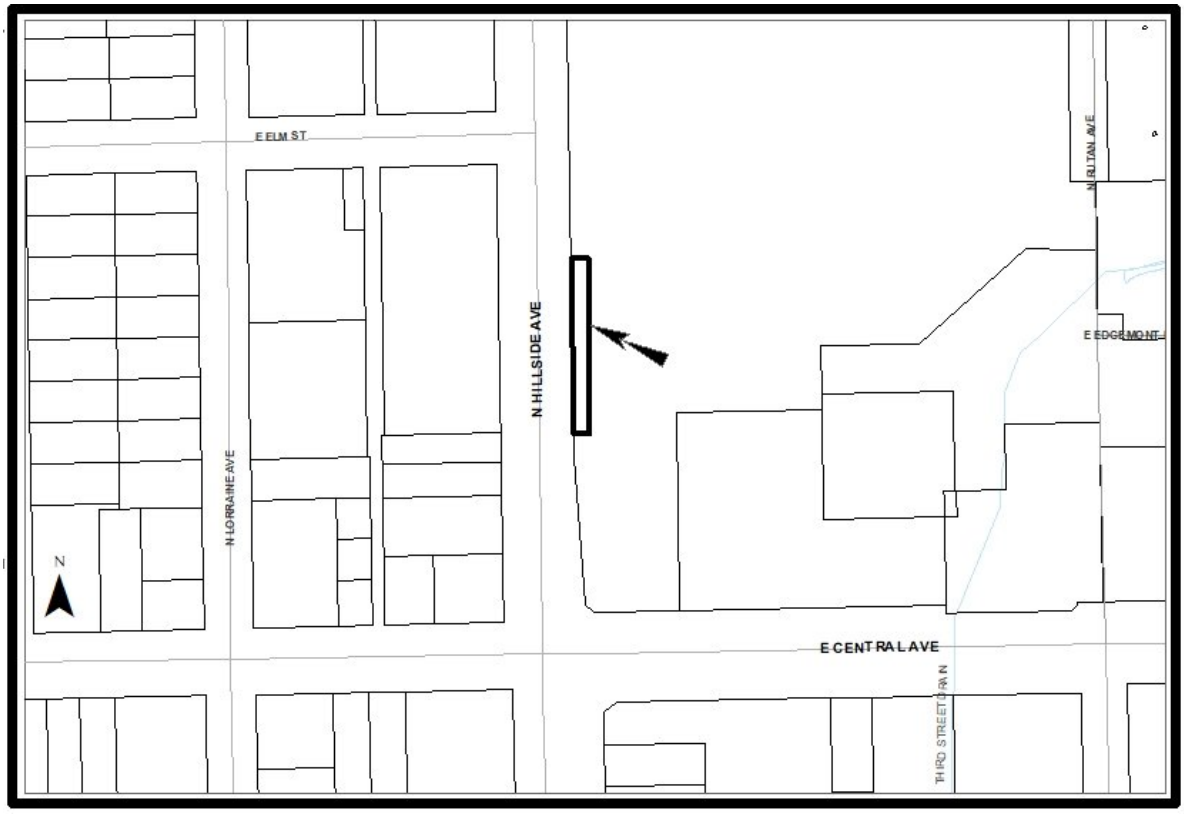
SUBJECT: VAC2021-00017 – City request to Vacate a Platted Street Side Yard Setback on General Office (GO) Zoned Property Generally Located on the Northeast Corner of East Central Avenue and North Hillside Avenue (550 North Hillside Avenue) (District I).

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The Metropolitan Area Planning Commission recommends approval of the vacation request (13-0).

Staff Recommendation: Staff recommends approval of the vacation request.



Background: The applicant is requesting the vacation of a 173.56-foot to a 173.82-foot long portion of a platted 20-foot street side yard setback to zero feet on the General Office (GO) zoned property, which is a corner lot. The subject setback is located on the west side of Lot 1, Wesley Medical Center Addition. The Wesley Medical Center Addition was recorded with the Register of Deeds August 12, 1969.

The purpose of the vacation is to remove an existing encroachment of 14.74 feet and to allow additional construction onto Wesley Medical Center, which is located on the northeast corner of East Central Avenue and North Hillside Avenue.

The Unified Zoning Code (UZC) establishes a corner lot's front yard setback along its shorter street frontage, which in this case is the subject site's East Central Avenue frontage: UZC Art.III, Sec.III-E.1.e.(6). The subject corner lot's street side yard setback runs parallel to North Hillside Avenue, a four lane arterial road with a center turn lane.

The UZC's minimum street side yard setback standard for the GO zoning district is 15 feet, which is less than the subject corner lot's platted 20-foot street side yard setback. If approved the request would reduce a173.56-foot to a 173.82-foot long portion of the platted 20-foot street side yard setback to zero feet. If the 20-foot street side yard setback was not platted the applicant could have applied for a variance to reduce it to the proposed zero feet. However, because the setback is platted an approved vacation request could establish the street side yard setback at zero feet.

The Wesley Medical Complex development is located on multiple plats. The GO zoned subject corner lot is unique in its configuration for the Wesley development and to the other properties located along the East Central – North Hillside Avenues' intersection. The subject lot is one of the three largest lots in the area. Adjacent and abutting GO, Limited Commercial (LC), General Commercial (GC) and Planned Unit Development (PUD) zoned subdivisions' lot sizes and configurations are not unique to this area and their setbacks are per the UZC's minimum standards or are platted as 20 to 35-foot setbacks. Staff could find no zero setbacks. In observation with other reductions of portions of this setback on the Wesley property, approval may not adversely affect the rights of adjacent property owners or residence.

Public Works has equipment in the area of the vacation and requires the dedication of a water and utility easement dedicated by separate instrument. There has been no objections from other utilities. The request will not encroach into the North Hillside Avenue right-of-way, therefore it will not encroach into the sidewalk as sidewalks are typically, including this site, located in the public street right-of-way. The Traffic Engineer has determined that the request would not pose vehicular sight interference.

Analysis: On May 6, 2021, the Metropolitan Area Planning Commission (MAPC) voted (13-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting.

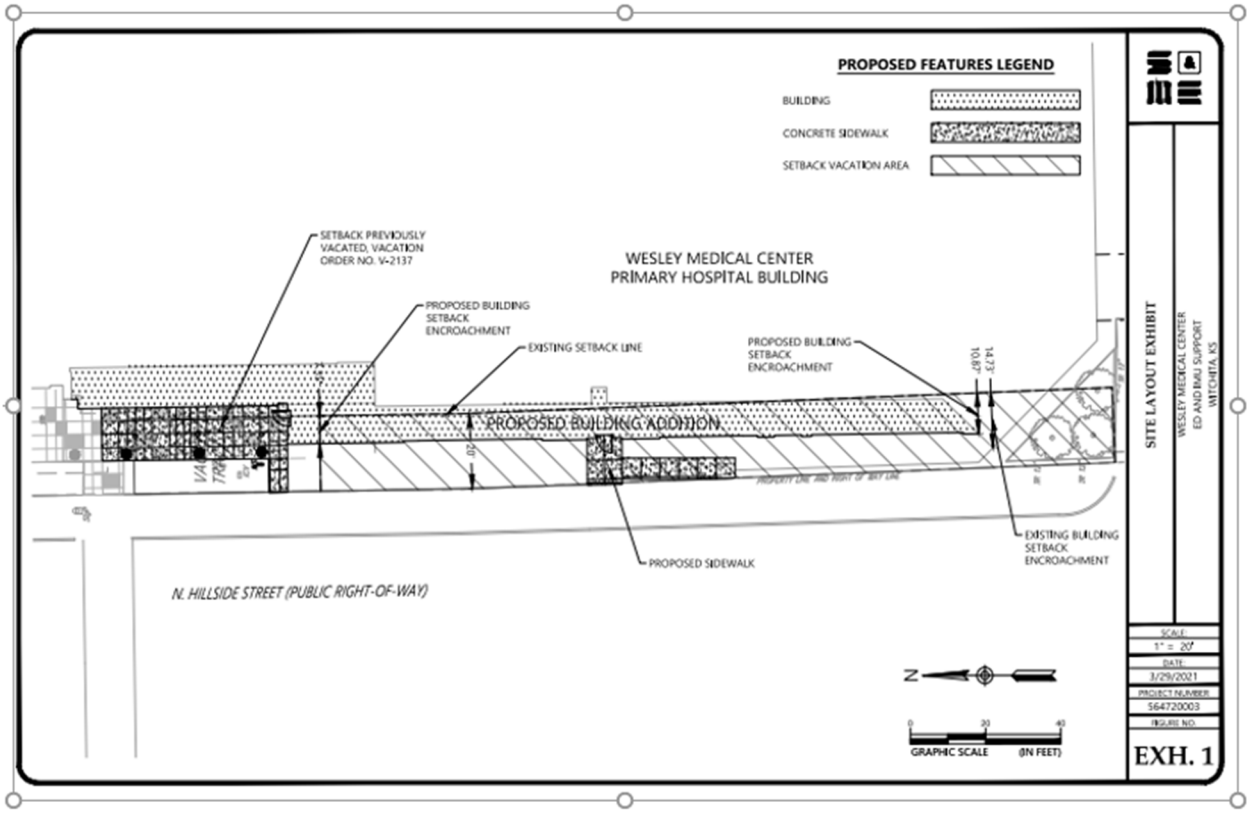
Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. The Law Department concurs that the approval of the Vacation Order is in accordance with City policy. The original Vacation Order and a dedication of a water and utility easement by separate instrument will be recorded with the Sedgwick County Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.

Attachments:

- Site Layout Map
- Vacation Order
- MAPC Minutes Excerpt


PROPOSED FEATURES LEGEND
BUILDING
CONCRETE SIDEWALK
SETBACK VACATION AREA
SETBACK PREVIOUSLY VACATED, VACATION ORDER NO. V-2137
WESLEY MEDICAL CENTER
PRIMARY HOSPITAL BUILDING
PROPOSED BUILDING SETBACK ENCROACHMENT
EXISTING SETBACK LINE
PROPOSED BUILDING SETBACK ENCROACHMENT
10.87'
14.73'
PROPOSED BUILDING ADDITION
PROPERTY LINE, 2ND RIGHT OF WAY LINE
EXISTING BUILDING SETBACK ENCROACHMENT
PROPOSED SIDEWALK
N. HILLSIDE STREET (PUBLIC RIGHT-OF-WAY)
N
0
20
40
GRAPHIC SCALE
(IN FEET)
SITE LAYOUT EXHIBIT
WESLEY MEDICAL CENTER
ED AND BMJ SUPPORT
WICHITA, KS
SCALE
1" = 20'
DATE
3/29/2021
PROJECT NUMBER
564720003
FIGURE NO.
EXH. 1

BEFORE THE CITY COUNCIL OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

IN THE MATTER OF THE VACATION OF A PORTION OF A PLATTED 20-FOOT STREET SIDE YARD SETBACK	)	
GENERALLY LOCATED ON THE NORTHEAST CORNER OF NORTH HILLSIDE AVENUE & EAST CENTRAL AVENUE	)	**VAC2021-00017**
MORE FULLY DESCRIBED BELOW	)	

VACATION ORDER

NOW on this 20th day of July, 2021, comes on for hearing the petition for vacation filed by Wesley Medical Center, LLC, c/o William J. Voloch, President & CEO (owner), praying for the vacation of the described portion of a platted 20-foot street side yard setback, to wit:

Being a tract of land lying in Wichita, Sedgwick County, Kansas, and being a portion of Lot 1 of the Wesley Medical Center Addition. Said tract being bounded on the west by the eastern right of way (ROW) of Hillside Avenue and bounded on the north, east and south by the remainder of said Lot 1. Said tract being more particularly described as follows:

POINT OF COMMENCEMENT being the southwest corner of Section 14, Township 27S, Range 1E, thence east 40.10 feet; thence north 50.07 feet to a point lying on the northeast ROW intersection of said Hillside Avenue and Central Avenue, said point being the southwest corner of said Lot 1; thence along said eastern ROW of Hillside Avenue North 01°18'08" West 216.27 feet to the true and actual POINT OF BEGINNING; thence continuing along said ROW of Hillside Avenue with the following: thence North 01°18'08" West 173.82 feet to a point; thence North 00°10'00" East 37.73 feet to a point; thence leaving said ROW of Hillside Avenue with the following: South 89°50'00" East 20.00 feet to a point; thence South 00°10'00" West 37.47 feet to a point; thence South 01°18'08" East 173.56 feet to a point; thence South 88°41'52" West 20.00 feet to the point of beginning.

Tract contains 4,226 square feet or 0.097 acres.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on April 15, 2021, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the described portion of the platted 20-foot street side yard setback, and the public will suffer no loss or inconvenience thereby.

3. A dedication of a utility and drainage easement will be recorded with the Sedgwick County Register of Deeds.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

6. The vacation of the described portion of the platted 20-foot street side yard setback, should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 20th day of July, 2021, ordered that the described portion of the platted 20-foot street side yard setback is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County for recording.

CITY OF WICHITA, KANSAS

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Jennifer Magana, City Attorney and Director of Law

EXCERPT MINUTES OF THE MAY 6, 2021 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

3.2 <u>Case No. VAC2021-00017: City Vacation of a portion of a platted street side yard setback on GO General Office zoned property;</u> generally located on the northeast corner of North Hillside Avenue and East Central Avenue (550 N Hillside).

RECOMMENDED ACTION: **APPROVE 6-0.**

Lot 1, Wesley Medical Center Addition, Wichita, Sedgwick County, Kansas

The applicant is requesting the vacation of a 173.56 – 173.82-foot long portion of a platted 20-foot street side yard setback to zero feet. The subject setback is located on the west side of Lot 1, Wesley Medical Center Addition, which is zoned GO General Office. The purpose of the vacation is to remove an existing encroachment of 14.74 feet and to allow additional construction onto Wesley Medical Center, which is located on the northeast corner of East Central Avenue and North Hillside Avenue; 550 North Hillside Avenue.

The UZC Unified Zoning Code establishes a corner lot's front yard setback along its shorter street frontage, which in this case is the subject site's East Central Avenue frontage: UZC Sec.III, E.1e.6. The subject corner lot's street side yard setback (it's west side) runs parallel to North Hillside Avenue, a four lane arterial with a center turn lane.

The UZC's minimum street side yard setback standard for the GO zoning district is 15 feet, which is less than the subject corner lot's platted 20-foot street side yard setback. If approved the request would reduce the platted 20-foot street side yard setback to zero feet, per an approved legal description. If the 20-foot street side yard setback was not platted the applicant could have applied for a variance to reduce it to the proposed zero feet. However, because the setback is platted an approved vacation request could establish the street side yard setback at zero feet.

The Wesley Medical Complex development is located on multiple plats. The GO zoned subject corner lot is unique in its configuration for this development and to the other properties located along the East Central – North Hillside Avenues' intersection. The subject lot is one of the three largest lots in the area. Adjacent and abutting GO, LC Limited Commercial, GC General Commercial and PUD Planned Unite Development zoned subdivisions' lot sizes and configurations are not unique to this area and their setbacks are per the UZC's minimum standards or are platted as 20 to 35 foot setbacks. Staff could find no zero setbacks. In observation with other reductions of portions of this setback, approval may not adversely affect the rights of adjacent property owners or residence; see NOTES.

Evergy has no objection, but has noted that it has street light lines, power lines and poles in this section of the North Hillside Avenue right-of-way. LaDonna Vanderford is the Evergy contact for this case; 316-261-6490. There is water, sewer and drainage lines in the North Hillside Avenue right-of-way. Stormwater requests an eight to 10-foot drainage easement. Conditions #2 and #4 cover Evergy and all public and franchised utilities. There has been no objections from utilities. The request will not encroach into the North Hillside Avenue right-of-way, therefore it will not encroach into the sidewalk as sidewalks are typically, including this site, located in the public street right-of-way. The Traffic Engineer has determined that the request would not pose vehicular sight interference. The Wesley Medical Center Addition was recorded with the Register of Deeds August 12, 1969.

NOTE: Various other portions of this platted 20-foot street side yard setback have been reduced for previous expansions. In 1992 V-1764 vacated a portion of the platted 20-foot setback. In 1998 V-2137 vacated a portion of the subject setback and BZA26-00098 was a variance that further reduced the platted 20-foot

street side yard setback to 9 feet. BZA2015-00035 was a variance that reduced the platted 20-foot street side yard setback to 6 feet.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Storm Water, Water and Sewer, Traffic, Fire, franchised utility representatives and other interested parties, planning staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted building setback.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

    1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 15, 2021, which was at least 20 days prior to this public hearing.

    2. That no private rights will be injured or endangered by vacating the described portion of the platted street side yard setback, and that the public will suffer no loss or inconvenience thereby.

    3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

(1) Provide Planning staff with an approved legal descriptions of the vacated portion of the platted street side yard setback on a Word document, via e-mail, to be used on the Vacation Order. This must be provided to Planning prior to the case going to Council for final action.

(2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(3) The Traffic Engineer would need to determine if the request would pose vehicular sight interference.

(4) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds; Stormwater requires a dedication of a drainage easement by separate instrument. All original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(5) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION

The Subdivision Committee recommends approval subject to the following (but not limited to) conditions:

(1) Provide Planning staff with an approved legal descriptions of the vacated portion of the platted street side yard setback on a Word document, via e-mail, to be used on the Vacation Order. This must be provided to Planning prior to the case going to Council for final action.

(2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(3) The Traffic Engineer would need to determine if the request would pose vehicular sight interference.

(4) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds; Stormwater requires a dedication of a drainage easement by separate instrument. All original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(5) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation

J JOHNSON moved, **DEB FOSTER** seconded the motion, and it carried (13-0).

Agenda Item No. II-11

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: VAC2021-00024 – City Request to Vacate a Portion of a Platted Rear Yard Setback on Single-Family Residential (SF-5) Zoned Property Generally Located Midway Between North Tyler and North Ridge Roads, Approximately a Third of a Mile North of West 21st Street North and Northeast of the West Reflection Ridge Road – North Morning Dew Street Intersection. (2408 North Morning Dew Street) (District V).

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The Metropolitan Area Planning Commission recommends approval of the vacation request (11-0).

Staff Recommendation: Staff recommends approval of the vacation request.

Background: The applicant proposes to vacate approximately 4.9 feet of a platted 20-foot rear yard setback located on the east side of the SF-5 Single Family Residential (SF-5) zoned property; Lot 42, Block 1, Reflection Ridge Addition, 2408 North Morning Dew Street. The Reflection Ridge Addition was recorded with the Register of Deeds October 7, 1987. The applicant proposes to build a roof over a patio. The roof will be attached to the applicant's house.

The SF-5 zoned subject property is included in the overlay of the Reflection Ridge Residential Community Unit Plan Development Plan #170 (CUP DP-170). Provision #4 of the CUP states that setbacks would be determined at the time of platting depending on land use or generally the minimum setbacks shall be shown on a chart on the CUP. The chart calls for 20-foot rear setbacks for all development in the CUP. The Unified Zoning Code (UZC) establishes a 20-foot rear setback, for the SF-5 zoning district; Sec.III-B.5.d.(4). Per the UZC the recorded platted setback is the minimum setback; Sec.III-E.1.(4).

If the rear setback was not platted the applicant could have applied for a variance that, if approved, would reduce the rear setback by more than 20%. However, if the vacation request is approved it would establish a setback of 15.1 feet only where the proposed roof for the patio is shown on the site plans. The subject lot is not unique in its configuration or size in reference to the other lots along this portion of North Morning Dew Street. However, none of the lots on this portion of North Morning Dew Street are rectangular or square in their shape, they all have a 'dog leg' bend leading to their rear yards. There is 10 feet of a platted 20-foot utility easement with a sewer line located in the rear yard setback. There is a platted five-foot maintenance and access easement running parallel to the subject site's north property line. The proposed vacation will not encroach into the platted easements. No utilities will be impacted by this vacation request.

Analysis: On June 17, 2021, the Metropolitan Area Planning Commission (MAPC) voted (11-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. The Law Department concurs that the approval of the Vacation Order is in accordance with City policy. The original Vacation Order will be recorded with the Sedgwick County Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order (simple majority of four votes required) and authorize the necessary signatures.

Attachments:
- Vacation Order
- MAPC Minutes Excerpt

BEFORE THE CITY COUNCIL OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

IN THE MATTER OF THE VACATION OF A PORTION OF A PLATTED 20-FOOT STREET REAR YARD SETBACK	)	
GENERALLY LOCATED MIDWAY BETWEEN NORTH TYLER ROAD & RIDGE ROAD, APPROXIMATELY A THIRD OF A MILE NORTH OF WEST 21ST STREET NORTH & NORTHEAST OF THE WEST REFLECTION RIDGE – NORTH MORNING DEW STREETS' INTERSECTION	)	**VAC2021-00024**
MORE FULLY DESCRIBED BELOW	)	

VACATION ORDER

NOW on this 20th day of July, 2021, comes on for hearing the petition for vacation filed by Teresa M. Craddock (owner), praying for the vacation of the described portion of a platted 20-foot rear yard setback, to wit:

A portion of Lot 42, Block 1, Reflection Ridge Addition to Wichita, Sedgwick County, Kansas, described a COMMENCING at the Northeast corner thereof; THENCE S89°24'13"W along the North line of said Lot 42, a distance of 20.00 feet; THENCE S00°35'47"E parallel with the East line of said Lot 47, a distance of 16.81 feet for a point of BEGINNING; THENCE continuing S00°35'47"E, a distance of 12.62 feet; THENCE N29°14'27"E, 10.95 feet; THENCE N60°45'33"W, a distance of 6.27 feet to the point of BEGINNING.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on April May 27, 2021, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the described portion of the platted 20-foot rear yard setback, and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

4. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

5. The vacation of the described portion of the platted 20-foot rear yard setback, should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 20th day of July, 2021, ordered that the described portion of the platted 20-foot rear yard setback is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County for recording.

CITY OF WICHITA, KANSAS

_____
Brandon J. Whipple, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Jennifer Magana, City Attorney and Director of Law

EXCERPT MINUTES OF THE JUNE 17, 2021 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

3. PUBLIC HEARING – VACATION ITEMS

3.1 VAC2021-00024: City Vacation of a portion of a platted rear setback on property zoned SF-5 Single Family generally located midway between North Tyler & North Ridge Roads, approximately a third of a mile north of West 21st Street north and northeast of the West Reflection Road – North Morning Dew Street intersection (2408 N. Morning Dew St.).

RECOMMENDED ACTION: **APPROVE 5-0.**

Lot 42, Block 1, Reflection Ridge Addition, Wichita, Sedgwick County, Kansas.

The applicants propose to vacate approximately 4.9 feet of a platted 20-foot rear yard setback located on the east side of the SF-5 Single Family Residential zoned property; Lot 42, Block 1, Reflection Ridge Addition, 2408 North Morning Dew Street. The applicants propose to build a roof over a patio, as shown on the site plans. The roof will be attached to the applicant's house.

The SF-5 zoned subject property is included in the overlay of the Reflection Ridge Residential CUP Community Unit Plan DP-170. Provision #4 of the CUP states that setbacks would be determined at the time of platting depending on land use or generally the minimum setbacks shall be shown on a chart on the CUP. The chart calls for 20-foot rear setbacks for all development in DP-170. The UZC Unified Zoning Code establishes a 20-foot rear setback, for the SF-5 zoning district; Sec.III-B.5.d.4. Per the UZC the recorded platted setback is the minimum setback; Sec.III-E.1.(4).

If the rear setback was not platted the applicant could have applied for a variance that could have reduced the rear setback by more than 20%. However if the vacation request is approved it would establish a setback of 15.1 feet only where the proposed roof for the patio is shown on the site plans. The subject lot is not unique in its configuration or size in reference to the other lots along this portion of North Morning Dew Street. However, none of the lots on this portion of North Morning Dew Street are rectangular or square in their shape, they all have a 'dog leg' bend leading to their rear yards. There is 10 feet of a platted 20-foot utility easement with a sewer line located in the rear yard setback. The proposed vacation will not encroach into the platted easement. There is a platted 5-foot maintenance and access easement running parallel to the subject site's north property line. This is not shown on the site plans, but per those plans the proposed roof does not appear to encroach into it.

The Reflection Ridge Addition was recorded with the Register of Deeds October 7, 1987.

Evergy has no objection to this request but does have equipment and underground lines in the in the platted 20-foot utility easement of which 10 feet is located in the back yard in the area/setback they want to vacate. Condition # 3 will cover Evergy. Richard Aiken Design Representative is the contact for this item and can be reached at 316-261-6334. There have been no objections from utilities or other entities that may have an interest in this request.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Storm Water, Water and Sewer, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described platted front yard setback.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time May 27, 2021, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by vacating the described portion of the platted rear yard setback, and that the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

(1) Vacate the portion of the platted 20-foot rear yard setback as described in an approved legal description. Provide Planning with the approved legal description on a Word document via E-mail for use on the Vacation Order. This must be completed prior to the case going to City Council for final action.

(2) Note VAC2021-00024 and its change on Lot 42, Block 1, Reflection Ridge Addition's rear setback on CUP DP-170.

(3) Confirm that the proposed roof does not encroach into the platted 5-foot maintenance and access easement running parallel to the subject site's north property line.

(4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(5) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(6) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the Vacation Order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Sedgwick County Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION

The Subdivision Committee recommends approval subject to the following (but not limited to) conditions:

(1) Vacate the portion of the platted 20-foot rear yard setback as described in an approved legal description. Provide Planning with the approved legal description on a Word document via E-mail for use on the Vacation Order. This must be completed prior to the case going to City Council for final action.

(2) Note VAC2021-00024 and its change on Lot 42, Block 1, Reflection Ridge Addition's rear setback on CUP DP-170.

(3) Confirm that the proposed roof does not encroach into the platted 5-foot maintenance and access easement running parallel to the subject site's north property line.

(4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.

(5) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filling with the Sedgwick County Register of Deeds.

(6) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the Vacation Order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Sedgwick County Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation

HARTMAN moved, **B JOHNSON** seconded the motion, and it carried (11-0).

Agenda Item No. II-12

City of Wichita
City Council Meeting
July 20, 2021

TO: Mayor and City Council

SUBJECT: ZON2021-00032 – City Zone Change from SF-5 Single-Family Residential to GO General Office on 23 Acres; Generally Located One-Half Mile West of South Meridian Avenue and One-Quarter Mile North of West MacArthur Road (3310 West MacArthur Road). (District IV)

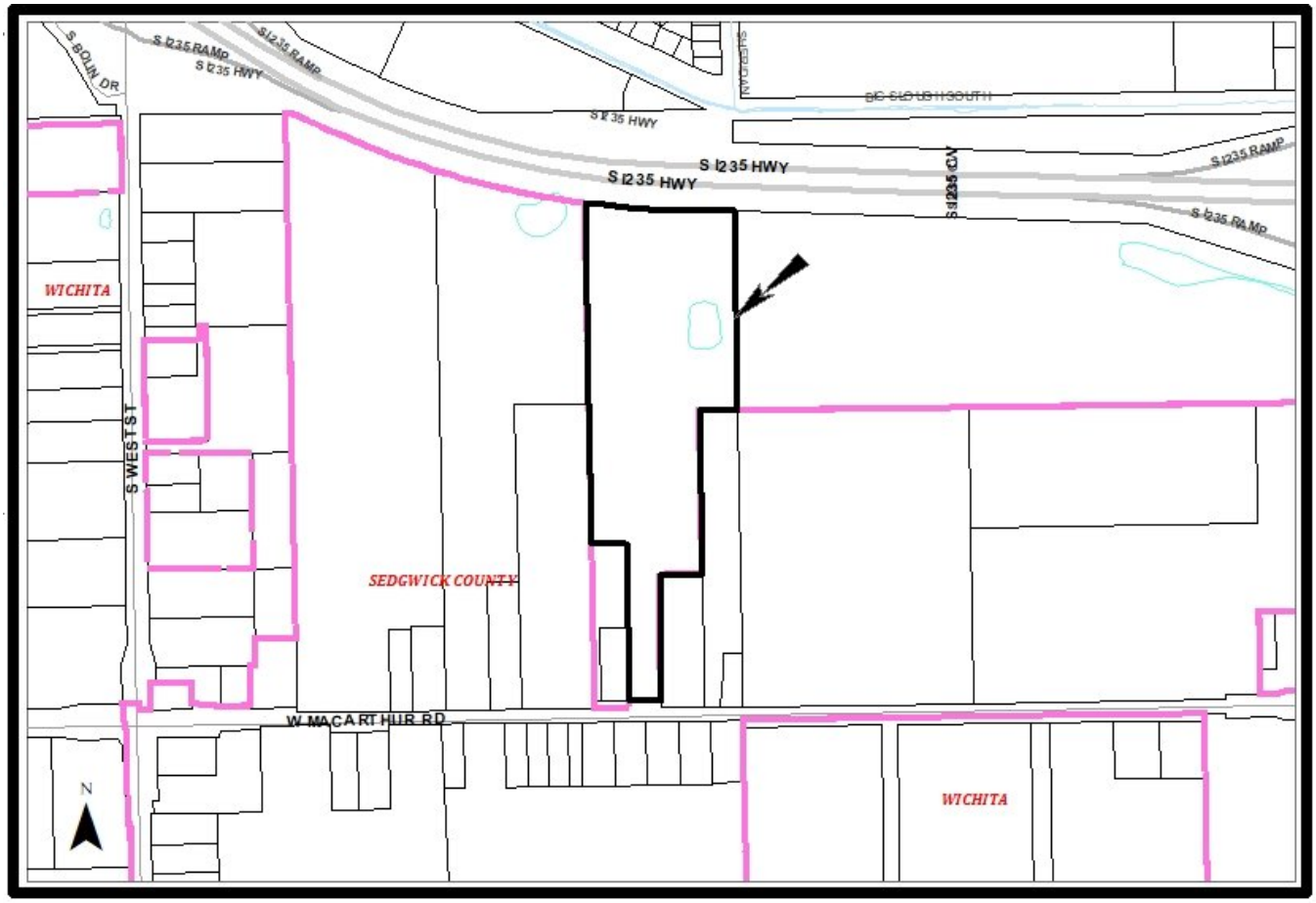
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The MAPC recommended approval of the request (11-0) subject to staff recommendations.

DAB Recommendation: District Advisory Board (DAB) IV reviewed the application at its meeting of July 12, 2021, and recommended approval subject to staff recommendations by a 7-0 vote.

MAPD Staff Recommendation: Metropolitan Area Planning Department staff recommended approval of the request.



Background: The applicant is requesting a zone change from SF-5 Single-Family Residential to GO General Office for a 22.73 acre parcel at 3310 West MacArthur Road, which is generally located on the one-half mile west of South Meridian Avenue and one-quarter mile north of West MacArthur Road. The purpose of the request is to permit General Office uses. The site is currently developed as a church. The application did not state whether or not the existing structures and use would remain or if the applicant desires to build additional structures on-site for new uses. The site is unique because the current structures and parking are on the extreme north side of the property fronting I-235. Access to these structures and parking is by a long driveway connecting south to MacArthur.

As discussed in more detail below, the Community Investments Plan identifies this area as appropriate for new residential. Staff recommends a protective overlay in order to meet the needs of the applicant's desire to develop the property and minimize negative impacts to surrounding properties. The protective overlay would restrict the site to certain uses permitted within General Office zoning in addition to limiting the area on which those uses can be developed.

General Office zoning will require the site to comply with screening, lighting, landscaping, and compatibility requirements as stated in the Unified Zoning Code and Wichita Landscape Ordinance.

Property to the north is the I-235 highway right-of-way. Property to the south is zone SF-20 Single-Family Residential and is developed with single family houses on large lots with a variety of lots sizes ranging from one acre to four and one-half acres. Property to the east is zoned SF-5 and GC General Commercial with CUP DP-357. The SF-5 zoned property is developed as a church. The GC zoned property with the CUP was recently approved the Board of County Commissioners on May 19, 2021 and is undeveloped. Property to the west is zoned SF-20 with single-family dwellings on large lots and agricultural land.

The request subject to Protective Overlay #373.

Protective Overlay #373

1. The site shall be restrict the uses to those permitted by-right in GO General Office, except the following use: Cemetery; Correctional Placement Residence, Limited and General; Recycling Collection Station, Private; Utility Minor; Marine Facility, Recreational; and Asphalt or Concrete Plant, Limited.

Analysis: On June 17, 2021, the Metropolitan Area Planning Commission (MAPC) recommended approval subject to staff comments (11-0). No members of the public spoke in opposition to this application at this public hearing. On July 12, 2021, the District Advisory Board (DAB) IV reviewed the application and recommended approval (7-0). No one spoke in opposition to this application at this public hearing. No protest petitions were filed. The application can be approved by a simple majority vote.

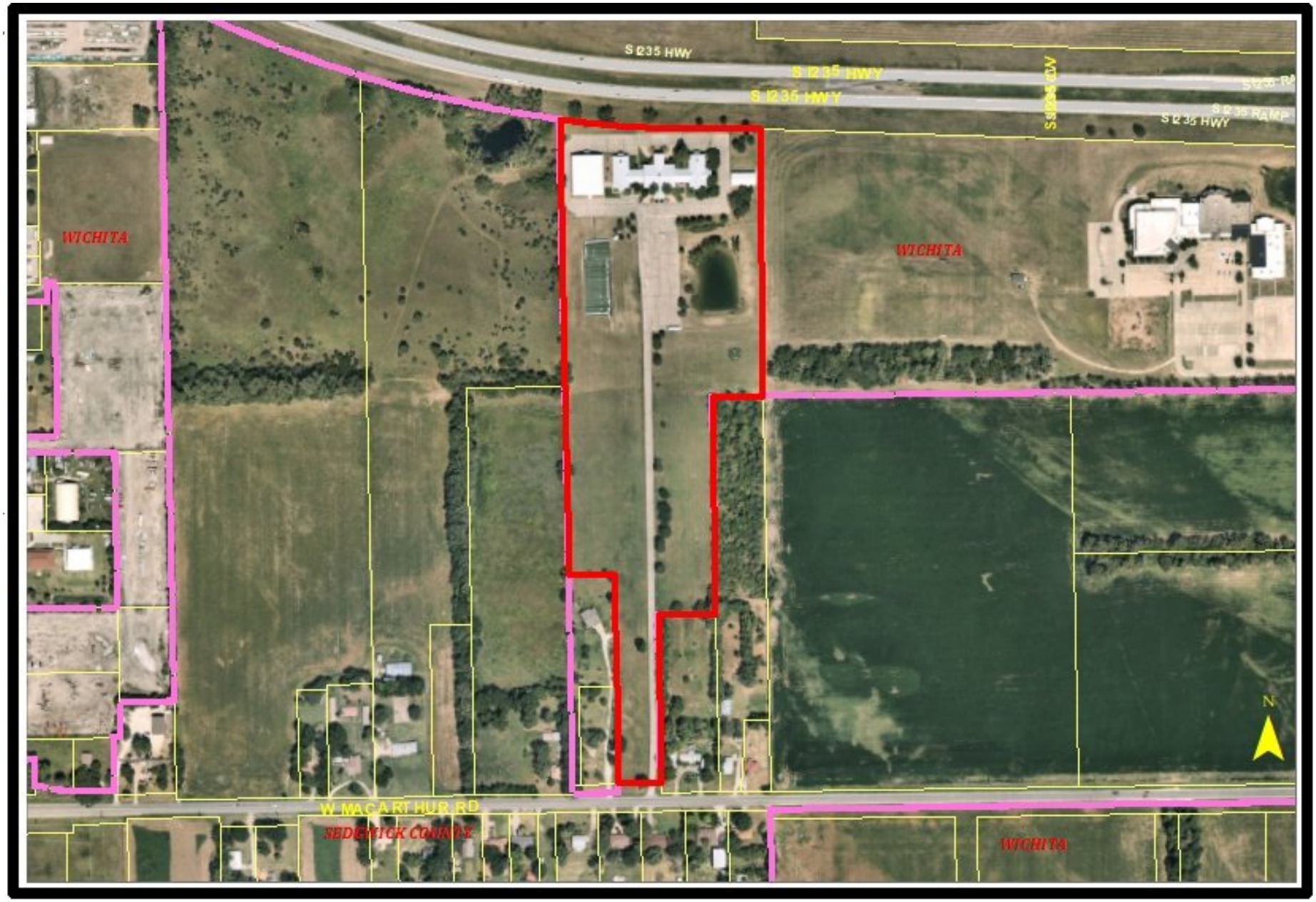
Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC, approve the requested zone change and place the ordinance on the first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four votes or a simple majority vote).

Attachments:

1) Aerial Map, 2) Zoning Map, 3) Land Use Map 4) MAPC Minutes, 5) DAB IV Report, 6) Ordinance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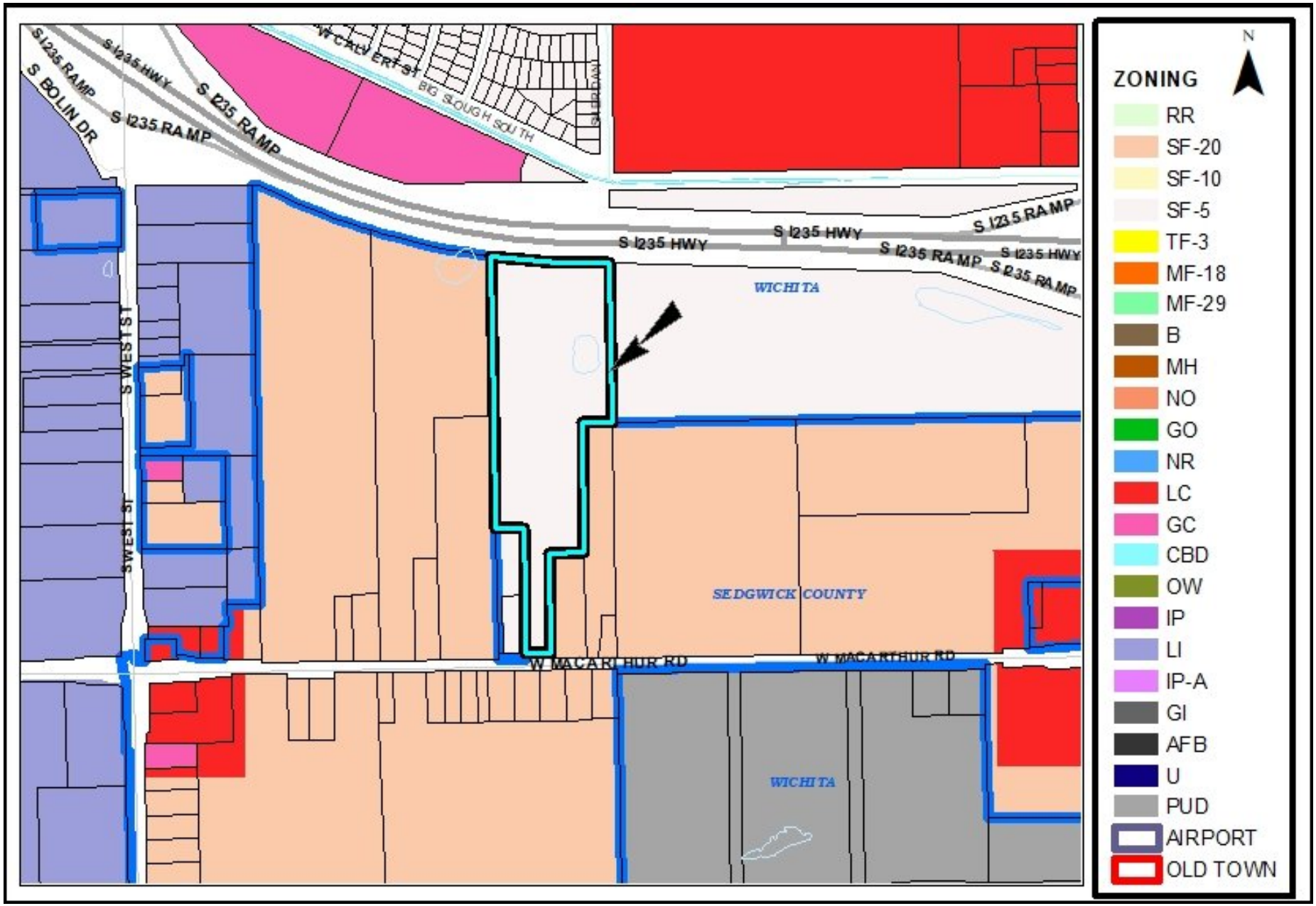
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OW
IP
LI
IP-A
GI
AFB
U
PUD
AIRPORT
OLD TOWN

EXCERPT MINUTES OF THE JUNE 17, 2021 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

4.6 ZON2021-00032 - City zone change from SF-5 single-family residential to GO general office on 23 acres; generally located one-half mile west of S. Meridian and one-quarter mile north of W. MacArthur (3310 W. MacArthur).

Lot 1, West Side Free Will Baptist Church Addition, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting a zone change from SF-5 Single Family Residential to GO General Office for a 22.73 acre parcel at 3310 West MacArthur Road, which is generally located on the one-half mile west of South Meridian Avenue and one-quarter mile north of West MacArthur Road. The purpose of the request is to permit General Office uses. The site is currently developed as a church. The application did not state whether or not the existing structures and use would remain or if the applicant desires to build additional structures on-site for new uses. The site is unique because the current structures and parking are on the extreme north side of the property fronting I-235. Access to these structures and parking is by a long driveway connecting south to MacArthur.

General Office zoning provides the opportunity to develop a variety of residential, public and civic, commercial, and industrial/manufacturing/ and extractive uses. The commercial uses permitted in GO are deem more appropriate in close proximity to nearby residential uses than uses in Limited Commercial or more intensive zoning classifications. As discussed in more detail below, the Community Investments Plan identifies this area as appropriate for new residential. Staff recommends a protective overlay in order to meet the needs of the applicant's desire to develop the property and minimize negative impacts to surrounding properties. The protective overlay would restrict the site to certain uses permitted within General Office zoning in addition to limiting the area on which those uses can be developed.

General Office zoning will require the site to comply with screening, lighting, landscaping, and compatibility requirements. The Unified Zoning Code (UZC) Section IV-B requires a minimum of a six-foot solid screening fence where abutting residentially zoned property. Screening is permitted to be done via landscaped earth berms as long as the effect of the landscaping provides the same effect as a six-foot solid screening fence. Section IV-B.4 of the UZC requires lighting to be provided with cut-off luminaries to minimize light trespass and glare and the height of the pole cannot exceed one-half the distance from the neighboring lot, except that the pole shall be limited to 15 feet in height within 200 feet of residential zoning. The Wichita Landscape Ordinance requires a landscape buffer where abutting residentially zone property. The landscape buffer must provide one shade tree or two ornamental trees per 40 linear feet. If landscaping is used to fulfill the screening requirement, screening trees can be counted toward the landscape buffer. The Landscape Ordinance also requires a landscaped street yard along MacArthur, which is calculated based on the average lot depth. Finally, Section IV-C of the UZC requires compatibility standards for setbacks and height of commercial buildings when abutting residential zoning. A 25-foot compatibility setback shall apply to any new structures. In addition, height is limited to 35 feet within 50 feet of abutting, residentially zoned lot line. Buildings can achieve one additional foot in height for every three feet they are setback beyond 50 feet.

Property to the north is the I-235 highway right-of-way. Property to the south is zone SF-20 Single-Family Residential and is developed with single family houses on large lots with a variety of lots sizes ranging from one acre to four and one-half acres. Property to the east is zoned SF-5 and GC General Commercial with CUP DP-357. The SF-5 zoned property is developed as a church. The GC zoned property with the

CUP was recently approved the Board of County Commissioners on May 19, 2021 and is undeveloped. Property to the west is zoned SF-20 with single-family dwellings on large lots and agricultural land.

CASE HISTORY: In January 1986, the property was re platted as the West Side Free Will Baptist Church Addition. In 1973, the property was platted as a portion of the MacArthur Villa Addition.

ADJACENT ZONING AND LAND USE:

North:	N/A	I-235 Right-of-way
South:	SF-20	Single Family Residential
East:	SF-5 and GC CUP DP-357	Church and Undeveloped
West:	SF-20	Single Family Residential, Agriculture.

PUBLIC SERVICES: Access to the site off of West MacArthur Road, a paved, two-lane arterial with no sidewalks. Public water and sewer already serve the existing building. Public services would have to be extended for any new construction.

CONFORMANCE TO PLANS/POLICIES: The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be appropriate for "New Residential" and a small portion of the northeast corner appropriate for "Commercial". The "New Residential" category is described in part as follows: "*Encompasses areas that likely will be developed or redeveloped by 2035 with uses predominately found in the Residential category. Pockets of Major Institutional and Commercial uses likely will be developed within this area as well, based upon market driven location factors.* The "Commercial" category is described in part as follows: "*Encompassing areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with Residential Uses.*" It is in Staff's opinion that the zone change request is in conformance with the comprehensive plan.

RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends **APPROVAL** of the request subject to Protective Overlay #373.

Protective Overlay #373

1. The site shall be restrict the uses to those permitted by-right in GO General Office, except the following use: Cemetery; Correctional Placement Residence, Limited and General; Recycling Collection Station, Private; Utility Minor; Marine Facility, Recreational; and Asphalt or Concrete Plant, Limited.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property to the north is the I-235 highway right-of-way. Property to the south is zone SF-20 Single-Family Residential and is developed with single family houses on large lots with a variety of lots sizes ranging from one acre to four and one-half acres. Property to the east is zoned SF-5 and GC General Commercial with CUP DP-357. The SF-5 zoned property is developed as a church. The GC zoned property with the CUP was recently approved the Board of County Commissioners on May 19, 2021 and is undeveloped. Property to the west is zoned SF-20 with single-family dwellings on large lots and agricultural land. It is in staff's opinion that General Office restricted by the Protective Overlay will not be detrimental to

the character of the neighborhood.

2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned SF-5 and is developed with a single family home or replatted into a subdivision for single family homes. The site currently is used for a church which is permitted by-right in SF-5 zoning.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The request for General Office could introduce a number of uses that would not be compatible with the surrounding residential uses. Restricting the zone change to the northern portion of the lot and the Projective Overlay restricting the uses will minimize negative impacts with the surrounding area.

4. **Length of time subject property has remained vacant as zoned:** The church was initially constructed in 1985. Several added on in 1996, 1998, and 2003.

5. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship.** Denial would represent a loss of economic opportunity to the applicant or property owner. Approval would represent gain for the applicant and provide new economic opportunity with General Office uses that serve the surrounding area, which is considered a gain for public health, safety, and welfare.

6. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be appropriate for "New Residential" and a small portion of the northeast corner appropriate for "Commercial". The "New Residential" category is described in part as follows: *"Encompasses areas that likely will be developed or redeveloped by 2035 with uses predominately found in the Residential category. Pockets of Major Institutional and Commercial uses likely will be developed within this area as well, based upon market driven location factors.* The "Commercial" category is described in part as follows: *"Encompassing areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with Residential Uses."* It is in Staff's opinion that the zone change request is in conformance with the comprehensive plan.

7. **Impact of the proposed development on community facilities:** Approval of the request should generate no additional impacts on community facilities. Existing public infrastructure at the site will accommodate the proposed use.

MOTION: To approve subject to staff recommendation.

B JOHNSON moved, **HARTMAN** seconded the motion, and it carried (11-0).

INTEROFFICE MEMORANDUM

TO: MAPD

FROM: Rebecca Fields, Community Services Representative, District 4

SUBJECT: **ZON2021-00032**

DATE: July 13, 2021

On Monday, July 12, 2021, Bill Longnecker, Senior Planner with the Metropolitan Area Planning Department (MAPD) presented ZON2021-00032 to the District 4 Advisory Board.

The applicant is requesting a zone change from SF-5 Single Family Residential to GO General Office for a 22.73 acre parcel at 3310 West MacArthur Road, which is generally located on the one-half mile west of South Meridian Avenue and one-quarter mile north of West MacArthur Road. The purpose of the request is to permit General Office uses. The site is currently developed as a church. Access to the current church structures and parking is by a long driveway connecting south to MacArthur.

General Office zoning provides the opportunity to develop a variety of residential, public and civic, commercial, and industrial/manufacturing/ and extractive uses. The commercial uses permitted in GO are deem more appropriate in close proximity to nearby residential uses than uses in Limited Commercial or more intensive zoning classifications. As discussed in more detail, the Community Investments Plan identifies this area as appropriate for new residential. Staff recommends a protective overlay in order to meet the needs of the applicant's desire to develop the property and minimize negative impacts to surrounding properties. The protective overlay would restrict the site to certain uses permitted within General Office zoning in addition to limiting the area on which those uses can be developed.

DAB Member Rebecca Robertson asked if there had been any protests from the area, and Mr. Longnecker replied no.

Councilman Blubaugh asked if the property would revert back to the tax roles when the zoning changes. Mr. Brian Lindebak ,MKEC Engineering, answered this question and stated yes, that it will go back on the tax role.

DAB Member Dalton Glasscock made a motion to approve and DAB Member Laura Rainwater gave a 2nd. The motion passed 7/0.

OCA 150004 PUBLISHED IN THE WICHITA EAGLE ON July 30, 2021

ORDINANCE NO. 51-605

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2021-00032

City zone change from SF-5 Single-Family Residential to GO General Office zoning lot described as:

Lot 1, West Side Free Will Baptist Church Addition, Sedgwick County, Kansas.

Subject to the following Protective Overlay #373 as follows:

1. The site shall restrict the uses to those permitted by-right in GO General Office, except the following use: Cemetery; Correctional Placement Residence, Limited and General; Recycling Collection Station, Private; Utility Minor; Marine Facility, Recreational; and Asphalt or Concrete Plant, Limited.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ATTEST:

_____
Brandon J. Whipple, Mayor, City of Wichita

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
July 20, 2021

TO: Wichita Airport Authority

SUBJECT: Assignment and Assumption of Lease for 7227 W. Harry Street Honeywell International, Inc., to Epoch, LLC
Wichita Dwight D. Eisenhower National Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Assignment and Assumption of Lease and acknowledge sublease.

Background: On October 19, 2004, the Wichita Airport Authority (WAA) entered into a Lease Agreement with Honeywell International, Inc., (Honeywell) for aviation related technical support space, offices, and other supporting facilities at 7227 W. Harry Street. Honeywell gave the WAA notice of its intent to close down and abandon this leasehold in October, 2019. Other than a brief period of sub-leasing the property, the property has been vacant since that time. This Lease Agreement has a 30 year term, terminating on November 21, 2035, and includes two 10 year renewal option terms through November 21, 2055.

Analysis: Honeywell requests to assign to Epoch, LLC (Epoch) the October 19, 2004 Lease Agreement, in its entirety, controlling all leasehold property located at 7227 W. Harry Street. Through a Leasehold Purchase Agreement between the parties, and through an Assignment and Assumption of Lease, Honeywell, as Assignor, and Epoch, as Assignee, have agreed upon all terms and conditions. Epoch is the real estate holding company of Millennium Concepts, Inc. (Millennium), and Epoch is wholly owned by the principal owners of Millennium. Epoch plans to sublease the 7227 W. Harry Street property in its entirety to Millennium. Millennium was established in 1999, and is a privately held local company. Millennium is a full scale vertically integrated research, engineering, and manufacturer of aerospace seats and interiors. The leased property on Eisenhower Airport will further expand and supplement Millennium's current location at 9050 W. Monroe Circle in West Wichita. Millennium's corporate headquarters and offices will relocate to Airport property.

Airport and Law Department staff have found these terms and conditions to be reasonable, but subject to approval by the WAA.

Financial Considerations: There are no financial considerations arising from this Assignment and Assumption of Lease. Rental terms remain unchanged, which results in net-neutral lease revenues to the WAA.

Legal Considerations: The Assignment and Assumption of Lease has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Assignment and Assumption of Lease between Honeywell and Epoch, and acknowledge sublease of the property from Epoch to Millennium.

Attachments: Assignment and Assumption of Lease.

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "**Assignment**") is made and entered into as the "Effective Date" set forth below, by and between **HONEYWELL INTERNATIONAL INC.**, a Delaware corporation ("**Assignor**"), and **EPOCH, LLC**, a Kansas limited liability company ("**Assignee**").

R E C I T A L S:

A. Assignor is the tenant with respect to a building and other fixtures and improvements (the "Improvements"), and the 6.342 acres of land under and around the Improvements as legally described on **Exhibit A** hereto (the "Land"; and together with the Improvements, the "Property") with an address of 7227 W. Harry Street, Wichita, Kansas 67209, located at the Wichita Dwight D. Eisenhower National Airport in Sedgwick County, pursuant to that certain Lease, dated October 29, 2004, between Wichita Airport Authority of the City of Wichita, Kansas, a government entity authorized and existing under the laws of the State of Kansas ("Landlord"), as landlord, and Seller, as tenant (the "Lease"); and

B. Assignor and Assignee are parties to that certain Real Estate Leasehold Purchase Agreement, dated _____, 2021 (the "Purchase Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to purchase Assignor's "Leasehold Estate" in the Property.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the consideration described in the Purchase Agreement, the parties agree as follows:

1. **Recitals**. The foregoing recitals are hereby incorporated in the body of this Assignment as if fully rewritten and restated herein.

2. **Assignment of Lease**. Assignor hereby sells, transfers and assigns to Assignee all of its right, title and interest in and to the Lease, subject, however, to the terms, covenants and conditions of the Lease and this Assignment, effective as of the Effective Date (the "Closing").

The Assignee acknowledges and understands all terms, covenants, conditions, rights and restrictions of the Lease and agrees to be bound by the same. The Assignee acknowledges and understands that this Assignment does not include title ownership in real property, including land, facilities, improvements, or alterations, which, whether current improvements or future improvements, shall remain vested with the Landlord. This Assignment expressly includes only those terms, conditions, rights, and covenants of the same. The Lease is incorporated into and made a part of this Agreement.

3. **Assumption of Obligations**. Assignee hereby accepts the assignment of the Lease, subject to the terms and conditions hereof, and Assignee hereby assumes and shall be responsible for and shall perform all of those obligations imposed on the tenant under the Lease from and after the Closing.

4. **Assignee's Indemnification**. Assignee hereby indemnifies, protects, defends and holds Assignor, Assignor's officers, directors, employees and agents, and their respective

successors and assigns, harmless from and against any and all claims, direct damages, direct losses, suits, proceedings, costs and expenses, including, without limitation, reasonable attorneys' fees, both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the Property on or after the date hereof, or the breach by Assignee of (or Assignee's failure to timely perform) any or all of the obligations imposed on the tenant under the Lease from and after the date hereof.

5. **Contingency**. Assignor and Assignee acknowledge that this Assignment may only become effective upon the consent of the Landlord. Both parties expressly agree that the consent of the Landlord is a contingency to this Assignment becoming effective. In the event the Landlord does not execute the consent below, this Assignment shall have no legal force or effect.

6. **Counterparts; Facsimile/E-mailed Signatures.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. Assignor and Assignee agree that the delivery of an executed copy of this Assignment by facsimile or by attachment to an e-mail (including execution via DocuSign) shall be legal and binding on the transmitting party and shall have the same full force and effect as if an original executed copy of this Assignment had been delivered.

7. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of Kansas.

8. **Partial Invalidity**. The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

Effective Date: _____, 2021

ASSIGNOR:
HONEYWELL INTERNATIONAL INC., a Delaware corporation

By: _____
Name: James O'Reilly
Its: Vice President, Global Real Estate

ASSIGNEE:
EPOCH, LLC, a Kansas limited liability company

By: _____
Name: Kevin R. Reifschneider
Its: Managing Member

LANDLORD'S CONSENT

Pursuant to the "Lease," as such term is defined in the Assignment and Assumption of Lease (the "Assignment"), dated as of the Effective Date (as set forth in the Assignment), between Honeywell International Inc., as assignor, and Epoch, LLC, as assignee, to which this Landlord's Consent is attached, the undersigned hereby consents to the assignment and assumption of the Lease as set forth in the Assignment and agrees (a) to release Honeywell International Inc. from any liability or obligations under the Lease that arise from and after the Effective Date (but only to the extent that the causes giving rise to Tenant's obligations under the Lease occurred after the Effective Date), and (b) that Epoch, LLC has all rights and obligations under the Lease as "Tenant" from and after the Effective Date (but only to the extent that the causes giving rise to Tenant's obligations under the Lease occur on or after the Effective Date). The undersigned further states that no default has occurred under the terms of the Lease.

WICHITA AIRPORT AUTHORITY OF THE CITY OF WICHITA, KANSAS, a government entity authorized and existing under the laws of the State of Kansas

By:_____
Printed Name: Brandon J. Whipple
Its: President

Approved:

_____
Scot Rigby, Interim/Acting Director of Airports

Approved as to form:

_____
Jennifer Magana, City Attorney and Director of Law

Exhibit A to Assignment and Assumption of Lease

Legal Description of the Land

Part of Reserve F, Wichita Municipal Airport Addition to Wichita, Sedgwick County, Kansas described as follows: Commencing at the Northeast corner of the Northeast Quarter, Section 33, Township 27 South, Range 1 West of the 6TH P.M.; thence bearing S87°48'42"W, along the North line of said Northeast Quarter, a distance of 106.27 feet; thence bearing S02°11'18"E, a distance of 45.00 feet to the Point of Beginning; thence bearing S87°48'42"W parallel with the North line of said Northeast Quarter, a distance of 399.42 feet; thence bearing S02°43'58"E, a distance of 395.21 feet; thence bearing S06°43'48"W a distance of 234.01 feet; thence bearing N87°48'42"E, a distance of 489.82 feet; thence bearing N00°37'12"W a distance of 385.10 feet; thence bearing S87°48'42"W a distance of 75.03 feet; thence bearing N00°37'12"W a distance of 241.50 feet to the Point of Beginning.

Encompassing 276,276 square feet or 6.342 acres more or less.